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Thursday
April 18, 1996

Briefings on How To Use the Federal Register
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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

WHO: Sponsored by the Office of the Federal Register.

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

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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

WHEN: April 23, 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)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–137–AD; Amendment 39–9573; AD 96–08–07]

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A310 and A300–600 series airplanes, that currently requires a revision to the FAA-approved Airplane Flight Manual (AFM) that warns the flight crew about certain consequences associated with overriding the autopilot while it is in the COMMAND mode or in the pitch axis. That AD also requires modification of certain flight control computers (FCC). This amendment requires replacement of the currently required revision to the AFM with a newly worded revision that explains the effect the modification of the FCC's has on the operation and performance of the autopilot and that clarifies the limitation for unmodified airplanes. This amendment is prompted by the results of an FAA review of the requirements of the existing AD. The actions specified by this AD are intended to prevent an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which could severely reduce controllability of the airplane.

DATES: Effective May 23, 1996.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of November 2, 1994 (59 FR 52414, October 18, 1994).

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–21–07, amendment 39–9049 (59 FR 52414, October 18, 1994), which is applicable to all Airbus Model A310 and A300–600 series airplanes, was published in the Federal Register on October 11, 1995 (60 FR 52872). The action proposed to require modification of certain flight control computers (FCC). The action also proposed to require replacement of the currently required revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) with a newly worded revision that explains the effect the modification of the FCC's has on the operation and performance of the autopilot and that clarifies the limitation for unmodified airplanes.

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

All of the commenters support the proposed rule.

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

There are approximately 15 Model A310 series airplanes and 36 Model A300–600 series airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 94–21–07 and retained in this AD takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the actions currently required by AD 94–21–07 is estimated to be $3,060, or $60 per airplane.

The newly revised AFM limitation that is required by this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be nominal in cost. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $3,060, or $60 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9049 (59 FR 52414, October 18, 1994), and by adding a new airworthiness directive (AD), amendment 39–9573, to read as follows:

96–08–07 Airbus Industrie: Amendment 39–9573. Docket 95–NM–137–AD. Supersedes AD 94–21–07, Amendment 39–9049.

Applicability: All Model A310 and A300–600 series airplanes, 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 (d) 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 an out-of-trim condition between the trimmable horizontal stabilizer and the elevator, which may severely reduce controllability of the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the information contained in paragraph (a)(1) or (a)(2) of this AD, as applicable. This may be accomplished by inserting a copy of this AD in the AFM. The AFM limitation required by AD 94–21–07, amendment 39–9049, may be removed following accomplishment of the requirements of this paragraph.

(1) For airplanes on which the flight control computers (FCC) have not been modified in accordance with the requirements of paragraph (b) of this AD:

''Overriding the autopilot (AP) in pitch axis does not cancel the AP autotrim when LAND TRACK mode [green LAND on both Flight Mode Annunciators (FMA)] or GO-AROUND mode is engaged. In these modes, if the pilot counteracts the AP, the autotrim will trim against pilot input. This could lead to a severe out-of-trim situation in a critical phase of flight.''

(2) For airplanes on which the FCC's have been modified in accordance with requirements of paragraph (b) of this AD.

''Overriding the autopilot (AP) in pitch axis does not cancel the AP autotrim when LAND TRACK mode (green LAND on both FMA's) is engaged, or GO-AROUND mode is engaged below 400 feet radio altitude (RA). In these modes, if the pilot counteracts the AP, the autotrim will trim against pilot input. This could lead to a severe out-of-trim situation in a critical phase of flight.''

(b) For airplanes equipped with FCC's having either part number (P/N) B470ABM1 (for Model A310 series airplanes) or B470AAM1 (for Model A300–600 series airplanes): Within 60 days after November 2, 1994 (the effective date of AD 94–21–07, amendment 39–9049), modify the FCC's in accordance with Airbus Service Bulletin A310–22–2036, dated December 14, 1993 (for Model A310 series airplanes), or Airbus Service Bulletin A300–22–6021, Revision 1, dated December 24, 1993 (for Model A300–600 series airplanes), as applicable.

Note 2: Paragraph (b) of this AD merely restates the requirements of paragraph (b) of AD 94–21–07, amendment 39–9049. As allowed by the phrase, ''unless accomplished previously,'' specified in the compliance statement of this AD, if those requirements of AD 94–21–07 have already been accomplished, this AD does not require that those actions be repeated.

(c) As of November 2, 1994 (the effective date of AD 94–21–07, amendment 39–9049), no person shall install an FCC having either P/N B470ABM1 or B470AAM1 on any airplane.

(d) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) 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.

(f) The modification shall be done in accordance with Airbus Service Bulletin A310–22–2036, dated December 14, 1993, or Airbus Service Bulletin A300–22–6021, Revision 1, dated December 24, 1993, as applicable. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of November 2, 1994 (59 FR 52414, October 18, 1994). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 23, 1996.

Issued in Renton, Washington, on April 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–9337 Filed 4–17–96; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

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

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

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

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

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

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National

Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Effingham County (FEMA Docket No. 7150).	Unincorporated areas .	August 23, 1995, August 30, 1995, The Herald.	Mr. George G. Allen, Chairman of the Effingham County Board of Commissioners, Effingham County Courthouse, P.O. Box 307, Springfield, Georgia.	August 15, 1995	130076
Illinois: Cook (FEMA Docket No. 7158).	Village of Orland Park .	September 28, 1995, October 5, 1995, The Daily Southtown Economist.	The Honorable Daniel McLaughlin, Mayor of the Village of Orland Park, 14700 South Ravinia Drive, Orland Park, Illinois 60462.	September 21, 1995.	170140 B
Ohio: Montgomery (FEMA Docket No. 7158).	City of Trotwood	October 10, 1995, October 17, 1995, Daily Court Reporter.	Mr. Michael Ratcliff, City of Trotwood Manager, 35 North Olive Road, Trotwood, Ohio 45426.	September 19, 1995.	390417 B

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

Dated: April 9, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–9608 Filed 4–17–96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

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

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

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

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

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
INDIANA	
Brownstown (Town), Jackson County (FEMA Docket No. 7164)	
East Fork White River:	
Approximately 0.4 mile downstream of Ewing Road	*542
Approximately 0.5 mile upstream of Ewing Road	*544
Maps available for inspection at the Town Hall, 200 West Walnut Street, Brownstown, Indiana.	
Scottsburg (City), Scott County (FEMA Docket No. 7164)	
Iola Lake:	
Entire shoreline	*552
Pigeon Roost Creek:	
At confluence with Stucker Ditch	*544
Approximately 0.1 mile upstream of State Route 56	*547
Scottsburg Drain:	
At confluence with Pigeon Roost Creek	*547
At U.S. 31 downstream side	*570
Iola Run:	
Approximately 0.5 mile upstream of confluence with Stucker Ditch	*543
At Conrail Railroad	*543
Stucker Ditch:	
Approximately 0.6 mile upstream of confluence with Muscatatuck River	*544
Approximately 0.65 mile upstream of confluence with Muscatatuck River	*544
Maps available for inspection at the Scottsburg City Hall, 2 East McClain Avenue, Scottsburg, Indiana.	
Seymour (City), Jackson County (FEMA Docket No. 7159)	
Heddy Run, Von Fange Ditch:	
Approximately 0.78 mile downstream of Chessie System at the extraterritorial limits	*561
Approximately 370 feet upstream of Eighth Street	*571
Maps available for inspection at the City Hall, 301 North Chestnut, Seymour, Indiana.	
MARYLAND	
Prince George's County (Unincorporated Areas) (FEMA Docket No. 7164)	
Bald Hill Branch:	
Approximately 475 feet upstream of confluence with Western Branch	*93
Approximately 1,300 feet upstream of Bald Hill Branch	*164
Maps available for inspection at the Department of Environmental Resources, Information and Permits Management Section, Inglewood III Office Building, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland.	
MICHIGAN	
Coldwater (City), Branch County (FEMA Docket No. 7155)	
Sauk River:	
At confluence with South Lake	*928
Approximately 0.1 mile upstream of Michigan Avenue	*972
South Lake Drain:	
Approximately 300 feet downstream of Race Street	*940
Approximately 1,300 feet upstream of most upstream crossing of Farm Lane	*985
County Drain 15:	
At State Road	*969
Approximately 900 feet upstream of Private Drive	*974
South Lake:	
Entire shoreline within community	*928
Randall Lake:	
Entire shoreline within community	*928
Maps available for inspection at the Coldwater City Hall, 28 West Chicago Street, Coldwater, Michigan.	
Coldwater (Township), Branch County (FEMA Docket No. 7155)	
Coldwater River:	
At confluence with South Lake	*928
At Fenn Road	*959
South Lake Drain:	
At confluence with South Lake	*928
Approximately 1.2 miles upstream of Garfield Road	*1000
Sauk River:	
Approximately 0.6 mile downstream of Michigan Avenue	*970
At Fox Road	*984
County Drain 40:	
At confluence with Sauk River	*978
Approximately 1.0 mile upstream of Wood Road	*990
Cold Creek:	
At confluence with Randall Lake	*928
At Jonesville Road	*963
County Drain 15:	
At confluence with Cold Creek	*946
Approximately 0.7 mile upstream of Michigan Road	*966
Morrison Lake:	
Entire shoreline within community	*928

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Randall Lake:	
Entire shoreline within community	*928
South Lake:	
Entire shoreline within community	*928
Maps available for inspection at the Coldwater Township Hall, 571 South Sprague Road, Coldwater, Michigan.	
MINNESOTA	
Cannon Falls (City), Goodhue County (FEMA Docket No. 7164)	
Cannon River:	
Approximately 0.7 mile upstream from the downstream corporate limits	*781
Approximately 0.3 mile upstream of 8th Street (State Route 17)	*801
Little Cannon River:	
Approximately 100 feet upstream of Sewer Crossing	*795
At upstream corporate limits	*820
Maps available for inspection at the City Hall, 306 West Mill Street, Cannon Falls, Minnesota.	
NEW YORK	
Bolton (Town), Warren County (FEMA Docket No. 7159)	
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Town of Bolton Zoning Office, Lakeshore Drive, Bolton, New York.	
Lake George (Village), Warren County (FEMA Docket No. 7159)	
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Village of Lake George Administrative Building, Amherst Street, Lake George, New York.	
Queensbury (Town), Warren County (FEMA Docket No. 7159)	
Glen Lake:	
Along entire shoreline	*404
Lake George:	
Entire shoreline within community	*321
Rush Pond:	
Entire shoreline	*404
Unnamed Ponding Area:	
Area near I–87	*404
Maps available for inspection at the Office of the Town Clerk, 742 Bay Road, Queensbury, New York.	
Ticonderoga (Town), Essex County (FEMA Docket No. 7159)	
Lake George:	
Entire shoreline within community of Deland Point Road	*321
Maps available for inspection at the Ticonderoga Town Hall, 324 Champlain Avenue, Ticonderoga, New York.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
New Stanton (Borough), Westmoreland County (FEMA Docket No. 7110)	
Belson Run:	
At downstream corporate limits with Hempfield	*1043
At upstream corporate limits with Hempfield (near Sandworks Road)	*1133
Maps available for inspection at the Borough Municipal Building, 451 West Center Avenue, New Stanton, Pennsylvania	
Philadelphia (City), Philadelphia County (FEMA Docket No. 7155)	
Schuylkill River:	
Approximately 1,600 feet upstream of Passyunk Avenue	*10
Approximately 1.4 miles upstream of Flat Rock Dam (at the upstream county boundary)	*54
The land area located adjacent to and east of the Schuylkill River previously designated as the Philadelphia Naval Base	*10
Cobbs Creek:	
Approximately 950 feet upstream of Market Street	*72
Approximately 0.3 mile downstream of confluence of Indian Creek	*86
Byberry Creek:	
At confluence with Poquessing Creek	*27
At the downstream side of Knights Road	*27
Delaware River:	
The land area located adjacent to and north of the Delaware River previously designated as the Philadelphia Naval Base	*10
Maps available for inspection at the Philadelphia Planning Commission, 1515 Market Street, Philadelphia, Pennsylvania.	
Washington (Township), Westmoreland County (FEMA Docket No. 7110)	
Pine Run:	
Approximately 725 feet downstream of the State Route 380	*919
Approximately .4 mile upstream of Ashbaug Road	*1071
Pucketa Creek (Upper Reach):	
Approximately 0.6 mile upstream of Chamber Road (Pine Run Road) ...	*987
Maps available for inspection at the Washington Township Municipal Building, 285 Pine Run Church Road, Apollo, Pennsylvania.	
WEST VIRGINIA	
Boone County (Unincorporated Areas) (FEMA Docket No. 7164)	
Little Coal River:	
Approximately 1.26 miles downstream of confluence of Big Pinnacle Creek	*160
Approximately 0.2 mile upstream of State Route 17	*701
Spruce Fork:	
At the confluence with Little Coal River	*701

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pond Fork:	
At the confluence with Little Coal River	*701
Maps available for inspection at the Office of the Emergency Services Director, Avenue C, Madison, West Virginia.	
Danville (Town), Boone County (FEMA Docket 7164)	
Little Coal River:	
Approximately 100 feet upstream of U.S. Route 119	*692
Approximately 0.36 mile downstream of the confluence of Hopkins Branch	*695
Maps available for inspection at the Danville City Hall, Park Avenue, Danville, West Virginia.	
Madison (City), Boone County (FEMA Docket No. 7164)	
Little Coal River:	
Approximately 0.36 mile downstream of the confluence of Hopkins Branch	*695
Approximately 0.2 mile upstream of State Route 17	*701
Spruce Fork:	
At the confluence with Little Coal River	*701
Approximately 32.5 feet upstream of confluence with Little Coal River	*701
Pond Fork:	
At the confluence with Little Coal River	*701
At upstream side of CSX Transportation	*701
Maps available for inspection at the Madison City Hall, 261 Washington Avenue, Madison, West Virginia.	
Mineral County (Unincorporated Areas) (FEMA Docket No. 7155)	
Patterson Creek:	
Approximately 1.55 miles downstream of George Run Road	*593
Approximately 0.58 mile upstream of confluence of Mill Creek	*751
Maps available for inspection at the Mineral County Planning Office, 150 Armstrong Street, Keyser, West Virginia.	
WISCONSIN	
Barron County (Unincorporated Areas) (FEMA Docket No. 7155)	
Tenmile Lake:	
Entire shoreline within community	*1040
Lake Chetek:	
Entire shoreline within community	*1040
Prairie Lake:	
Entire shoreline within community	*1040
Pokegama Lake:	
Entire shoreline within community	*1040
Mud Lake:	
Entire shoreline within community	*1040
Hemlock Lake:	
Entire shoreline within community	*1189
Red Cedar Lake:	
Entire shoreline within community	*1189
Kidney Lake:	
Entire shoreline within community	*1233
Beaver Dam Lake:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Entire shoreline within community	*1233
Bear Lake:	
Entire shoreline within community	*1222
Maps available for inspection at the Barron County Clerk's Office, 1671 18th Street, Barron, Wisconsin.	
Dunn County (Unincorporated Areas) (FEMA Docket No. 7155)	
Chippewa River:	
Approximately 400 feet upstream of downstream county boundary	*725
At upstream county boundary	*761
Elk Creek:	
At the Elk Lake Dam	*806
At County Highway EE	*846
Eau Galle River:	
At the Eau Galle Dam	*763
Approximately 200 feet upstream of County Highway D	*769
Red Cedar River:	
At the confluence with Chippewa River	*729
Approximately 0.6 mile downstream of County Highway Y	*729
Maps available for inspection at the Dunn County Clerk's Office, 800 Wilson Avenue, Menomonie, Wisconsin.	
Haugen (Village), Barron County (FEMA Docket No. 7128)	
Bear Lake:	
Entire shoreline within corporate limits	*1222
Maps available for inspection at the Haugen Village Office, 108 West Third Street, Haugen, Wisconsin.	
Platteville (City), Grant County (FEMA Docket No. 7128)	
Roundtree Branch:	
Approximately 0.95 mile downstream of Southwest Road	*830
Approximately 0.23 mile upstream of 500 Line Railroad Bridge	*931
Maps available for inspection at the Department of Community Planning and Development, 75 North Bonson, P.O. Box 780, Platteville, Wisconsin.	

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

Dated: April 9, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–9605 Filed 4–17–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 96–113]

Mass Media: AM Expanded Band Allotment Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; comments in response to reconsideration.

SUMMARY: In Comments in Response to Reconsideration of Implementation of the AM Expanded Band and Allotment Plan, FCC 96–113, the Federal Communications Commission denied requests raised in response to Reconsideration of Implementation of the AM Expanded Band Allotment Plan (Reconsideration Order) and closed to further changes the official AM database (the June 30, 1993–A AM Engineering Database) which is used for expanded band allotments. The Reconsideration Order had rescinded the initial AM Expanded Band Allotment Plan and provided a period for comments to correct the AM database and comments on the procedures which would be used to generate a new plan based on recalculated ranking factors.

EFFECTIVE DATE: April 18, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Burtle, Audio Services Division, Mass Media Bureau, (202) 418–2670.

SUPPLEMENTARY INFORMATION: The full text of this Commission decision Comments in Response to Reconsideration of Implementation of the AM Expanded Band and Allotment Plan, FCC 96–113, adopted March 15, 1996, and released March 22, 1996 (Comments Order), is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., N.W. Washington D.C. (See MM Docket 87–267). The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M St., N.W., Suite 640, Washington, D.C. 30036.

By the Reconsideration Order, 60 FR 48426 (September 19, 1995), the Commission rescinded the interference improvement factor rankings and the resulting Allotment Plan for AM stations seeking to migrate to the AM expanded band. The Allotment Plan identified those AM stations that were eligible to apply for authorizations for specific allotments for AM expanded band frequencies (1605 kHz–1705 kHz). The Commission provided the public a thirty-day period to submit comments on the procedures and technical standards which were set forth in the Reconsideration Order and which would be used to generate corrected improvement factors and a new allotment plan. Comments were received from four licensees. The FCC rejected the requests raised in the comments.

Concurrent with the release of the Comments Order, the Commission's Mass Media Bureau announced revised expanded AM broadcast band improvement factors and a revised Allotment Plan. See Public Notice DA 96–408, released March 22, 1996. After the Allotment Plan becomes a final Commission action, the FCC will issue a further public notice announcing that each licensee that was allotted a frequency, and thus selected for migration to the expanded band, will be afforded a sixty (60) day period in which to file an application for construction permit authority on the allotted channel. Such licensees will also be notified individually by letter. Applications will be subject to petitions to deny but not to competing applications. Applications are also subject to the provisions of three international agreements (Region 2, Canadian, and Mexican). See Section 73.28 (a) of the Commission's Rules. Application procedures will be set forth in the further public notice.

Final Regulatory Flexibility Analysis

This action is authorized under Sections 4 (i) and 303 (r) of the Communications Act of 1934, as amended, and 303 (r), and Section 553 (b) (3) (A) of the Administrative Procedures Act.

Ordering Clause

Accordingly, *it is ordered* that the requests raised in the comments filed in this proceeding are denied, as set forth above. *It is further ordered* that the June 30, 1993–A database is now closed to further changes and the June 30, 1993–A AM Engineering Database which was placed in the public record and associated with MM Docket 87–267, the Expanded Band rulemaking proceeding, will be used as the official database for further use in the expanded band proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–9488 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 95–109, RM–8665]

Radio Broadcasting Services; Coolidge and Gilbert, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rainbow Broadcasting, Inc., substitutes Channel 280C2 for Channel 280C3 and reallots Channel 280C2 from Coolidge, Arizona to Gilbert, Arizona and modifies Station KBZR(FM)'s license accordingly. Channel 280C2 can be reallotted to Gilbert in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.8 kilometers (17.9 miles) east of the community. The coordinates for Channel 280C2 at Gilbert are North Latitude 33–22–37 and West Longitude 111–28–55. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–109, adopted March 13, 1996, and released March 29, 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, 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 contiues 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 Arizona, is amended by removing Coolidge, Arizona, Channel 280C3 and adding Gilbert, Arizona, Channel 280C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–8120 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Part 207

[DFARS Case 96–D302]

Defense Federal Acquisition Regulation Supplement; Leasing of Commercial Vehicles and Equipment

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit the use of leasing in the acquisition of commercial vehicles and equipment.

DATES: *Effective date:* April 18, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before June 17, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D302 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Michael Mutty, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). Section 807 amends 10 U.S.C. 2401a to permit the use of leasing in the acquisition of commercial vehicles and equipment when it is determined that leasing of such vehicles is practicable and efficient.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule primarily pertains to internal Government considerations regarding the leasing of commercial vehicles and equipment. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and cite DFARS 96–D302 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 807 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106), which was effective upon enactment on February 10, 1996. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 207 is amended as follows:

1. The authority citation for 48 CFR Part 207 continues to read as follows:

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

PART 207—ACQUISITION PLANNING

2. Section 207.470 is revised to read as follow:

§ 207.470 Statutory requirements.

(a) *Limitation on contracts with terms of 18 months or more.* As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(1) Considered all costs of such a contract (including estimated termination liability); and

(2) Determined in writing that the contract is in the best interest of the Government.

(b) *Leasing of commercial vehicles and equipment.* Except as provided in

paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 U.S.C. 2401a).

[FR Doc. 96–9449 Filed 4–17–96; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 225 and 252

[DFARS Case 96–D308]

Defense Federal Acquisition Regulation Supplement; Designation of Singapore

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Singapore as a designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative.

DATES: *Effective date:* April 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, PDUSD (A&D) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to add Singapore as a Designated country under the Trade Agreements Act of 1979, as directed by the United States Trade Representative (USTR) (61 FR 11233, March 19, 1996). This designation does not apply to procurements by the U.S. Army Corps of Engineers, in accordance with the USTR's direction. The USTR may revoke this designation if Singapore has not completed negotiations on its accession to the World Trade Organization Government Procurement Agreement by July 31, 1996.

The Director of Defense Procurement has authorized a class deviation from the clause at FAR 52.225–15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, to add Singapore to the list of designated countries. This DFARS rule likewise amends the clause at DFARS 252.225–7007, Trade Agreement, which the Department of Defense uses instead of the clause at FAR 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program, and adds an Alternate I to the DFARS clause for use by the U.S. Army Corps of Engineers.

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D308 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply. This final rule does not impose any new information collection requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.408 is amended by revising the title and paragraph (a)(2) to read as follows:

225.408 Solicitation provisions and contract clauses.

(a) * * *

(2) Use the clause at 252.225–7007, Trade Agreements, instead of the clause at FAR 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7007 is amended by revising the clause title, clause date, and paragraph (a)(3), and by adding Alternate I to read as follows:

252.225–7007 Trade Agreements.

* * * * *

Trade Agreements (Apr 1996)

(a) *Definitions.* * * *

(3) *Designated country* means:

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Finland
France
Gambia
Germany
Greece
Guinea
Haiti
Ireland
Israel
Italy
Japan
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Singapore
Somalia
Spain
Sudan
Sweden
Switzerland
Tanzania U.R.
Uganda
United Kingdom
Western Samoa
Yemen

* * * * *

Alternate I (Apr. 1996). As prescribed in 225.408(a)(2), delete Singapore from the list of designated countries in paragraph (a)(3) of the basic clause.

[FR Doc. 96–9448 Filed 4–17–96; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 231 and 242

[DFARS Case 94–D316]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs Under Defense Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) concerning the reimbursement of external restructuring costs associated with business combinations.

DATES: *Effective date:* April 18, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337). Section 818 restricts DoD from reimbursing external restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

An interim rule with request for comments was published at 60 FR 1747 on January 5, 1995. All comments received in response to the interim rule were considered in the development of the final rule. The final rule differs from the interim rule in that it (1) revises certain definitions at 231.205–70(b); (2) deletes the list of examples at 321.205–70(c)(3) and the requirement of a Memorandum of Understanding at 231.205–70(d)(3) and 242.1204(e); (3) amends 242.1204(e) to state that certain external restructuring costs are allowable under flexibily-priced novated contracts, provided restructuring will reduce overall costs to the National Aeronautics and Space Administration (NASA), in addition to DoD, where there is a mix of DoD and NASA contracts; and (4) makes editorial changes for clarification.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles, therefore, do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this final rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 231 and 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 231 and 242 are amended as follows:

1. The authority citation for 48 CFR Parts 231 and 242 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is revised to read as follows:

231.205–70 External restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing contractor external restructuring costs when net savings would result for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337).

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) *Restructuring activities* means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement of employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) *Restructuring costs* means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than $2.5 million, the costs shall not be subject to the audit, review, and certification requirements of 231.205–70(c)(1); instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

(5) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205–70(d)(8); and

(iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), his Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate), that

projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(2) The audit, review, and certification required by 231.205–70(c)(1) shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall:

(1) Promptly execute a novation agreement, if one is required, in accordance with FAR subpart 42.12 and DFARS subpart 242.12 and include the provision at DFARS 242.1204(e).

(2) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification in paragraph (c)(1)(iv) of this subsection is obtained.

(3) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the projected restructuring costs and projected restructuring savings.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with 231.205–70(d)(8), the contracting officer shall include a repricing clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification required by 231.205–70(c)(1)(iv) is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The cost may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification required by 231.205–70(c)(1)(iv) is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification of net benefit. Include the information described in 231.205–70(e).

(e) *Information needed to obtain certification of net benefit.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.1204 is amended by revising paragraph (e) to read as follows:

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 213.205–70, the cognizant contracting officer shall include the following provisions as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

''(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them, for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibily-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205–70 are met. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned.''

[FR Doc. 96–9450 Filed 4–17–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 960409108–6108–01; I.D. 040596A]

RIN 0648–XX61

American Lobster Fishery; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to clarify enforcement of the regulations governing the American Lobster Fishery Management Plan (FMP). This rule clarifies that a prohibition on the removal of eggs from a lobster encompasses a ban on the landing or possession of lobsters that have come in contact with any substance capable of removing lobster eggs. This clarification of the regulations is necessary to ensure that the ban on removing lobster eggs can be effectively enforced.

EFFECTIVE DATE: April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: The regulations governing the American lobster fishery prohibit the retention or landing of berried lobsters (a lobster bearing eggs), removal of eggs from a

lobster, and possession of lobster from which eggs have been removed. NMFS has evidence of widespread use of chemical solutions to remove eggs from berried lobsters. Laboratory tests have shown that eggs can be effectively removed chemically and tests now exist that can reveal the presence of various chemicals on lobsters. Standard industry practice does not include placing lobsters in contact with chemical solutions. While it is not possible to prove that a lobster had eggs attached prior to being immersed in a chemical solution, there is no legitimate reason for the practice that has become known as ''chemical scrubbing.'' This technical amendment clarifies that any chemical scrubbing that results in the removal of eggs from a lobster is contrary to the objectives of the FMP.

Classification

Because this rule only clarifies enforcement of an existing regulation for which prior notice and opportunity for comment have been provided, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such procedures for this rule.

Because this rule states specifically an action that is currently subject to an existing prohibition, there is no need to delay its effective date. Accordingly, under 5 U.S.C. 553(d)(3), there is good reason to waive the requirements for a 30-day delay in effective date. As such, this rule is made effective immediately.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: April 12, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.8, paragraph (a)(4) is revised to read as follows:

§ 649.8 Prohibitions.

(a) * * *

(4) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed. No such person may land or possess any lobster that has come in contact with any substance capable of removing lobster eggs.

* * * * *

[FR Doc. 96–9592 Filed 4–15–96; 3:55 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 041296A]

Groundfish of the Bering Sea and Aleutian Islands Area; Rock Sole/ Flathead Sole/''Other Flatfish'' Fishery

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/ flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 13, 1996, until 12 noon, A.l.t., July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 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.

The second seasonal bycatch allowance of Pacific halibut for the BSAI trawl rock sole/flathead sole/ ''other flatfish'' fishery category, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 139 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the second seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/ flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from review under E.O. 12866.

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

Dated: April 12, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–9509 Filed 4–12–96; 4:44 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 041296B]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Central 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 Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the specification for Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 14, 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 28,560 metric tons (mt) as the initial total allowable catch of Atka mackerel for the Central Aleutian District.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel initial total allowable catch in the Central Aleutian District will soon be reached. Therefore, the Regional Director has established a directed fishing allowance of 28,160 mt after determining that 400 mt will be taken as incidental catch in directed fishing for other species in the Central Aleutian District. NMFS is prohibiting directed fishing for Atka mackerel in the Central 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: April 12, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–9510 Filed 4–12–96; 4:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 76
Thursday, April 18, 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 TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–021]

RIN 2115–AE46

Special Local Regulations; Augusta Southern National Drag Boat Races; Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent special local regulations for the Augusta Southern National Drag Boat Races. This event will be held annually on Thursday, Friday, Saturday, and Sunday during the third week in July, between 6 a.m. and 8 p.m. Eastern Daylight Time. Historically, there have been approximately 160, 16–18 foot, drag boats racing two vessels per heat on a quarter mile long course on that portion of the Savannah River at Augusta, GA, between U.S. Highway 1 (Fifth St) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. The boats will be competing at high speeds and at close range. The nature of the event and the closure of the Savannah River creates an extra or unusual hazard in the navigable waters. These proposed regulations are necessary to provide for the safety of life on navigable waters during the event. By establishing these proposed permanent regulations, the Coast Guard expects to give better notice of requirements related to marine events, and also avoid the recurring costs of publication related with temporary regulations. However, the establishment of these proposed permanent regulations would not relieve the event organizers from applying for an annual marine event permit.

DATES: Comments must be received on or before May 20, 1996.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to operations office at the same address between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (803) 724–7621. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: ENS M.J. DaPonte, Assistant Operations Officer, Coast Guard Group Charleston, South Carolina at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07–96–021) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of Proposed Regulations

The proposed regulations are needed to provide for the safety of life during Augusta Southern National Drag Boat Races. These regulations are intended to promote safe navigation on the waters off Augusta on the Savannah River during the races by controlling the traffic entering, exiting, and traveling within these waters. The anticipated concentration of spectator and participant vessels associated with the Drag Boat Races poses a safety concern, which is addressed in these proposed special local regulations. The proposed regulations would not permit the entry or movement of spectator vessels and other nonparticipating vessel traffic between the U.S. Highway Route 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197 from 6 a.m. to 8 p.m. annually, on Thursday, Friday, Saturday, and Sunday during the third week in July. The proposed regulations would permit the movement of spectator vessels and other nonparticipants after the termination of race each day, and during intervals between scheduled events at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6 (a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation would last for only 14 hours each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605 (b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and

criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.709 is added to read as follows:

§ 100.709 Annual Augusta Southern National Drag Boat Races; Savannah River, Augusta, GA.

(a) *Definitions.*

(1) *Regulated Area.* The regulated area is formed by a line drawn directly across the Savannah River at the U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and directly across the Savannah River at Eliot's Fish Camp at mile marker 197. The regulated area encompasses the width of the Savannah River between these two lines.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander will be commissioned, warrant, or petty officer who will be designated by the Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.*

(1) Entry into the regulated area is prohibited to all non-participants.

(2) After termination of the Augusta Southern National Drag Boat Races each day, and during intervals between scheduled events, at the discretion of the Coast Guard Patrol Commander, all vessels may resume normal operations.

(c) *Effective Dates.* This section is effective at 6 a.m. and terminates at 8 p.m. Eastern Daylight Time annually on Thursday, Friday, Saturday and Sunday during the third week of July, unless otherwise specified in the Seventh Coast Guard District Local Notice to Mariners.

Dated: March 21, 1996.

Roger T. Rufe, Jr.,

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

[FR Doc. 96–9603 Filed 4–17–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD09–96–002]

Safety Zone—Lake Erie, Detroit to Cleveland

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a moving safety zone around the M/V AMERICAN REPUBLIC on Sunday, June 9, 1996, as it transits lake Erie from Detroit to Cleveland. During this time, the M/V AMERICAN REPUBLIC will be transporting the 1996 Summer Olympics Torch Runner on the Detroit to Cleveland leg of the cross-country relay. This safety zone is necessary to protect the vessel and its passengers from vessels which may impede its passage.

DATES: Comments must be received on or before May 20, 1996. This regulation will become effective at 8 a.m. on June 9, 1996, and terminate at 11 p.m. on June 9, 1996, unless terminated earlier by the Coast Guard Captain of the Port Detroit or Cleveland.

ADDRESSES: Comments and supporting materials should be mailed or delivered to Lieutenant Commander Rhae Giacoma, Assistant Chief, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comments to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rhae Giacoma, Assistant Chief, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3994.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments which may consist of data, views, arguments, or proposals for amendments to the proposed regulations. The Coast Guard does not currently plan to have a public hearing. However, consideration will be given to holding a public hearing if it is requested. Such a request should indicate how a public hearing would contribute substantial information or views which cannot be received in written forms. If it appears that a public hearing would substantially contribute to this rulemaking and there is sufficient time to publish a notice, the Coast Guard will announce such a hearing by a later notice in the Federal Register. The Coast Guard will consider all comments received before the closing date indicated above, and may amend or revoke this proposal in response to such comments.

Background and Purpose

Prior to the opening of the 1996 Summer Olympics in Atlanta, GA, the Olympic Torch will be carried cross country by way of a relay. The relay will begin in Los Angeles, CA and terminate in Atlanta, GA. Part of the relay includes an over-water leg from Detroit, MI to Cleveland, OH. For this leg, the Olympic Torch and Runner will be transported across Lake Erie onboard the Great Lakes cargo vessel M/V AMERICAN REPUBLIC. The Torch Runner will arrive in Detroit Hart Plaza on the morning of June 9, 1996, where he will board the M/V AMERICAN REPUBLIC for transit to Cleveland. The vessel is expected to arrive at Cleveland City Dock the evening of June 9, 1996.

The M/V AMERICAN REPUBLIC will be taking the following route: From Detroit, the transit will follow the shipping channel down the Detroit River, then 095 degrees True across northern Lake Erie (transiting north of Pelee Island) to Pelee Passage Light, through Pelee Passage, then 111 degrees True to Cleveland.

A 200-yard moving safety zone will be in place around the M/V AMERICAN

REPUBLIC during its entire voyage from Detroit to Cleveland. The U.S. Coast Guard Cutter BRISTOL BAY will escort the M/V AMERICAN REPUBLIC throughout the voyage. Other Coast Guard vessels (including Coast Guard Auxiliary) will join in escorting the M/V AMERICAN REPUBLIC at various locations where vessel congestion is expected to be heavy.

The safety zone is being established for the protection of the M/V AMERICAN REPUBLIC and all personnel onboard, as well as for the protection of vessels and personnel operating in the vicinity of the vessel during its voyage. The M/V AMERICAN REPUBLIC is a 634 foot vessel. Because of its size, it is restricted in its ability to maneuver. Since the transit from Detroit to Cleveland will be taking place on a Sunday, media and public interest is expected to be high. Boating traffic on Lake Erie is anticipated to be heavy, particularly in the areas close to the ports of Detroit and Cleveland. The safety zone is essential to ensure vessels and personnel do not interfere with the safe transit of the vessel throughout its voyage and to protect the safety of spectator craft. However, the Captain of the Port may reduce the size of the safety zone within the outer limits prescribed in the regulation whenever it appears to the Captain of the Port that this may be done so with due regard for safety.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231, as set out in the authority section for all of Part 165.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file.

Federalism

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

Regulatory Evaluation

This regulation is considered to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979).

Small Entities

For the reasons stated in the preamble, the economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 165

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

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Subpart C of Part 165 of title 33, Code of Federal Regulations as follows:

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

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

2. A new temporary section is added to read as follows:

§ 165.T09–002 Safety Zone: Lake Erie, From Detroit, MI to Cleveland, OH.

(a) *Location.* The following area is a moving safety zone: Within 200 yards of the M/V AMERICAN REPUBLIC as it transits Lake Erie from Detroit, MI to Cleveland, OH.

(b) *Effective Date.* This section is effective at 8 a.m. on June 9, 1996, and terminates at 11 p.m. on June 9, 1996, unless terminated earlier by the Coast Guard Captain of the Port Detroit or Cleveland.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 10, 1996.

G. F. Woolever,

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

[FR Doc. 96–9601 Filed 4–12–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7175]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Illinois	Aroma Park (Village) Kankakee County.	Iroquois River	At the confluence with Kankakee River	*613	*608
			Approximately 0.3 mile upstream of the confluence with Kankakee River.	*613	*608
		Kankakee River	Approximately 0.5 mile downstream of the confluence of Iroquois River.	*613	*608
			At the confluence of Spring Creek	*613	*608
Maps available for inspection at the Aroma Park Village Hall, 108 West Front Street, Aroma Park, Illinois.					
Send comments to Ms. Roberta Conrad, President of the Village of Aroma Park, P.O. Box 117, Aroma Park, Illinois 60910.					
Illinois	Aurora (City) Du Page and Kane Counties.	Mastadon Lake	Entire shoreline within the community	None	*662
Maps available for inspection at the Planning Department, Aurora City Hall, 44 East Downer Place, Aurora, Illinois.					
Send comments to The Honorable David Pierce, Mayor of the City of Aurora, 44 East Downer Place, Aurora, Illinois 60507.					
Illinois	Kankakee County (Unincorporated Areas).	Kankakee River	At the upstream side of Interstate Highway 57.	*611	*607
			At the State boundary	*631	*630
		Iroquois River	At the confluence with Kankakee River	*613	*608
			Approximately 0.4 mile upstream of the confluence with Minnie Creek.	*613	*612
Maps available for inspection at the Kankakee County Administrative Building, 189 East Court Street, Kankakee, Illinois.					
Send comments to Mr. Russell Thompson, Chairman of the Kankakee County Board, Kankakee County Administration Building, 189 East Court Street, Kankakee, Illinois 60901.					
Illinois	Momence (City) Kankakee County.	Kankakee River (Main Channel).	Approximately 0.52 mile downstream of Dixie Highway.	*620	*615
			Approximately 625 feet upstream of Union Pacific Railroad.	*623	*620
		Kankakee River	Just upstream of spillway	*620	*618
		North Channel	Approximately 475 feet upstream of Union Pacific Railroad.	*623	*620
Maps available for inspection at the City Hall, 123 West River Street, Momence, Illinois.					
Send comments to The Honorable James Moody, Mayor of the City of Momence, City Hall, 123 West River Street, Momence, Illinois 60954.					
New York	Newport (Town) Herkimer County.	West Canada Creek	Approximately 200 feet downstream of Old State Road.	None	*686
			Approximately 1.02 miles upstream of Old State Road.	None	*696

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Newport Town Hall, West Street, Newport, New York. Send comments to Mr. Michael McEvoy, Supervisor of the Town of Newport, Box 519, Newport, New York 13416.					
New York	Oyster Bay (Town) Nassau County.	Hempstead Harbor	Approximately 100 feet west of the intersection of Glenwood Road and Shore Road.	*14	*16
		Atlantic Ocean: South Oyster Bay.	Approximately 525 feet west of the intersection of Atwater Place and West Shore Drive.	*8	*9
			Approximately 250 feet southeast of the intersection of Sunset Boulevard and Bay Drive.	*9	*8
		Beaver Lake	Approximately 950 feet northeast of Kentuck Lane.	None	*12
Maps available for inspection at the Oyster Bay Town Department of Planning and Development, 74 Audry Avenue, Oyster Bay, New York. Send comments to Mr. Lewis Yevoli, Oyster Bay Town Supervisor, 54 Audry Avenue, Oyster Bay, New York 11771.					
Pennsylvania	Hempfield (Township) Westmoreland County.	Sewickley Creek	Approximately 0.5 mile downstream of confluence with Buffalo Run.	None	*930
			Approximately 1,000 feet downstream of confluence with Buffalo Run.	*933	*932
Maps available for inspection at Hempfield Municipal Building, Woodward Drive, Greensburg, Pennsylvania. Send comments to Mr. Jed Yurt, Supervisor for the Township of Hempfield, R.D. #6, Box 500, Greensburg, Pennsylvania 15601.					
Pennsylvania	Rostraver (Township) Westmoreland County.	Speers Run	Approximately 0.2 mile downstream of State Route 200.	*808	*811
			At confluence of Speers Run Tributary 2 and 3.	*896	*903
		Speers Run	At confluence with Speers Run	*896	*903
		Tributary 2	At downstream side of Norfolk and Western Railway culvert.	*993	*990
		Speers Run	At confluence with Speers Run	*896	*903
		Tributary 3	Approximately 0.3 mile upstream of Norfolk and Western Railway.	*932	*931
		Speers Run	At confluence with Speers Run	*843	*844
		Tributary 4	Approximately 40 feet downstream of Norfolk and Western Railway.	*862	*863
		Monongahela River	At county boundary	*756	*757
			At upstream side of Interstate Route 70	*762	*764
		Youghiogheny River	At the downstream corporate limits (in the area of Collinsburg Road).	None	*769
Maps available for inspection at the Rostraver Township Municipal Building, R.D.#4 Port Royal Road, Belle Vernon, Pennsylvania. Send comments to Mr. Austin A. Cratty, President of the Rostraver Township Board of Supervisors, R.D.#4 Municipal Building, Belle Vernon, Pennsylvania 15012.					
Pennsylvania	South Huntingdon (Township). Westmoreland County	Sewickley Creek	Approximately 0.5 feet downstream of confluence with Buffalo Run.	None	*930
			Approximately 1,000 feet downstream of confluence with Buffalo Run.	*933	*932
Maps available for inspection at the South Huntingdon Township Hall, 75 Supervisor Drive, West Newton, Pennsylvania. Send comments to Mr. Scott Painter, Chairman of the South Huntingdon Board of Supervisors, 75 Supervisor Drive, West Newton, Pennsylvania 15089.					
Tennessee	Shelbyville (City) Bedford County.	Duck Creek	Approximately 0.6 mile downstream of Sims Road	None	719
			Approximately 0.65 mile upstream of the confluence of Bomar Creek.	None	747
		Bomar Creek	At confluence with Duck River	None	*745
			Approximately 750 feet upstream of State Route 64 (Wartrace Pike).	None	*750
		Flat Creek	At the confluence with Duck River	None	*730
			Approximately 1.1 miles upstream of U.S. Route 231 (South Cannon Boulevard).	None	*740
		Pettus Branch	Approximately 700 feet upstream of River Road.	None	*731

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Little Hurricane Creek.	At Cemetery Road	None	*753
			At Peacock Lane	None	*749
			Approximately 0.8 mile upstream of State Route 10 and 82 (U.S. Route 231).	None	*780
		Tributary to Little Hurricane Creek.	At confluence with Little Hurricane Creek	None	*761
			At Fairfield Pike	None	*785
Maps available for inspection at the Shelbyville City Hall, 109 Lane Parkway, Shelbyville, Tennessee.					
Send comments to The Honorable Albert C. Stephenson, Mayor of the City of Shelbyville, 109 Lane Parkway, Shelbyville, Tennessee 37160.					
Wisconsin	Chetek (City) Barron County.	Lake Chetek	Entire shoreline within corporate limits	None	*1040
		Prairie Lake	Entire shoreline within corporate limits	None	*1040
Maps available for inspection at the Chetek City Clerk's Office, 220 Stout Street, Chetek, Wisconsin.					
Send comments to The Honorable Shirley A. Webb, Mayor of the City of Chetek, P.O. Box 194, Chetek, Wisconsin 54728.					

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

Dated: April 9, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–9607 Filed 4–17–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CS Docket No. 96–83; FCC 96–151]

Preemption of Restrictions on Over-the-Air Reception Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Notice of Proposed Rulemaking (''NPRM'') requests comment on issues concerning the implementation of section 207 of the Telecommunications Act of 1996 as it relates to television broadcast signals and multichannel multipoint distribution services. The NPRM will assist the Commission in devising regulations in this area. The NPRM will provide interested parties an opportunity to submit comments that will provide the Commission with a sufficient record on which to base ultimate regulations.

DATES: Interested parties may file comments on or before May 6, 1996 and reply comments on or before May 21, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before May 6, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before June 17, 1996.

ADDRESSES: An original and six copies of all comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Randi Albert of the Cable Services Bureau, 2033 M Street, N.W., Room 700Q, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Randi Albert or Jacqueline Spindler, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's NPRM in CS Docket No. 96–83, FCC No. 96–151, adopted April 2, 1996 and released April 4, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

OMB Approval Number: None.

Title: Preemption of Restrictions on Over-the-Air Reception Devices—Notice of Proposed Rulemaking.

Type of Review: New collection.

Respondents: State and local governments; small businesses.

Number of Respondents: The Commission asks commenters to provide estimates of the volume of waivers and requests for declaratory rulings we might expect to receive on an annual basis. At this time, we estimate parties will annually prepare 200 requests for declaratory rulings and 100 petitions for waivers; for an annual total of 300 respondents.

Estimated Time Per Response: Preparation of a request for declaratory ruling prepared without outside counsel will require an average of 10 hours, and

if using outside counsel would require 1 hour. Preparation of a waiver request is estimated to require an average of 2 hours without outside counsel, and if using outside counsel would require 1 hour.

Total Annual Burden: It is estimated that 50% of declaratory rulings will be prepared without outside counsel and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel will be 1 hour. 100 (50% without outside counsel)×10 hours=1,000 hours; and 100 (50% with outside counsel)×1 hour=100 hours, for a burden of 1,100 hours. It is estimated that 90% of petitions for waivers will be prepared without outside counsel. The other 10% will hire outside counsel, and the estimated burden to coordinate information with outside counsel will be 1 hour. 90 (90% without outside counsel)×2 hours=180 hours; and 10 (10% with outside counsel)×1 hour=10 hours, for a burden of 190 hours. The total burden to respondents is therefore 1,100+190=1,290 hours.

Estimated Costs Per Respondent: It is estimated that 100 requests for declaratory rulings and 10 petitions for waivers will be prepared each year through outside counsel. The estimated annual costs are $153,000, illustrated as follows: 100 declaratory rulings×10 hours×$150/hr.=$150,000. 10 petitions for waivers×2 hours×$150/hr.=$3,000

Needs and Uses: Submitted information will be used to evaluate requests for declaratory ruling regarding the reasonableness of state and local restrictions, or requests for waiver of the rule.

I. Notice of Proposed Rulemaking

1. On February 8, 1996, the Telecommunications Act of 1996 (the ''1996 Act'') became law. Section 207 of the 1996 Act directs that the Commission shall, ''pursuant to Section 303 of the Communications Act, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.'' In this Notice of Proposed Rulemaking, we address the statutory mandate with regard to television broadcast service (''TVBS'') and multichannel multipoint distribution service (''MMDS'').

2. In a recent Report and Order and Further Notice of Proposed Rulemaking, FCC 96–78 (released March 11, 1996) (61 FR 10710, March 15, 1996) (''Order and Further Notice''), the Commission considered the issue of preemption of state or local restrictions, such as zoning ordinances, on devices used to receive direct broadcast satellite (''DBS'') services. Noting that section 207 expands the range of preemption to include non-governmental entities such as homeowners' associations, the Order and Further Notice proposes a per se preemption of restrictions imposed by non-governmental entities as they affect reception of DBS signals. In this Notice of Proposed Rulemaking, we seek to provide similar implementation of section 207 regarding TVBS and MMDS.

3. In the Order and Further Notice we adopted a rule for satellite receivers less than one meter in diameter, including DBS receivers. Section 207 of the 1996 Act groups TVBS, MMDS, and DBS receiving devices together, which suggests that they should be treated similarly. However, antennas used to receive TVBS signals can be of various forms and sizes, and may not always be comparable to DBS antennas. Therefore, while we propose a rule for TVBS and MMDS devices that does not draw distinctions among receivers based on size, we invite comments on whether and when such distinctions might be justified, within the Commission's authority to implement the statutory language pursuant to section 303 of the Communications Act.

4. The Order and Further Notice establishes a presumption that restrictive state or local regulations are unreasonable, and therefore preempts them, if they affect the installation, maintenance, or use of a satellite earth station antenna that is one meter or less in diameter. The presumption could be rebutted by obtaining a ''final declaration'' from the Commission or a court of competent jurisdiction that the state or local regulation is both necessary to accomplish a clearly defined and expressly stated health or safety objective, and as narrowly drawn as possible to accomplish that objective. We tentatively conclude that this same presumption is applicable to MMDS and TVBS antennas. In the Order and Further Notice we also determined that any state or local authority that wished to maintain and enforce regulations inconsistent with the preemption rule could apply to the Commission for a full or partial waiver. Such a request must show local concerns of a highly specialized or unusual nature, and must include the particular regulation for which waiver is sought. We tentatively conclude that this determination applies to MMDS and TVBS as well. We solicit comment on this tentative conclusion and proposed rule, and specifically ask commenters to provide estimates of the volume of waivers we might expect under this proposed rule. We ask, too, whether any workable alternative approach exists that would reduce the burden on this Commission.

5. As we did in the Order and Further Notice, we note that antenna users and local governments are free to pursue litigation remedies in federal or state courts if they wish to forego Commission review. Further, our recently adopted rule states that no civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted. We tentatively find that this approach is appropriate here as well.

II. Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

6. *Reason for Action*: The rulemaking is initiated to obtain comment on the implementation of Section 207 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996), as it applies to over-the-air reception of television broadcast signals and multichannel multipoint distribution services.

7. *Objectives:* The Commission seeks to evaluate whether our proposed rule preempting non-federal restrictions will enhance viewers' ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals and multichannel multipoint distribution services.

8. *Legal Basis:* The proposed action is authorized under Sections 1 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 303, and Section 207 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996).

9. *Reporting, Recordkeeping, and Other Compliance Requirements:* State and local governments propounding regulations which restrict the installation, maintenance or use of devices designed for receiving over-the-air signals of television broadcast and multichannel multipoint distribution services may request declaratory rulings from the Commission that their regulations are reasonable, or may petition the Commission for waiver of the rule.

10. *Federal Rules that Overlap, Duplicate or Conflict with These Requirements:* None.

11. *Description, Potential Impact and Number of Small Entities Involved:* Any policies or regulations adopted in this proceeding could affect state, local, and nongovernmental regulatory entities, as well as small businesses that install or use devices designed for over-the-air reception of television broadcast signals and multichannel multipoint distribution services.

12. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:* This Notice solicits comments on any suggested alternatives.

III. Initial Paperwork Reduction Act of 1995 Analysis

13. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due June 17, 1996. Comments should address: (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 Commission's 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.

IV. Procedural Provisions

14. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, provided that they are disclosed as provided in Commission's rules. *See generally* 47 CFR 1.1202, 1.1206.

15. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 6, 1996, and reply comments on or before May 21, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Randi Albert of the Cable Services Bureau, 2033 M Street, N.W., Room 700Q, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

V. Ordering Clauses

16. It is ordered that, pursuant to Section 207 of the Telecommunications Act of 1996; and Sections 1, 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 303(r), Notice is hereby given of proposed implementation of Section 207 of the Telecommunications Act of 1996, in accordance with the proposals, discussions, and statement of issues in this NPRM and Comment is Sought regarding such proposals, discussions, and statements of issues.

17. It is further ordered that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

18. For additional information regarding this proceeding, contact Randi Albert or Jacqueline Spindler, Consumer Protection and Competition Division, Cable Services Bureau (202) 416–0800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–9491 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 960216032–6107–02; I.D. 032196D]

RIN 0648–AH70

Northeast Multispecies Fishery; Amendment 7; Resubmission of Disapproved Measure

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amending its proposed regulations published on March 5, 1996, to implement Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) in order to implement a resubmitted part of the amendment that was initially disapproved on February 14, 1996. The New England Fishery Management Council (Council) has clarified that the proposed measure to increase fishing time would apply to all vessels using large mesh. The intended effect of this measure is to promote conservation by providing an equitably applied incentive to use nets constructed of mesh that are larger than the minimum size.

DATES: Comments on this proposed rule must be received by May 15, 1996.

ADDRESSES: Comments should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Large Mesh Individual DAS vessels.''

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: The Council submitted Amendment 7 to the FMP on February 5, 1996. After a preliminary evaluation, the following three measures in the amendment were disapproved on February 14, 1996: An additional allowance of days at sea for trawl vessels enrolled in the Individual Days-at-Sea (DAS) category that use 8–inch (20.32–cm) mesh; a 300–lb (136.1–kg) possession limit of regulated species for vessels that use 8–inch (20.32–cm) mesh in an exempted fishery; and the establishment of a limited access category for vessels that fished in the Possession Limit Open Access category under Amendment 5. The remainder of

Amendment 7 was published as a proposed rule on March 5, 1996 (61 FR 8540). Pursuant to section 304(b)(3)(A) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Council has resubmitted the measure that would allow additional DAS for vessels enrolled in the Large Mesh Individual DAS category as described in this proposed rule. The Council also resubmitted the proposal to allow a 300–lb (136.1–kg) possession limit when fishing in an exempted fishery with 8–inch (20.32–cm) mesh, but this measure has been disapproved again and is not contained in this action. The third disapproved measure has not been resubmitted.

The Large Mesh Individual DAS option that would grant additional DAS for vessels fishing for groundfish exclusively with large mesh was proposed by the Council based on its policy to provide incentives for using mesh larger than the minimum size. The original submission of this measure was disapproved, because it appeared to apply only to all trawl vessels and not to all gillnet vessels, which would have created an inequity and would, therefore, have been inconsistent with Magnuson Act National Standard 4.

At its February 27–28, 1996, meeting, the Council clarified its intent and voted to resubmit a measure that proposes that additional DAS under the Large Mesh Individual DAS category apply to both trawl and gillnet vessels, thereby eliminating what was previously identified as an inequity. This rule proposes this measure and provides that an increase in DAS under the Large Mesh Individual DAS category would be equivalent to the Large Mesh Fleet increase in DAS, i.e., an additional 12 percent in year 1 and 36 percent in year 2.

As stated in the proposed rule to implement Amendment 7, this measure raises issues of concern. The first issue of concern is over how NMFS would calculate the number of DAS for any gillnet vessel that may appeal the number of Individual DAS assigned to it by NMFS. Second, as mesh selectivity studies for 7–inch (17.8–cm) and 8–inch (20.2–cm) mesh do not currently exist, it is impossible to know whether and how much the selectivity of this increased mesh would compensate for the additional allocation of DAS. Public comment is sought on both of these concerns.

The Council also resubmitted the disapproved 300–lb (136.1–kg) regulated species possession limit for vessels fishing with 8–inch (20.32–cm) mesh in an exempted fishery, claiming that there would be a conservation benefit by creating an added incentive to use a mesh larger than the minimum regulated mesh of 6 inches (15.24 cm). This measure was initially disapproved, because it could not be reasonably calculated to promote conservation, and, therefore, would be inconsistent with National Standard 4.

In its resubmission justification, the Council notes that in the event that a fishery is deemed exempt, because it has been determined that the bycatch of regulated species does not exceed the maximum 5–percent standard, a vessel may still catch some groundfish when fishing with 6–inch (15.24–cm) mesh and consequently be forced to discard more and smaller fish than if it were fishing with 8–inch (20.32–cm) mesh. The Council further states that if a fishery is determined to meet the 5 percent criteria with 6–inch (15.24–cm) mesh, providing an incentive to use a larger mesh than that on which the exemption is based would not increase the regulated species bycatch rate above 5 percent. The Council notes that, when fishing with larger mesh, vessels would have a lower regulated species bycatch rate and would be providing for the escapement of a greater proportion of juvenile and undersized groundfish. Therefore, the Council believes that the resubmitted measure would promote conservation and would be consistent with the objectives of the amendment. In resubmitting this measure the Council states that it is their belief that when provided an incentive to retain a 300–lb (136.1–kg) possession limit when fishing in an exempted fishery, vessels would be encouraged to use 8–inch (20.32–cm) mesh, thereby reducing overall groundfish mortality.

Although it is possible that in some exempted fisheries discards may be reduced when fishing with 8–inch (20.32–cm) mesh as opposed to the current regulated mesh size, NMFS has disapproved this resubmitted measure for the same reason that it was initially disapproved, i.e., because it conflicts with the Council's proposed exempted fishery measure. The clear intent of the exemption program is to prevent any vessel, when not fishing under the DAS effort control program, from fishing in a fishery that has a bycatch of regulated species comprising 5 percent or more of its total catch. The Council originally arrived at the 5 percent standard as a realistic measure to use in order to allow some fishing to continue when a vessel is not directing effort on groundfish. Just as the 500–lb (226.8–kg) possession limit under Amendment 5 provided an incentive for vessels to target groundfish when fishing outside of a DAS, it is believed that the 300–lb (136.1– kg) possession limit may do the same and would, therefore, counteract the conservation effect of the bycatch protection measure. Further, because the Council's proposal would allow a vessel to stow nets of mesh less than 8 inches (20.32 cm) on board its vessel when fishing in an exempted fishery, an enforcement concern is raised that some vessels would use net liners to harvest a groundfish bycatch. In addition, it would allow participants in certain exempted fisheries an advantage that participants in other exempted fisheries do not have, without any clear conservation benefit. For these reasons, this measure cannot be reasonably calculated to promote conservation and is, therefore, inconsistent with National Standard 4.

In discussing this issue at its February Council meeting, it appears that the Council's recommendation for the 300–lb (136.1– kg) measure may be to allow a reasonable bycatch of regulated species in the monkfish fishery. This fishery is essentially unregulated, although the Council is moving forward with a plan amendment to add monkfish as a species regulated by the FMP. Depending upon which types of controls are placed on this fishery, the regulated species bycatch provision may be more appropriately considered in the development of monkfish conservation measures.

NMFS notes that portions of the regulatory text proposed at 61 FR 8540 on March 5, 1996, would be amended by this proposed rule.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, NMFS has not determined whether the amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The proposed measure contained in this rule is not modified from that included in the Council's initial Amendment 7 submission. As such, the final supplemental environmental impact statement (FSEIS), regulatory impact review (RIR), and the initial regulatory flexibility analysis (IRFA) on Amendment 7 considered this measure.

A separate regulatory flexibility analysis was not prepared for this action. Copies of the FSEIS/RIR/IRFA for Amendment 7 can be obtained by contacting Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

A formal section 7 consultation under the Endangered Species Act was conducted for Amendment 7 to the FMP. A biological opinion was prepared by a formal section 7 consultation for Amendment 7 and it was determined that fishing activities conducted under the amendment and its implementing regulations may affect but are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat. This action does not change that conclusion.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 12, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.20, the proposed rule published at 61 FR 8540 on March 5, 1996, is proposed to be amended by revising paragraphs (a)(2)(ii), (c)(2)(ii), and (d)(2)(ii) to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a)* * *

(2)* * *

(ii) *Large Mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7–inch (17.78–cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs shall be 8–inch (20.32–cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

* * * * *

(c)* * *

(2)* * *

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7–inch (17.78–cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs shall be 8–inch (20.32–cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 x 3 ft (0.9 x 0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

* * * * *

(d)* * *

(2)* * *

(ii) *Large Mesh vessels.* When fishing in the MA regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7–inch (17.78–cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs shall be 8–inch (20.32–cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 x 3 ft (0.9 x 0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

* * * * *

3. In § 651.22, the proposed rule published at 61 FR 8540 on March 5, 1996, is proposed to be amended by revising paragraph (b)(6) and adding paragraph (b)(7) to read as follows:

§ 651.22 Effort control program for limited access vessels.

* * * * *

(b)* * *

(6) *Large Mesh Individual DAS Category*—(i) *DAS allocation.* Vessels fishing under the Large Mesh Individual DAS category shall be allocated a DAS increase that is equivalent to 12 percent in year 1 and 36 percent in year 2 beyond the DAS allocations specified in paragraph (b)(1)(i) of this section. To be eligible to fish under the Large Mesh Individual DAS permit category a vessel, while fishing under the DAS program, must fish with gillnet gear with a minimum mesh net of 7–inch (17.78–cm) diamond or trawl gear with a minimum mesh size of 8–inch (20.32–cm) diamond, for the entire fishing year, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Individual DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(7) *Large Mesh Fleet DAS Category*—(i) *DAS allocation.* Vessels fishing under the Large Mesh Fleet DAS category shall be allocated 155 DAS for the 1996 fishing year, and 120 DAS for the 1997 fishing year and beyond. To be eligible to fish under the Large Mesh Fleet DAS permit category a vessel, while fishing under the DAS program, must fish with gillnet gear with a minimum mesh net of 7–inch (17.78–cm) diamond or trawl gear with a minimum mesh size of 8–inch (20.32–cm) diamond, for the entire fishing year, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Fleet DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

* * * * *

[FR Doc. 96–9593 Filed 4–15–96; 4:42 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 76
Thursday, April 18, 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

Submission for OMB Review; Comment Request

April 12, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- *Title:* Distance Learning and Telemedicine Grant Program.

Summary: The program provides grants to rural community facilities, such as schools, hospitals, and medical centers; to encourage, improve, and make affordable the use of advanced telecommunications and computer networks to provide educational and medical benefits to people living in rural areas.

Need and Use of the Information: This information is required to determine eligibility; specific purpose for which the grant will be used; project feasibility; need for improved educational or medical facility, etc.

Description of Respondents: Business or other for-profit.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 10,626.

- *Title:* National Hunger Clearinghouse Database Form.

Summary: The Healthy Meals for Healthy Americans Act of 1994 mandated that FCS enter into a contract with a nongovernmental organization to establish and maintain an information clearinghouse for groups that assist low-income individuals or communities regarding nutrition or other assistance. In order to establish the clearinghouse database a form seeking updated program and mailing information will be sent to related organizations.

Need and Use of the Information: This project has been Congressionally mandated to provide a resource for organizations working to improve the nutrition and health of low-income Americans. The information provided by the clearinghouse database will enable their group to do a better job of assisting needy persons.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Farms.

Number of Respondents: 11,917.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 993.

- *Title:* Baseline and Trend Information on Wilderness Use and Users.

Summary: This collection requests clearance of a pool of questions and sampling alternatives to be used in establishing baseline and monitoring trends in some areas for critical use and user characteristics for representative forest service wilderness areas. Recreational visitors will be sampled.

Need and Use of the Information: Information collected will be used in wilderness planning and management by all Federal Agencies that manage wilderness and by Congress and the public in understanding the changing uses and expectations of wilderness.

Description of Respondents: Individuals or households.

Number of Respondents: 1000.

Frequency of Responses: Reporting: On-Occasion.

Total Burden Hours: 416.

- *Title:* FS Mail Issuance Report.

Summary: Title 7 CFR 276.2(b) requires a mail issuance loss reporting level plan for food stamps. The plan is established by those State agencies using a mail issuance system for coupon delivery. The plan reflects the issuance sites or counties that comprise each administrative unit. The State agencies shall report the number and value of all invoices which do not reconcile with the record-for-issuance and/or master issuance file.

Need and Use of the Information: The purpose is to collect management information to assess mail issuance losses and hold State agencies liable for a portion of those losses.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 2,515.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 3,139.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 96–9563 Filed 4–17–96; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

[Docket No. 96–016–4]

Declaration of Extraordinary Emergency Because of Karnal Bunt

On March 25, 1996, the U.S. Department of Agriculture (the Department) published in the Federal Register a notice of ''Declaration of Extraordinary Emergency Because of Karnal Bunt'' (61 FR 12508, Docket No. 96–016–1). At the time of the notice, Karnal bunt, an exotic fungal disease, had been detected in Arizona, and contaminated seed had been sent to New Mexico and Texas. Since publication of the notice, Karnal bunt has also been detected in California.

Karnal bunt (*Tilletia indica*) is a serious disease of wheat, durum wheat, and triticale, a hybrid of wheat and rye. The disease affects both yield and grain quality. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from wheat. It does not present a risk to human health.

If Karnal bunt is allowed to spread, the overall crop loss and impact on quality may be significant. The disease could affect United States grain exports. The United States is the world's leading wheat exporter, accounting for one-third of the world wheat exports. Wheat exports from the United States were valued at $4.9 billion in Fiscal Year 1995. At least 28 countries are known to regulate or prohibit grain movement on the basis of Karnal bunt.

Control and eradication of Karnal bunt is difficult. Management of the disease is through quarantine and

containment of regulated articles. In addition to the emergency actions taken to control Karnal bunt in Arizona, New Mexico, and Texas, emergency action has been taken by the California Department of Food and Agriculture (CDFA) and the Animal and Plant Health Inspection Service (APHIS). APHIS and CDFA have instituted emergency quarantines on the infected premises and are regulating the movement of seed, farm equipment, and soil associated with the infected wheat.

This infection of Karnal bunt represents a threat to United States wheat crops. It constitutes a real danger to the national economy and seriously burdens interstate and foreign commerce. Therefore, the Department has determined that an extraordinary emergency exists because of the existence of Karnal bunt in California, as well as in Arizona, New Mexico, and Texas as previously declared.

The Department has reviewed the measures being taken by the State of California to survey, regulate, and control Karnal bunt and has consulted with the Governor of California. Based on such review and consultation, the Department has determined that measures being taken by the State of California are inadequate because California is unable to take all of the measures required to obtain and maintain the cooperation of the owners of wheat crops necessary to effectively and efficiently control Karnal bunt.

Therefore, in accordance with 7 U.S.C. 150dd, this declaration of extraordinary emergency authorizes the Secretary to: (1) seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Secretary deems appropriate, any product or article of any character whatsoever, or means of conveyance that the Secretary has reason to believe is infected by or contains Karnal bunt; (2) quarantine, treat, or apply other remedial measures to, in such manner as the Secretary deems appropriate, any premises, including articles on such premises, that the Secretary has reason to believe are infected by Karnal bunt. The Governor of California has been informed of these facts.

EFFECTIVE DATE: This declaration of extraordinary emergency shall become effective April 12, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–9551 Filed 4–17–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Draft 1995 RPA Program

AGENCY: Forest Service, USDA.

ACTION: Advanced notice; reopening of public comment period.

SUMMARY: This is an advance notice to advise interested individuals and organizations that the Forest Service will reopen the comment period on the Draft 1995 RPA Program, the agency's proposed national strategic plan. The comment period will be open during the month of May and is intended to ensure that those who wish to review and comment on the national strategic plan will have both the time and opportunity to do so.

FOR FURTHER INFORMATION CONTACT: Additional information about the Draft 1995 RPA Program may be requested by calling 202/205–1235 or via FAX at 202/205–1546. Information may also be requested by electronic mail (ASCII only) at /s=rpa/0u1=w01c@mhs-fswa.attmail.com. An electronic copy of the Draft 1995 RPA Program may be obtained via the World-wide Web at URL:http://www.fs.fed.us/land/RPA.welcome.htm.

Dated: April 11, 1996.

Mark A. Reimers,

Acting Chief.

[FR Doc. 96–9571 Filed 4–17–96; 8:45 am]

BILLING CODE 3410–11–M

Crown Jewel Mine, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

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

SUMMARY: On March 2, 1992, the USDA, Forest Service and the Washington State Department of Ecology, as joint lead agencies, issued a notice of intent (NOI) to prepare an environmental impact statement (EIS) for a proposal to develop a mine for precious mineral extraction on Buckhorn Mountain in the Federal Register (57 FR 7362). On April 15, 1993, March 11, 1994, and November 17, 1994 the USDA, Forest Service and the Washington State Department of Ecology, as joint lead agencies, issued revisions to the notice of intent (NOI) to prepare an environmental impact statement (EIS) in the Federal Register (58 FR 19646, 59 FR 11576, and 59 FR 59396). A notice of availability for the draft environmental impact statement was published in the Federal Register on June 30, 1995 (60 FR 34246), with the comment period closing on August 29, 1995. The purpose of this revised notice of intent is to inform the interested parties of a revised release date for final EIS. The final environmental impact statement (EIS) is expected to be completed and available to the public in early October, 1996.

Dated: April 9, 1996.

Allen N. Garr,

Acting Forest Supervisor.

[FR Doc. 96–9564 Filed 4–18–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; James J. Gato

Order

In the Matter of: James J. Gato individually with an address at 5 Naumkeag Road, Peabody, Massachusetts 01960, and with an address at c/o Mass Computer Group, Inc., 79R Walnut Street, Peabody, Massachusetts 01960, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified James J. Gato (Gato) of its intention to initiate an administrative proceeding against him pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1991 & Supp. 1995)) (the Act),[1] and Part 788 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (the Regulations), based on allegations that, on or about August 9, 1990, Gato, a person denied all U.S. export privileges by Order dated April 3, 1990, resold, transferred and disposed of U.S.-origin commodities to a third party, knowing or having reason to know that the third party intended to, and in fact did, export the commodities to Australia, in violation of section 787.4(a) and Section 787.6 of the Regulations;

The Department and Gato having entered into a Consent Agreement whereby the Department and Gato have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Consent Agreement having been approved by me;

[1] The Act expired on August 20, 1994. Executive Order No. 12924 (59 FR 43437, August 23, 1994), extended by Presidential Notice of August 15, 1995 (60 FR 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)).

It is therefore ordered,

First, that a civil penalty of $5,000 is assessed against Gato, $3,000 of which shall be paid to the Department within 30 days of the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining $2,000 shall be suspended for a period of five years from the date from the entry of this Order and shall thereafter be waived, provided that, during the period of suspension, Gato has committed no violation of the Act, or any regulation, order, or license issued thereunder.

Second, that, James J. Gato, individually with an address at 5 Naumkeag Road, Peabody, Massachusetts 01960, and with an address at c/o Mass Computer Group, Inc., 79R Walnut Street, Peabody, Massachusetts 01960, shall, for a period of five years from the date of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. All outstanding individual validated export licenses in which Gato appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Services for cancellation. Further, all of Gato's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

C. After notice and opportunity for comment as provided in section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Gato by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

D. As provided by section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served on Gato and published in the Federal Register.

This Order is effective immediately.

Entered this 9th day of April, 1996.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 96–9535 Filed 4–17–96; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[I.D. 041196A]

Endangered Species; Permits

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

ACTION: Issuance of permits 994 (P497D), 996 (P504G), 997 (P770#70), and 998 (P510B).

SUMMARY: Notice is hereby given that NMFS has issued permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research, subject to certain conditions set forth therein, to the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU); the U.S. Army Corps of Engineers at Walla Walla, WA (Corps); the Coastal Zone and Estuarine Studies Division, NMFS at Seattle, WA (CZESD); and the Shoshone-Bannock Tribes at Fort Hall, ID (SBT).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on February 7, 1996 (61 FR 4626) that an application had been filed by ICFWRU (P497D) for a permit to take ESA-listed species. Permit 994 was issued on April 2, 1996 to ICFWRU under the supervision of Joel Hunt, a research associate at the University of Idaho. Permit 994 authorizes a take of adult, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to assess the passage success of migrating adult salmonids at the four dams and reservoirs in the lower Columbia River in the Pacific Northwest, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. Permit 994 will expire on December 31, 2000.

Notice was published on February 27, 1996 (61 FR 7241) that an application had been filed by the Corps (P504G) for a permit to take ESA-listed species. Permit 996 was issued to the Corps on April 9, 1996. Permit 996 authorizes the Corps to directly take juvenile, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon

(*Oncorhynchus nerka*) and to incidentally take adult, threatened, Snake River spring/summer and fall chinook salmon associated with a study designed to monitor the operation of the new juvenile fish bypass system at Ice Harbor Dam on the Snake River in Washington. Some adult fish, including ESA-listed adult salmon, are expected to fall back through the juvenile bypass system and will be incidentally captured and handled in the effort to return them to the river. Permit 996 will expire on December 31, 2000.

Notice was published on March 5, 1996 (61 FR 8568) that an application had been filed by CZESD (P770#70) for a permit to take ESA-listed species. Permit 997 was issued to CZESD on April 8, 1996. Permit 997 authorizes CZESD to take juvenile, threatened, Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with four studies designed to evaluate existing and proposed juvenile fish bypass systems at Ice Harbor and Little Goose Dams on the Snake River and McNary and John Day Dams on the Columbia River in the Pacific Northwest. A proportion of the ESA-listed juvenile fish that fail to enter the fish bypass system at John Day Dam only (Study 4) will be captured and sacrificed. The authorization for a take of ESA-listed species associated with Study 1 (Ice Harbor Dam) expires on December 31, 1998. The authorization for a take of ESA-listed species associated with Studies 2–4 expires on December 31, 1996.

Notice was published on February 7, 1996 (61 FR 4626) that an application had been filed by SBT (P510B) for a permit to take an ESA-listed species. Permit 998 was issued to SBT on April 9, 1996. Permit 998 authorizes SBT to take juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with a study designed to evaluate the destiny of the ESA-listed juvenile sockeye salmon from the Idaho Department of Fish and Game's captive broodstock program that were released into Pettit Lake, ID in July, 1995 under the authority of permit 795. An evaluation of the success of this release is necessary to make management decisions on future releases of the progeny from the captive broodstock program. Permit 998 expires on December 31, 2000.

Issuance of the permits, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: April 11, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–9513 Filed 4–17–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 041196B]

Endangered Species; Permits

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

ACTION: Issuance of permit 995 (P605) and a second amendment of permit 747 (P45H).

SUMMARY: Notice is hereby given that NMFS has issued a permit and an amendment to a permit that authorize takes of an Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to Ms. Pamela A. Petrusso, in collaboration with the U.S. Bureau of Reclamation at Red Bluff, CA (BOR), and the U.S. Fish and Wildlife Service at Red Bluff, CA (FWS).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

SUPPLEMENTARY INFORMATION: The permit and the second amendment of a permit were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on February 23, 1996 (61 FR 6975) that an application had been filed by Ms. Pamela A. Petrusso, in collaboration with BOR (P605), for a permit to take an ESA-listed species. Permit 995 was issued to Ms. Petrusso on April 2, 1996. Permit 995 authorizes Ms. Petrusso a take of juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to determine the physical condition of juvenile chinook salmon rearing in mainstem habitats between Keswick Dam and Red Bluff on the Sacramento River. The project will contribute to BOR's efforts to reduce migration impediments to the four runs of Sacramento River chinook salmon by providing baseline data for interpretation of the results of entrainment studies. In addition, the study will advance the understanding of the early life history and ecology of young chinook salmon in the upper Sacramento River. Permit 995 will expire on June 30, 1998.

Permit 747 was issued to FWS on August 8, 1991. Permit 747 had authorized FWS takes of adult and juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research, monitoring, and enhancement activities to promote the survival of this ESA-listed species. In the interest of ESA-listed species enhancement, supplementation hatchery programs and a captive broodstock program were initiated. In 1995, genetics research found that the artificial propagation of winter-run chinook salmon has likely resulted in hybridization with spring-run chinook salmon. In addition, hatchery-produced winter-run chinook salmon have not been returning to the mainstem Sacramento River as intended, but rather, are returning to Battle Creek where FWS's Coleman National Fish Hatchery is located, apparently as a result of imprinting on Battle Creek water.

Permit 747 was to expire on December 31, 1995. The first amendment of permit 747 was issued on December 20, 1995 (61 FR 346, January 4, 1996) and provided, in part, an extension of the permit through March, 1996 and a moratorium on the collection of adult ESA-listed fish for broodstock for the duration of the permit. An extension of the permit was necessary to allow FWS to continue research, monitoring, and enhancement activities until new permits replaced permit 747 (60 FR 58334, November 27, 1995) and to provide an opportunity to address the technical concerns with FWS' ESA-listed fish artificial propagation program. The purpose of the moratorium on the collection of adult ESA-listed fish for broodstock is to avoid compromising the genetic integrity of the winter-run chinook salmon population due to the technical problems and to avoid a significant drain on the 1996 spawning population if juveniles continue to imprint exclusively on Battle Creek.

The second amendment of permit 747 was issued to FWS on March 27, 1996. Three actions are provided by this amendment. They are: (1) An extension of permit 747 through November 30, 1996; (2) the continuation of the moratorium on the collection of adult ESA-listed fish for broodstock for the duration of permit 747; and (3) the continuation of the authorization for a take of ESA-listed fish associated with the maintenance and care of hatchery fish that are part of FWS's propagation and captive broodstock programs. Due to continued technical concerns with hybridization and imprinting problems, it was not feasible for NMFS to complete the necessary actions required to issue a new enhancement permit by the end of March, 1996. The take of ESA-listed fish associated with the scientific research/monitoring component of permit 747 has been deleted and is now authorized under permit 990, issued on March 20, 1996 (61 FR 14297, April 1, 1996). The second amendment is in effect for the duration of permit 747.

Issuance of the permit and the second amendment to a permit, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: April 11, 1996.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–9515 Filed 4–17–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 040996B]

Marine Mammals

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

ACTION: Modification no. 4 to scientific research permit no. 873 (P772#63).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 873 submitted by the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has been granted.

ADDRESSES: The modification 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, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016).

SUPPLEMENTARY INFORMATION: On March 1, 1996, notice was published in the Federal Register (61 FR 8043) that a modification of permit no. 873, issued July 28, 1993 (58 FR 34038), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Permit no. 873 authorized the permit holder to biopsy several species of cetaceans off the Pacific, Southern, and Indian Oceans, and to import biopsy tissues collected outside of U.S. waters. The permit has been modified to authorize an increase in the number of humpback whales (*Megaptera novaeangliae*) to be biopsy sampled from 20 to 100 for 1996, including 15 cow/calf pairs (i.e., 30 animals), in Hawaiian waters during the 1996 field season.

Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 9, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–9514 Filed 4–17–96; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Trading and Clearing Link Between the Chicago Board of Trade and the London International Financial Futures and Options Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of the proposed trading and clearing linkage for certain financial products between the Chicago Board of Trade and the London International Financial Futures and Options Exchange and proposed rules and rule amendments to implement the linkage.

SUMMARY: The Chicago Board of Trade (''CBT'' or ''Exchange'') has submitted a proposal to implement a trading and clearing link (''Link'') with the London International Financial Futures and Options Exchange (''LIFFE''). Pursuant to the Link, CBT and LIFFE would trade their major financial futures and options contracts on each other's floors by open outcry. Effectively, the link would permit ''cross listing'' of CBT and LIFFE futures contracts. Market users could establish a position in a LIFFE-designated contract in Chicago which would be transferred to The London Clearing House (''LCH'') the same day and be recognized as a LIFFE position. Market users could also establish a position in a CBT-designated contract in London which would be transferred to the Board of Trade Clearing Corporation (''BOTCC'') the same day and be recognized as a CBT position. Conceptually, a CBT-designated contract would be executed on LIFFE, initially matched by LCH, and then transferred to BOTCC for clearing and vice-versa. All contracts traded through the Link would be completely fungible. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Lois Gregory, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5483.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

By letters dated July 28, 1995 through March 1, 1996, CBT submitted a proposal, including proposed new rules and rule amendments, for Commission approval under Section 5a(a)(12)(A) of the Commodity Exchange Act (''Act'') and Commission Regulation 1.41(b) to implement a trading and clearing Link with the LIFFE. CBT states that, through the Link, it and LIFFE intend to provide more extensive risk transfer opportunities for their members and users of the markets, and to facilitate price discovery for the benefit of persons who rely on internationally disseminated price information.

A. Contracts and Hours

Under the Link, CBT and LIFFE would trade their major financial futures and options contracts on each other's floors by open outcry. Market users could establish a position in a LIFFE-designated contract in Chicago which typically would be transferred to LCH the same day and be recognized as a LIFFE position. Markets users could also establish a position in a CBT-designated contract in London which typically would be transferred to BOTCC the same day and be recognized as a CBT position. All open positions in contracts traded under the proposal automatically would transfer from the executing exchange to the ''home'' exchange at the end of the trading day.[1]

At the commencement of the Link, CBT would list for trading futures and options on LIFFE's German Government Bond contract and LIFFE would list for trading futures and options on the CBT's U.S. Treasury Bond contract.[2] The CBT has proposed to amend its German government bond futures and option contracts to be fungible with the corresponding LIFFE contracts.[3]

All contracts traded through the Link would be completely fungible. Accordingly, to accomplish this, the CBT would modify the terms and conditions of its contracts which would be traded on both the CBT and LIFFE so that they would be identical to those of the LIFFE contracts.[4]

The products would have the following open outcry trading day at the two exchanges (central daylight savings time/location of trading in bold):

	Chicago	London
Treasury Bonds:		
CBT	6:20 p.m.–9:05 p.m.	12:20 a.m.–3:05 a.m.
LIFFE	1:30 a.m.–7:00 a.m.	7:30 a.m.–1:00 p.m.
CBT	7:20 a.m.–2:00 p.m.	1:20 p.m.–8:00 p.m.
German Bunds:		
CBT	6:20 p.m.–9:05 p.m.	12:20 a.m.–3:05 a.m.
LIFFE	1:30 a.m.–10:15 a.m.	7:30 a.m.–4:15 p.m.
CBT	10:20 a.m.–2:00 p.m.	4:20 p.m.–8:00 p.m.

There would be time breaks between the cessation of trading on the LIFFE and the trading resumption of Link products on the CBT to provide for an orderly transition from one market place to the other. There would be no overlap in open outcry trading in the contracts between the two exchanges.

Each exchange has an electronic trading system [5] and each initially would operate its system during a portion of the other's open-outcry sessions. However, when linkage volume reached a specified level, electronic trading would be turned-off during open-outcry sessions for the linkage contracts.

B. Trading and Clearing

The Link is designed to allow market users to enter and leave the market without regard to whether their trades are executed in London or Chicago, and to permit a contract executed at the executing exchange to be transformed into the contract of the home exchange upon its transfer to the home clearinghouse. Each day under the Link, each clearing member's gross long and gross short open position balance in LIFFE-designated contracts traded on CBT would be transferred at CBT's closing price to the account of a LIFFE clearing member counterpart via LCH for clearing and settlement. Transactions initially would be matched by BOTCC, but upon transfer to LCH, would be converted to a LIFFE futures or option contract and then confirmed to the customer as such at the trade price determined on the CBT floor. Similarly, each LCH clearing member's gross long and gross short open position balance in CBT-designated contracts traded on LIFFE would be transferred at LIFFE's closing price to the account of a CBT clearing member counterpart via BOTCC for clearing and settlement. Transactions initially would be matched by LCH, but upon transfer to BOTCC would be converted to a CBT futures or option contract at the trade price determined on the LIFFE floor.

Market participants also would have the option of having daytrade positions entered into on the executing exchange offset prior to transfer thereby reducing associated costs. A market participant also could have a position open at the home exchange offset by a designated link position that has been transferred.

The clearing organization for the executing exchange would be responsible for trades up until the moment they were transferred to the home clearing organization. At the moment of the transfer of positions, the home clearing organization would be responsible and the clearing guarantee of that organization would attach. The home clearing organization would guarantee the other side of the market in the same manner and with the same resources used to guarantee transactions executed on the home exchange. Open positions in linkage contracts could not be transferred from the executing exchange to the home exchange on holidays at the home exchange. In those cases, all transactions would continue to be held by the executing exchange until the home exchange's next business day.

Firms which executed trades for LIFFE-designated products in Chicago would be required to be an LCH clearing member or enter into a Link clearing agreement with a single LCH clearing

[1] Options could be exercised only after being transferred to the home exchange. All deliveries would be at the home exchange.

[2] CBT and LIFFE also propose eventually to have CBT's ten and five year U.S. Treasury Note futures and options contracts introduced for trading on LIFFE and futures and options on LIFFE's Long-Term British Gilts and Italian Government Bonds introduced for trading on the CBT.

[3] Likewise, LIFFE would have contracts which would be fungible with CBT contracts.

[4] In its rules, the CBT's contracts traded on the Link are referred to as ''LIFFE designated contracts trading on CBT''.

[5] CBT's electronic trading system is known as Project A. LIFFE operates the Automated Pit Trading system, referred to as ''APT.''

member. Likewise, firms who executed trades for CBT-designated products in London would be required to be BOTCC clearing members or enter into a Link clearing agreement with a single BOTCC clearing member. These agreements would require the receiving clearing member to accept the transferor's entire open position balance, except in accordance with specified criteria for rejection, such as, for example, the bankruptcy of the transferor or the termination of its rights to act as a clearing member. In order to trade under the Link, a non-clearing member of either exchange would have to have clearing arrangements for designated contracts trading with a home exchange clearing member that has entered into a relevant Link clearing agreement.

Contracts traded under the Link would be added to the contract's existing open interest on the home exchange. Link contract volume would be recorded by the executing exchange. With respect to positions transferred through the Link, the home exchange and clearing organization would be entitled to charge their respective fees, but at rates no higher than those normally charged. The home exchange and clearing organization would not impose fees on trades which were not transferred through the Link, i.e., daytrades offset on the executing exchange. If the average daily trading volume for a contract traded on the executing exchange was more than 20% of the average daily trading volume on the home exchange for the same period, the parties could take whatever action deemed appropriate, including suspending trading over the Link of that particular contract. The contract would then be traded only on the home exchange, with open interest, of course, attributable to the home exchange.

C. Margin

Both BOTCC and LCH would collect margin to minimize the risk of carrying positions executed under the Link. For LIFFE-designated contracts traded on CBT, BOTCC would transfer the day position balance to LCH at CBT's 2:00 p.m. closing price on trade day, ''T''. Transfer would take place between 4:00 p.m. and 5:00 p.m., Chicago time, and BOTCC would calculate a variation on all LIFFE-designated positions it had cleared for the trading day against its closing prices. LCH would receive the transferred positions at CBT's closing price and calculate a variation against its own earlier close-of-market settlement price. Although bank commitments would have been received earlier, each clearing house actually would collect the variation on T+2.[6]

For CBT-designated contracts trading on LIFFE, LCH would transfer open positions to BOTCC at approximately 10:00 a.m., Chicago time. Positions would be transferred at the LCH closing price and LCH would calculate variation based on this price and would collect on T+1. BOTCC would determine the settlement price based on its afternoon close and would calculate and collect variation on the transferred positions as part of its routine, mid-day variation call. Each home clearing firm would reimburse each executing clearing firm for the variation paid to the executing clearing organization. Conversely, each home clearing firm would receive from the executing clearing firm any variation paid by the executing clearing organization.

For CBT-designated option contracts purchased on LIFFE, LCH would collect the full option premium. So that linked contracts would be fully fungible and to avoid pricing discrepancies, CBT proposes, pursuant to Commission Regulation 33.11, that the Commission exempt LIFFE-designated options purchased on CBT from the requirement of Commission regulation 33.4(a)(2)[7] and allow them to be margined futures-style.

BOTCC and LCH would collect original margin on a position executed on the executing exchange when the day after the trade day was a holiday for the home clearing organization. Transfer of funds and positions would resume on the next business day. BOTCC would also collect original margin for LIFFE-designated positions it held overnight from its evening trading session.

LIFFE-designated contracts would be traded and settled in various currencies. CBT-designated contracts would be traded and settled in U.S. dollars.

The Link is intended to be seamless to customers. To aid in this endeavor, CBT proposes that contracts traded under the Link be subject to consistent segregation treatment before and after funds and positions were transferred from the executing exchange to the home clearing organization. U.S. customer funds associated with contracts executed on LIFFE normally would be subject to Commission Regulation 30.7 and customer funds associated with contracts executed on CBT normally would be subject to Section 4d of the Act. CBT proposes that customer funds used to secure positions in CBT-designated contracts traded on LIFFE be held by U.S. clearing firms under Section 4d of the Act before as well as after those positions were transferred to BOTCC. Customer funds used to secure positions in LIFFE-designated contracts traded on CBT would be classified as Commission Regulation 30.7 funds before as well as after those positions were transferred to LCH.[8] The parties anticipate this would avoid potential operational difficulties and accounting problems, fulfill customer expectations that funds and positions would be held in the manner required in the location where the ultimate clearing organization is located, and further the concept of full fungibility of contracts.

Deliveries and options exercises of all linkage contracts would take place through the home exchange and in accordance with the requirements of the home exchange. All deliveries in U.S. Treasury products would occur through BOTCC and its clearing members. All deliveries in LIFFE contracts would occur through LCH and its clearing members.

D. Oversight

Linkage contracts would be traded under the rules of the executing exchange. Therefore, the trading of LIFFE-designated contracts on CBT would be subject to CBT rules and regulations. Exchange-for-physical (''EFP'') transactions on CBT-designated contracts would continue to be submitted to BOTCC. EFPs would not be permitted on LIFFE-designated contracts. CBT would not operate any system of price limits or operate an average pricing system with respect to LIFFE-designated contracts. Crossing of transactions on the executing exchange could be permitted, but only in a manner which conformed with the rules of the home exchange.

Proposed CBT rules would provide that it would be an act detrimental to the interest and welfare of CBT for a member to be found by LIFFE to have committed a material violation of LIFFE's rules, and any CBT member sanctioned by LIFFE could be suspended until the sanction was satisfied.

The parties would share information to enable effective surveillance and investigations related to designated linkage contracts. Each exchange and its

[6] This variation would be collected on T + 1 for futures and options on Long-Term British Gilts. See footnote 2, supra.

[7] Commission Regulation 33.4(a)(2) requires that the full amount of each option premium be received from each option customer at the time the option is purchased.

[8] The Commission is exploring the appropriate treatment of CBT-designated positions for the period held in the United Kingdom to assure appropriate protection of U.S. based segregation deposits.

clearing house would be entitled to take such action under its rules to deal with a market emergency as it in its discretion deemed fit and would consult with all other parties on the matter as soon as practicable.

II. Request for Comments

The Commission requests comments from interested persons concerning any aspect of the proposed trading and clearing link between the CBT and LIFFE that commenters believe raises issues under the Act or Commission regulations.

Copies of the proposed rules, illustrations of accounting detail for transfer of positions and funds and other related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposal or proposed new rules or rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Alan L. Seifert,

Deputy Director.

[FR Doc. 96–9506 Filed 4–17–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing the ''Institutional Application and Agreement for Participation in the Work-Colleges Program.''

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an eligible institution to apply for participation in the Work-Colleges Program and to apply for funding under that program for the 1996–97 award year (July 1, 1996 through June 30, 1997) by submitting to the Secretary an ''Institutional Application and Agreement for Participation in the Work-Colleges Program.''

The Work-Colleges Program along with the Federal Work-Study Program and the Job Location and Development Program are known collectively as the Federal Work-Study programs. The Work-Colleges Program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

CLOSING DATE: To participate in the Work-Colleges Program and to apply for funds for that program for the 1996–97 award year, an eligible institution must mail or hand-deliver its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' on or before May 20, 1996. The Department will not accept the form by facsimile transmission. The form must be submitted to the Institutional Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Applications and Agreements Delivered by Mail.* An institutional application and agreement delivered by mail must be addressed to Carolyn Short, Work-Colleges Program, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, P.O. Box 23781, Washington DC 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an institutional application and agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. Institutions that submit an institutional application and agreement after the closing date of May 20, 1996, will not be considered for participation or funding under the Work-Colleges Program for award year 1996–97.

Applications and Agreements Delivered by Hand. An institutional application and agreement delivered by hand must be taken to Carolyn Short, Work-Colleges Program, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4663, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. Hand-delivered institutional applications and agreements will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An institutional application and agreement for the 1996–97 award year that is delivered by hand will not be accepted after 4:30 p.m. on May 20, 1996.

SUPPLEMENTARY INFORMATION: Under the Work-Colleges Program, the Secretary allocates funds when available for that program to eligible institutions. The Secretary will not allocate funds under the Work-Colleges Program for award year 1996–97 to any eligible institution unless the institution files its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' by the closing date.

To apply for participation and funding under the Work-Colleges Program, an institution must satisfy the definition of ''work-college'' in section 448(e) of the HEA. The term ''work-college'' under the HEA means an eligible institution that (1) is a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires all resident students who reside on campus to participate in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

Applicable Regulations

The following regulations apply to the Work-Colleges Program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: Carolyn Short, Work-Colleges Program, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, SW., (Room 4663, ROB–3), Washington, DC 20202–5458. Telephone (202) 708–9184. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 42 U.S.C. 2756(b)).

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

Dated: April 11, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–9521 Filed 4–17–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

AGENCY: Energy Information Administration, Energy.

ACTION: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed one year extension of the Forms EIA–800–804, 807, 810–814, 816, 817, 819M, 820 and 825 of the Petroleum Supply Reporting System (PSRS) for the collection of data in 1997. In addition, the EIA has eliminated the Form EIA–819A and will collect data by Form EIA–820 biennially, instead of annually.

DATES: Written comments must be submitted on or before June 17, 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 of your intention to do so as soon as possible.

ADDRESSES: Send comments to Stacey Ungerleider, Energy Information Administration, EI–421, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, telephone: (202) 586–5130, e-mail address: sungerle@eia.doe.gov or fax number: (202) 586–5846.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stacey Ungerleider at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Petroleum Supply Reporting System collects data essential for determining the supply and demand of crude oil, petroleum products and natural gas liquids. These data are published by the Energy Information Administration in the Weekly Petroleum Status Report, Winter Fuels Report, Petroleum Supply Monthly and the Petroleum Supply Annual. Survey respondents include producers of oxygenates, operators of petroleum refining facilities, motor gasoline blending plants, bulk terminals, crude oil and petroleum product pipelines, natural gas plant facilities, tanker and barge operators and oil importers.

II. Current Actions

The EIA requests a one year extension to the Forms EIA–800–804, 807, 810–814, 816, 817, 819M, 820 and 825 of the Petroleum Supply Reporting System to collect data in 1997. In response to budget reductions, EIA is making immediate modifications to its current business practices. As a result, the EIA eliminated the survey, Form EIA–819A, ''Annual Oxygenate Report'' as of January 1, 1996; is using the Form EIA–820, ''Annual Refinery Report'' to collect data on a biennial basis beginning in 1997 (the form is not being used to collect data in 1996); and initiated a two-year development schedule for the implementation of revised survey forms in 1998.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. (If the notice covers more than one form, please indicate to which form(s) your comments apply.)

General Issues

EIA is interested in receiving comments from persons regarding: A. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for this collection is estimated to average per submission: EIA–800, 1 hour 10 minutes; EIA–801, 40 minutes; EIA–802, 40 minutes; EIA–803, 25 minutes; EIA–804, 1 hour 10 minutes; EIA–807, 50 minutes; EIA–810, 3 hours 10 minutes; EIA–811, 1 hour 40 minutes; EIA–812, 2 hours; EIA–813, 1 hour 30 minutes; EIA–814, 1 hour 5 minutes; EIA–816, 40 minutes; EIA–817, 1 hour 30 minutes; EIA–819M, 30 minutes; EIA–820, 2 hours; and EIA–825, 30 minutes. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing

technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

D. What are the estimated (1) total dollar amount annualized for capital and start-up costs. and (2) recurring annual dollar amount of operation and maintenance and purchase of services costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information.

Estimates should not include purchases of equipment or services made as part of customary and usual business practices, or the cost of any burden hours for completing the form(s). EIA estimates that there are no additional costs other than those that the respondent incurs in keeping the information for its own uses.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., April 4, 1996.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–9568 Filed 4–17–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given of a meeting of the DOE/NSF Nuclear Science Advisory Committee.

DATES: Wednesday, May 1, 1996, 6:30 p.m. to 10:30 p.m.

ADDRESSES: Hyatt Regency Hotel, Mount Rushmore Room, One South Capitol Avenue, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mrs. Cathy A. Hanlin, Division of Nuclear Physics, U. S. Department of Energy, ER–23, GTN, Germantown, Maryland 20874, Telephone Number: 301–903–3613.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To advise the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda

Wednesday, May 1, 1996

- Status of Ongoing NSAC Business including Presentation of Long Range Plan (H. Robertson)
- Discussion of American Physical Society/Division of Nuclear Physics Activity (J.D. Walecka)
- Status of DOE Nuclear Physics Program, and Subsequent Discussion by NSAC (D. Hendrie, DOE)
- Status of NSF Nuclear Physics Program, and Subsequent Discussion by NSAC (J. Lightbody, NSF)
- Presentation of Charge to NSAC on the RHIC Operating Funding Level
- Public Comment

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements pertaining to agenda items should contact Cathy Hanlin at the address or telephone number listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

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, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on April 10, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–9569 Filed 4–17–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Proposed Information Collection and Request for Comments (FERC–598)

April 12, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 16, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873 and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: *Abstract:* The information collected under the requirements of FERC–598

''Determinations for Entities Seeking Exempt Wholesale Generator Status'' (OMB No. 1902–0166) is used by the Commission to implement the statutory provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) as added and redesignated by Section 711 of the Energy Policy Act of 1992. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. Persons granted EWG status will be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 365.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of respondents per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
280	1	6 hours	1680 hours.

Estimated cost burden to respondents: 1680 hours / 2,087 hours per year × $102,000 per year = $82,108.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are cost incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9573 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1195–000]

ANP Energy Direct Company; Notice of Amendment

April 12, 1996.

Take notice that on March 21, 1996, ANP Energy Direct Company filed an amendment to their filing in Docket No. ER96–1195–000.

Any person desiring to be heard or to protest said amendments 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 April 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9518 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–161–005]

Avoca Natural Gas Storage; Notice of Amendment

April 12, 1996.

Take notice that on April 5, 1996, Avoca Natural Gas Storage (Avoca), One Bowdoin Square, Boston, Massachusetts 02114, filed a request with the Director, Office of Pipeline Regulation to develop previously certificated storage caverns in either the ''B'' or ''C'' salt layers of the Syracuse and Vernon salts section. The Commission construes this filing as a request pursuant to Section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity issued by the Commission on September 20, 1994 in Docket No. CP94–161–000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Avoca states that the ''C'' salt layer where the first two caverns were to be developed where less thick than previously anticipated. This decreased thickness would cause the capacity of the caverns to be less than planned. Due to this, Avoca seeks authorization to develop storage caverns in either the ''B'' or ''C'' salt layers of the Syracuse and Vernon salts section. Avoca states that the geomechanical performance of caverns in the ''B'' salt would be similar to the performance of caverns in the ''C'' salt.

Avoca states that, due to its construction schedule, it requires

authorization on or before April 17, 1996.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 17, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this amendment if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Avoca to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9519 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–300–000]

Columbia Gulf Transmission Company, Natural Gas Pipeline Company of America, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation; Notice of Application for Abandonment

April 12, 1996.

Take notice that on April 8, 1996, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, STE 125, P.O. Box 683, Houston, Texas 77001–0683; Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148; Tennessee Gas Pipeline Company (Tennessee), Tenneco Building, P.O. Box 2511, Houston, Texas 77002; and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42310, herein collectively referred to as Applicants, filed a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain natural gas facilities. The application is one file with the Commission and open to public inspection.

Applicants propose to abandon three compressor units and associated equipment, valves and piping located on Platforms A and B, Eugene Island Block 250, Offshore Louisiana, as follows:

- Compressor 250–1 facilities located on Platform A—one 2,700 horsepower, gas-fired turbine-driven compressor unit co-owned by Texas Gas (33⅓%) and Columbia Gulf (66⅔%);
- Compressor 250–2 facilities located on Platform B—one 3,000 horsepower, gas-fired turbine-driven compressor unit co-owned by Natural (33⅓%), Tennessee (33⅓%) and Columbia Gulf (33⅓%); and
- Compressor 250–3 facilities located on Platform B—one 3,500 horsepower, gas-fired turbine-driven compressor unit owned by Columbia Gulf (100%).

Applicants' state that Units 250–1 and 250–2 were installed in 1975 and Unit 250–3 was installed in 1977. Applicants' analysis of Eugene Island Area production indicates no need for compression in the future. Applicants' state that no current services, firm or interruptible, will be terminated or adversely impacted by the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 3, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants' to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9520 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1122–000]

NFR Power, Inc.; Notice of Issuance of Order

April 15, 1996.

On February 21, 1996, NFR Power, Inc. (NFR) submitted for filing a rate schedule under which NFR will engage in wholesale electric power and energy transactions as a marketer. NFR also requested waiver of various Commission regulations. In particular, NFR requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NFR.

On April 2, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NFR should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NFR is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser,

surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NFR's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 2, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9574 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–906–000]

SuperSystems, Inc.; Notice of Issuance of Order

April 12, 1996.

On January 24, 1996, as amended February 20, 1996, SuperSystems, Inc. (SuperSystems) submitted for filing a rate schedule under which SuperSystems will engage in wholesale electric power and energy transactions as a marketer. SuperSystems also requested waiver of various Commission regulations. In particular, SuperSystems requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by SuperSystems.

On March 27, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SuperSystems 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 385.214).

Absent a request for hearing within this period, SuperSystems is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SuperSystems' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 26, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9575 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1144–000]

Utility Management Corporation; Notice of Issuance of Order

April 15, 1996.

On February 22, 1996, as amended on March 3, 1996, Utility Management Corporation (UMC) submitted for filing a rate schedule under which UMC will engage in wholesale electric power and energy transactions as a marketer. UMC also requested waiver of various Commission regulations. In particular, UMC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by UMC.

On April 5, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by UMC 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 385.214).

Absent a request for hearing within this period, UMC is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of UMC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 6, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9576 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–225–024, et al.]

Chicago Energy Exchange of Chicago, et al.; Electric Rate and Corporate Regulation Filings

April 12, 1996.

Take notice that the following filings have been made with the Commission:

1. Chicago Energy Exchange of Chicago; Tenaska Power Services, Co.; Texican Energy Ventures, Inc.; KCS Power Marketing, Inc.; J. Anthony & Associates, Ltd; Utility-Trade, Corp.; Vanpower, Inc.

[Docket No. ER90–225–024, Docket No. ER94–389–007, Docket No. ER94–1362–003, Docket No. ER95–208–005, Docket No. ER95–784–003, Docket No. ER95–1382–003, Docket No. ER96–552–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On April 8, 1996, Chicago Energy Exchange of Chicago, Inc. filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000.

On April 8, 1996, Tenaska Power Services, Co. filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On March 15, 1996, Texican Energy Ventures, Inc. filed certain information

as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000.

On April 8, 1996, KCS Power Marketing, Inc. filed certain information as required by the Commission's March 2, 1995, order in Docket No. ER95–208–000.

On April 8, 1996, J. Anthony & Associates Ltd. filed certain information as required by the Commission's May 31, 1995, order in Docket No. ER95–784–000.

On April 8, 1996, Utility-Trade Corp. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1382–000.

On April 8, 1996, Vanpower, Inc. filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–552–000.

2. American Electric Power Service Corporation

[Docket No. ER93–540–007]

Take notice that on March 15, 1996, American Electric Power Service Corporation tendered for filing its compliance filing of point-to-point transmission service and network transmission service tariffs.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company

[Docket No. ER95–1141–000]

Take notice that on April 4, 1996, Central Power and Light Company (CPL) submitted for filing a revised unexecuted Transmission Service Agreement (Revised TSA), between CPL and Rio Grande Electric Cooperative, Inc. (Rio Grande). CPL proposes that the Revised TSA supersede in its entirety a transmission service agreement filed earlier in this docket on May 31, 1995. As of June 1, 1995, CPL began transmission service to Rio Grande under the agreement currently on file, thereby permitting Rio Grande to purchase full-requirements service from West Texas Utilities Company instead of from CPL.

CPL requests an effective date of June 1, 1995, for the Revised TSA and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Rio Grande and the Public Utility Commission of Texas.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Vantus Power Services

[Docket No. ER95–1614–004]

On April 5, 1996, Vantus Power Services filed a notice of succession changing its name from Vantus Energy Corporation to Vantus Power Services.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–977–000]

Take notice that on April 9, 1996, Consolidated Edison Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER96–1109–000]

Take notice that on April 5, 1996, Pacific Gas and Electric Company tendered for filing an amendment to its February 20, 1996, filing of revised transmission rates for the Western Area Power Administration (Western) for services provided under Contract No. 14–06–200–2948A.

Subsequent to the initial filing, the Commission's staff requested certain additional revenue and cost of service data for Western. In response to this request from the Commission's staff, PG&E submitted additional workpapers to demonstrate how Western revenues are treated for cost of service purposes.

Copies of this filing have been served upon Western and the CPUC.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Detroit Edison Company

[Docket No. ER96–1287–000]

Take notice that on April 4, 1996, Detroit Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Houston Lighting & Power Company

[Docket No. ER96–1493–000]

Take notice that on April 3, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Coral Power, L.L.C. (Coral Power) for Economy Energy and Emergency Power Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of April 3, 1996.

Copies of the filing were served on Coral Power and the Public Utility Commission of Texas.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Public Service Company

[Docket No. ER96–1494–000]

Take notice that on April 3, 1996, Southwestern Public Service Company submitted an unexecuted service agreement under its point-to-point transmission tariff with Central and South West Services, Inc.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER96–1495–000]

Take notice that on April 3, 1996, Commonwealth Edison Company (ComEd), submitted three Service Agreements, establishing Delhi Energy Services, Inc. (Delhi), dated January 30, 1996; Utilicorp United (Utilicorp), dated February 14, 1996; and Federal Energy Sales, Inc. (Federal), dated March 10, 1996, as customers under the terms of ComEd's Flexible Transmission Service Tariff (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Second Revised Volume No. 3. ComEd also submitted for filing an additional Service Agreement, establishing Public Service Electric and Gas Co. (PSE&G), dated February 28, 1996, as a customer under the terms of ComEd's Power Sales Tariff (PS–1 Tariff).

ComEd requests an effective date of March 10, 1996, for all four Service Agreements and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Delhi, Utilicorp, Federal, PSE&G and the Illinois Commerce Commission.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER96–1496–000]

Take notice that on April 3, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Valero Power Services Company. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating

Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: April 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Midwest Energy, Inc.

[Docket No. ER96–1497–000]

Take notice that on April 2, 1996, Midwest Energy, Inc. (Midwest Energy), tendered for filing with the Federal Energy Regulatory Commission an Opportunity Sales rate schedule to sell energy at negotiated rates capped at the actual incremental cost of energy, plus up to 10% of the incremental cost of energy, not to exceed 1 mill/kWh. Midwest Energy has proposed an effective date of May 1, 1996.

Also take notice that Midwest tendered for filing on April 2, 1996, a Notice of Cancellation of the following rate schedules, effective May 1, 1996.

Supplement No. 3 to Rate Schedule FERC No. 6
Superseding Supplement No. 3 to Rate Schedule FERC No. 6
Supplement No. 3 to Rate Schedule FERC No. 4
Superseding Supplement No. 3 to Rate Schedule FERC No. 4

Firm transmission services provided under these rate schedules will be offered under Midwest's open-access transmission tariff.

Comment date: April 26, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9577 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG96–54–000, et al.]

Indian Queens Power Limited, et al.; Electric Rate and Corporate Regulation Filings

April 11, 1996.

Take notice that the following filings have been made with the Commission:

1. Indian Queens Power Limited

[Docket No. EG96–54–000]

On April 1, 1996, Indian Queens Power Limited (IQPL), c/o Alisa B. Johnson, Destec Energy, Inc., 2500 CityWest Blvd., Suite 150, P.O. Box 4411, Houston, Texas 77210–4411, (713) 735–4401, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

IQPL is a private limited company, incorporated under the laws of England and Wales, that is engaged directly and exclusively in owning and operating the Indian Queens electric generating facility (Facility) located in the County of Cornwall, England. The Facility will consist of one gas turbine generator, rated at approximately 140 MW, a metering station and associated transmission interconnection components.

Comment date: April 29, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. MidAmerican Energy Company

[Docket No. ER96–1470–000]

Take notice that on April 1, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving MidAmerican's application for membership in WSPP.

MidAmerican requests that the Commission amend the WSPP Agreement to include it as a member.

MidAmerican requests an effective date of April 1, 1996, for the proposed amendment. Accordingly, MidAmerican requests a waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon WSPP Members, WSPP General Counsel, Iowa Utilities Board, Illinois Commerce Commission and South Dakota Public Utilities Commission.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. The Cleveland Electric Illuminating Company

[Docket No. ER96–1471–000]

Take notice that on April 1, 1996, The Cleveland Electric Illuminating Company (CEI), tendered for filing a lease agreement (Agreement) between CEI and Jersey Central Power and Light Company (JCP&L) whereby CEI will lease its ownership share in the Seneca pumped storage hydro electric plant to JCP&L.

CEI requests that pursuant to the procedures established in *Prior Notice and Filing Requirements under Part 2 of the Federal Power Act,* 64 FERC ¶ 61,139 (1993), the Commission either accept the Agreement for filing under § 205 of the Federal Power Act and the Commission's regulations thereunder or determine that the Agreement is not subject to the Commission's jurisdiction because it does not contain rates for wholesale sale of capacity and energy or transmission services, and it does not affect or relate to jurisdictional rates or service. In the event the Commission determines that the Agreement is jurisdictional under § 205 of the Federal Power Act, CEI requests that the Agreement be made effective June 1, 1996.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER96–1472–000]

Take notice that on April 1, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 29, 1996 by KCPL. KCPL proposes an effective date concurrent with FERC acceptance of the related open season firm power service schedule, (KCPL filing with FERC dated March 27, 1996) and requests a waiver of the Commission's notice requirement, if needed, to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for a wholesale transaction.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas City Power & Light Company

[Docket No. ER96–1473–000]

Take notice that on April 1, 1996, Kansas City Power & Light Company

(KCPL), tendered for filing a Service Agreement dated March 29, 1996 by KCPL. KCPL proposes an effective date concurrent with FERC acceptance of the related open season firm power service schedule (ER96–689–000) and requests a waiver of the Commission's notice requirement, if needed, to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for a wholesale transaction.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER96–1474–000]

Take notice that on April 1, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 29, 1996 by KCPL. KCPL proposes an effective date of June 1, 1996, and requests a waiver of the Commission's notice requirement, if needed, to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for a wholesale transaction.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas City Power & Light Company

[Docket No. ER96–1475–000]

Take notice that on April 1, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 29, 1996 by KCPL. KCPL proposes an effective date of June 1, 1996, and requests a waiver of the Commission's notice requirement, if needed, to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for a wholesale transaction.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER96–1476–000]

Take notice that on April 1, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated March 29, 1996 by KCPL. KCPL proposes an effective date of June 1, 1996, and requests a waiver of the Commission's notice requirement, if needed, to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission Service by KCPL for a wholesale transaction.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER96–1478–000]

Take notice that on April 2, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Regulations, Transmission Service Agreements with various customers under, PacifiCorp's FERC Electric Tariff, Original Volume No. 10.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER96–1479–000]

Take notice that on April 2, 1996, Duke Power Company (Duke), tendered for filing Transmission Service Agreements (TSAs) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and PECO Energy Company (PECO). Duke states that the TSAs set out the transmission arrangements under which Duke will provide PECO firm transmission service and non-firm transmission service under its Transmission Service Tariff.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER96–1480–000]

Take notice that on April 2, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Rainbow Energy Marketing Corporation under Rate GSS.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Kentucky Utilities Company

[Docket No. ER96–1481–000]

Take notice that on April 1, 1996, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during March 1, 1996 through March 15, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER96–1482–000]

Take notice that on April 2, 1996, Nevada Power Company (Nevada Power), tendered for filing a proposed revised price sheet to the Purchased Power Agreement between the Colorado River Commission (CRC) and Nevada Power Company (Exhibit A) having a proposed effective date of June 1, 1996.

Exhibit A provides for an increase in rates to the CRC and an increase in the maximum on-peak firm capacity take for the period June 1, 1996 to May 31, 1997.

Copies of this filing have been served on the CRC and the Nevada Public Service Commission.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER96–1483–000]

Take notice that on April 1, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Aquila Power Corporation. The Agreement provides for transmission service under the Comparable Transmission Service Tariff, FERC Original Volume No. 7.

WPSC asks that the agreement become effective retroactively to the date of execution by WPSC.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER96–1485–000]

Take notice that on April 2, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Sonat Power Marketing Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 6, 1996.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER96–1486–000]

Take notice that on April 2, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Aquila Power Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 6, 1996.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER96–1487–000]

Take notice that on April 3, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1996 between Cinergy, CG&E, PSI and KN Marketing, Inc. (KNM).

The Interchange Agreement provides for the following service between Cinergy and KNM.

1. Exhibit A—Power Sales by KNM
2. Exhibit B—Power Sales by Cinergy

Cinergy and KNM have requested an effective date of April 15, 1996.

Copies of the filing were served on KN Marketing, Inc., the Public Service Commission of the State of Colorado, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER96–1488–000]

Take notice that on April 3, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER96–1489–000]

Take notice that on April 3, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Catex Vitol Electric, L.L.C. under Rate GSS.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER96–1490–000]

Take notice that on April 3, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER96–1491–000]

Take notice that on April 3, 1996, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Sonat Power Marketing under Rate GSS.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER96–1492–000]

Take notice that on April 3, 1996, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Heartland Energy Services, Inc. under Rate GSS.

Comment date: April 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Chambers Cogeneration Limited Partnership

[Docket No. QF87–433–003]

On April 2, 1996, Chambers Cogeneration Limited Partnership, of 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161 submitted for filing an application for recertification 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.

The cogeneration facility, to be located in Salem County, New Jersey, was previously recertified as a qualifying cogeneration facility, *Chambers Cogeneration Limited Partnership,* 57 FERC ¶ 62,187 (1991). The instant request for recertification is due to an increase in capacity. Electric power will now be sold to the thermal host, Alantic City Electric Company (Alantic Electric), and various power marketers through Alantic Electric's wheeling service.

Comment date: Thirty days after the date of publication of this notice in the Federal Register, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9578 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Request for Commission Approval To Grant a Permit for Dredging on Project Lands, and for the Lease of Project Lands

April 12, 1996.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Type of Application: Request for Commission Approval to Grant a Permit for Dredging on Project Lands, and for the Lease of Project Lands.

b. Project No.: 1494–119.

c. Dated Filed: March 8, 1996, and supplemented April 5, 1996.

d. Applicant: Grand River Dam Authority (licensee).

e. Name of Project: Pensacola Project.

f. Location: Near the Patricia Island portion of Grand Lake O' The Cherokees, Delaware County, Grove, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert W. Sullivan, Jr., Grand River Dam Authority, P.O. Box 409, Drawer G, Vinita, OK 74301, (918) 256–5545.

i. FERC Contact: Joseph C. Adamson, (202) 219–1040.

j. Comment Date: May 20, 1996.

k. Description of Proposed Action: The licensee requests Commission approval to grant a permit to Mr. Larry Herrelson, d/b/a Patricia Island Estate (permittee) to: (1) excavate approximately 192,200 cubic yards of material from the Pensacola Project's reservoir (Grand Lake O' The Cherokees); and (2) to lease 6 tracts of project lands totaling 72.48 acres. The application includes measures for mitigating temporary adverse impacts to fish resources. The proposed dredging activity is to lengthen and deepen coves to provide boat access to project waters as part of the development of a residential recreation area. The proposed lease will enable the permittee to develop a public golf course using private lands in conjunction with the leased project lands. If approved the application would authorize excavation at the site for the placement of nine boat access facilities, and development at the site for the establishment of a public golf course.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a project, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–9517 Filed 4–17–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 12, 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. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. 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 May 20, 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.: 3060-0139.

Title: Application for Antenna Structure Registration.

Form No.: FCC 854/854R.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; state or local governments.

Number of Responses: 43,000.

Estimated Time Per Response: 30 minutes.

Total Annual Burden: 21,500 hours.

Needs and Uses: Section 303(q) of the Communications Act authorizes the Commission to require the painting and/or illumination of radio towers if and when in its judgement such towers constitute, or there is a reasonable possibility that they may constitute, a hazard to air navigation. This FCC form is to be used for the purpose of registering structures used for wire or radio communication services within the United States, or to make changes to an existing registered structure, or to notify the Commission of the dismantlement of a structure. The Commission staff will evaluate the antenna data submitted by the tower owner and determine if Part 17 rule requirements are met and if any obstruction painting and/or lighting will be necessary. The tower owner will

receive notification that the Commission has registered the structure, modification or dismantlement on FCC Form 854R, Antenna Structure Registration. Owners of new and modified towers must notify the Commission within 24 hours of construction completion and/or disposition of structure, using a portion of the FCC Form 854R which is detachable. The data collected is required by the Communications Act of 1934, as amended; FCC Rules Section 1.61(a), 17.4, 21.11(g),25.113(c), 73.3533(c), 74.551(c), 74.651(d), 74.1251(d), 78.109(c), 95.83(a)(3), 97.15(d).

OMB Approval Number: 3060-0544.

Title: 47 CFR 76.701 Leased access channels.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, individuals or households.

Number of Respondents: 535,600 determined as follows: 6,270 cable companies are subject to the Commission's leased access provisions with approximately 1,000 carrying active leased access channels. We estimate approximately 50 systems will add leased access channels to their channel line-up for the first time and they will choose to adopt a written and published policy prohibiting indecent programming. The average burden is 2 hours per system for a total 100 hours. We also estimate that much leased access programming contains no indecent material. Therefore no more than 10% of the subscribers to a system with leased access channels are in a position to request indecent access programming or request termination of such programming. We estimate that cable systems have an average of 5,300 subscribers and the average burden to complete the written request is approximately 1 minute since many systems provide a pre-printed area on their monthly billing statement for subscribers to make these requests. The total burden for this is 9,010 hours.

Additionally the Commission estimates that for the 1,000 systems with leased access channels there will be an average 5 occurrences annually where program providers must identify indecent programming in writing to the cable operators. The estimated burden is 10 minutes per respondent for a total of 835 hours.

A cable operator may also request a program provider to certify that the programming intended for leased access does not have obscene or indecent content and may request that programming of ''live programming'' certify that reasonable efforts will be made to ensure that live programming is not indecent. The average burden for each certification is 10 minutes per respondent for a total burden of 835 hours. Section 76.701(h) requires retention of records verifying compliance with these requirements. The estimated burden is 4 hours per respondent for a total of 4,000 hours.

This collection was revised to incorporate the third party disclosure requirements contained in sections 76.701(c), 76.701(d), and 76.702(e) which were not previously reported. Also the number of respondents has been adjusted from 497 to 1,000.

Total Annual Burden: 14,780 hours.

Needs and Uses: Section 10(a) of the Cable Television Consumer Protection and Competition Act of 1992, Pub.L. No. 102-385, permits cable operators to enforce voluntarily a written and published policy of prohibiting indecent programming on commercial leased access channels on their cable systems. Section 10(b) of the Act requires the Commission to adopt regulations that are designed to restrict access of children to indecent programming on leased access channels (that is not voluntarily prohibited under section 10(a) by requiring cable operators to place indecent leased access programming, as identified by program providers, on a ''blocked'' leased access channel. The various information collection, disclosure and recordkeeping requirements set forth in 47 CFR 76.701 protect cable operators against involuntarily transmitting indecent programming on leased access channels; and unknowingly transmitting indecent programming on leased access channels to children or adult subscribers without adult subscribers' consent.

Federal Communications Commission.

William F. Caton,

Acting. Secretary.

[FR Doc. 96–9530 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Approved by Office of Management and Budget

April 11, 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 a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission

OMB Control No.: 3060–0084.

Expiration Date: 04/30/99.

Title: Ownership Report for Noncommercial Educational Broadcast Station; FCC Form 323–E.

Estimated Annual Burden: 348 hours annual burden; average 4 hours per respondent. However, the Commission estimates that the respondents will contract with an attorney to complete the form. The average time for conveying the necessary information to the attorney is 30 minutes per respondent; 695 respondents.

Description: Each licensee/permittee of a noncommercial AM, FM and TV station is required to file an FCC Form 323-E within 30 days of the date of grant by the FCC of an application for original construction permit and after any changes occur in the information called for in the form; and in conjunction with the renewal application. Licensees with current unamended Ownership Reports on file at the Commission may so indicate on their renewal applications and be relieved of the obligation to file a new Ownership Report. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act.

OMB Control No.: 3060–0690.

Expiration Date: 4/30/99.

Title: Proposed Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands ET Docket No. 95–183.

Estimated Annual Burden: 156,200 total annual hours.

This estimate was determined as follows: Proposed Section 21.711(b) has 300 respondents estimated time per response is 40 hours; Proposed Section 21.711(b)(2) has 200 respondents estimated time per response is 80 hours; Proposed Section 21.711(a)(4) has 500 respondents estimated time per response is 256 hours; FCC Forms 402 and 494 have 100 respondents estimated time per response is 2 hours.

Description: This information will be used by the Commission to provide adequate point-to-point microwave spectrum, which could be used by broadband Personal Communications

Service (PCS) and cellular licensees. Without this information the Commission would not be able to carry out its statutory responsibilities.

OMB Control No.: 3060–0705.

Expiration Date: 6/30/96.

Title: Implementation and Waiver Procedures Adopted in Preemption of Local Zoning Regulation of Satellite Earth Stations and Implementation of Section 207 of 1996 Telecommunications Act.

Estimated Annual Burden: 120 total annual hours; average 3 hours per respondent to prepare petitions for Declaratory Rules and 5 hours per respondent to prepare Petitions for Waivers; the commission estimates 30 petitions and 10 waiver requests per year.

Description: Pursuant to Section 205.104(d) of the Commission Rules, the Commission will be issuing a public notice implementing revisions to its rule preempting certain local nonfederal governmental regulations of satellite earth station antennas and setting forth procedures for filing petitions and waivers. The information collected from persons or entities seeking a petition for declaration of preemptibility will be used by the Commission to determine whether the state or local regulation in question is preemptible under Section 205.104 of the Commissions rules. The information collected from states and other local governmental agencies seeking a waiver of Section 25.104 will be used to determine if a waiver of the rule is warranted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–9532 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Extension of Low Power Television/Television Translator ''Major Change Only'' Filing Window

April 10, 1996.

On March 18, 1996, the Commission announced the scheduling of a low power television and television translator station (LPTV) application filing window. Public Notice, Mimeo No. 62033, 61 FR 11840, March 22, 1996. That filing window was limited to LPTV major change applications and was scheduled to commence on April 22, 1996 and continue through April 26, 1996.

The Community Broadcasters Association, the National Translator Association, and the Association of Federal Communications Consulting Engineers requested that the scheduled filing window be postponed or extended to better accommodate the expected demand for application preparation. For good cause shown, the LPTV filing window will be extended, as requested. Accordingly, commencing April 22, 1996, and continuing to and including May 17, 1996, the Commission will permit the filing of applications for MAJOR CHANGES ONLY in existing facilities for low power television and television translator stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–9492 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–U

[DA 96–481]

Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules; Bureau To Re-Auction Licenses Quickly

Released: April 4, 1996.

The Wireless Telecommunications Bureau (''Bureau'') has received numerous inquiries concerning the Commission's rules on bidder defaults in the various spectrum auctions. In response to these inquiries, the Bureau reminds bidders that the Commission's rules concerning default payments will be strictly enforced in all auctions. Under 47 CFR 1.2109(b), if a winning bidder fails to submit the required down payment(s) within the time frame designated by the applicable auction rules, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be subject to the default payment specified in 47 CFR 1.2104(g)(2). All funds, including upfront payments and down payments, will be applied first to satisfy outstanding bid withdrawal and default payments before being applied toward the down payment on licenses the bidder has won and seeks to acquire. 47 CFR 1.2104(g)(2). As indicated in the Fifth Report and Order in PP Docket No. 93–253 and the Broadband PCS C Block Supplemental Bidder Package, if the amount of the bid withdrawal or default payment cannot be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses.[1]

Example: Bidder X submitted an upfront payment of $5 to participate in an auction. At the close of an auction, Bidder X is the high bidder on licenses A, B and C. Bidder X submitted high bids of $1,000 for license A, $1,500 for license B, and $2,000 for license C. Within five days of the close of the auction, Bidder X must supplement its upfront payment with down payments sufficient to bring its total deposits up to five percent of its winning bids. Thus, Bidder X must submit down payments totalling $220 ($225 minus its $5 upfront payment) to be in compliance with the down payment requirements. If Bidder X submits $120 as down payments for licenses A and B only, it will be in default on license C.

Under our rules, all of Bidder X's funds on deposit with the Commission will be applied first to satisfy the default payment on license C. Because the amount of the default payment cannot be determined until the license is re-auctioned, Bidder X is required to make a deposit of 20 percent of the amount it bid on license C, or $400. Thus, all of the $125 that Bidder X has submitted to the Commission will be applied toward satisfying the default payment obligation on license C. Because Bidder X still owes $275 to satisfy its default payment on license C, Bidder X will be considered to be in default on licenses A and B as well. Bidder X will then owe the Commission $775 for its default payments (twenty percent of the amount bid on all three licenses (or $900) minus the amount it has on deposit (or $125)). Bidder X can avoid defaulting on licenses A and B only if it is able to deposit sufficient funds to cover the down payments on all three licenses ($225) or the default payment on license C and the down payments on licenses A and B ($625).

Should a winning bidder fail to submit the required down payment(s), the Bureau will either re-auction the license(s) to existing or new applicants, or offer the license(s) to the other highest bidders (in descending order) at their final bids. 47 CFR 1.2109(b). For defaults on licenses that occur after the down payments are due (or, in the case of small business applicants, after the first down payment is due), the Bureau will move to re-auction these licenses as quickly as possible. 47 CFR 1.2109(c).

For further information, please contact James W. Hedlund, Wireless Telecommunications Bureau, Auctions Division at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–9490 Filed 4–17–96; 8:45 am]

BILLING CODE 6712–01–P

[1] See, Fifth Report and Order in PP Docket No. 93–253, FCC 94–178, 9 FCC Rcd 5532, released July 15, 1994 at fn. 51; Broadband PCS C Block Supplemental Bidder Package at page 39.

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 10 a.m. on Monday, April 15, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Joseph H. Neely (Appointive), 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)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: April 15, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–9706 Filed 4–16–96; 1:00 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Date and Time: Tuesday, April 23, 1996 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C.

Status: This Meeting Will Be Closed to the Public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date and Time: Thursday, April 25, 1996 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

Status: This Meeting Will be Open to the Public.

Items to be Discussed:

Correction and Approval of Minutes.

Advisory Opinion 1996–2: CompuServe, Inc. by counsel, Stephen M. Heaton.

Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie E. Emmons,

Secretary of the Commission.

[FR Doc. 96–9664 Filed 4–16–96; 11:39 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1104–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1104–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1996:

Lauderdale and Lawrence Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Craig S. Wingo,

Division Director, Infrastructure Support Division.

[FR Doc. 96–9611 Filed 4–17–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1109–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1109–DR), dated April 2, 1996, and related determinations.

EFFECTIVE DATE: April 2, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from the ''Blizzard of 1996'' on January 6–12, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities. Other assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David A. Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

FEMA will provide reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities. This assistance will be provided to the following counties:

Bartholomew, Blackford, Boone, Clinton, Crawford, Daviess, Dearborn, Decatur, Delaware, Dubois, Fayette, Floyd, Gibson, Greene, Hamilton, Harrison, Hendricks, Henry, Jackson, Jay, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Morgan, Ohio, Orange, Owen, Pike, Posey, Randolph, Rush, Shelby, Spencer, Sullivan, Tipton, Union, Vigo, Warrick, Washington, and Wayne.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–9609 Filed 4–17–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1109–DR]

Indiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana, (FEMA–1109–DR), dated April 2, 1996, and related determinations.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Indiana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 2, 1996:

The counties of Clark, Knox and Scott for reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig S. Wingo,

Division Director, Infrastructure Support Division.

[FR Doc. 96–9610 Filed 4–17–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement art the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010424–032
Title: United States Atlantic and Gulf Hispaniola Steamship Freight Association
Parties:
Crowley American Transport, Inc.
NPR, Inc. d/b/a/ Navieras
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Synopsis: The proposed amendment adds a new Article 11(g) to the Agreement that pertains to the carriage of less-than-container-load cargo by non-vessel operating common carriers.

Agreement No.: 202–011432–005
Title: Pacific Latin America Agreement
Parties:
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Synopsis: The proposed Agreement expands the geographic scope of the Agreement to include West Coast ports of El Salvador, Costa Rica, Guatemala, Honduras, Nicaragua, and Mexico, and inland or coastal points in El Salvador, Costa Rica, Guatemala, Honduras, Nicaragua and Mexico. The Agreement also adds a voting group section in the Agreement for Central America and Mexico.

Agreement No.: 224–200878–001
Title: Port of Oakland/Evergreen Marine Corp. (Taiwan) Ltd.
Parties:
Port of Oakland
Evergreen Marine Corp. (Taiwan) Ltd.
Synopsis: The proposed Agreement increases the User's initial wharfage discount fee from 20 percent to 30 percent, and correspondingly decreases the User's contract yearend additional discount based on the volume of TEUs by 10 percent.

Agreement No.: 224–200978
Title: Port of Portland/Port of Vancouver Discussion Agreement
Parties:
Port of Portland
Port of Vancouver
Synopsis: The proposed Agreement would allow the staffs from the Port of Portland and from the Port of Vancouver to discuss and exchange information relating to the parties' operations of marine terminal activities. However any agreement reached as a result of the discussions and exchanges of information will be filed with the Federal Maritime Commission. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: April 12, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–9524 Filed 4–17–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect

to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031196 AND 040596

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Syratech Corporation, U.S. Industries Inc., Farberware Inc.	96–1095	03/11/96
Kjell I. Rokke, a citizen of the Bahamas, AB Electrolux, a Swedish company, White Consolidated Industries, Inc.	96–1173	03/11/96
General Motors Corporation, Imperial Credit Industries, Inc., Imperial Credit Industries, Inc.	96–1015	03/13/96
J.P. Morgan & Co. Incorporated, Travelers Group Inc., Travelers/Aetna Property Casualty Corp.	96–1193	03/13/96
The Trident Partnership, L.P., Travelers Group Inc., Travelers/Aetna Property Casualty Corp.	96–1194	03/13/96
Fund American Enterprises Holdings, Inc., Travelers Group Inc., Travelers/Aetna Property Casualty Corp.	96–1195	03/13/96
SunAmerica Inc., Beneficial Corporation, The Central National Life Insurance Company of Omaha	96–1199	03/13/96
SIH Stiftung & Co. Industrie-Holding KG, SIH Stiftung & Co. Industrie-Holding KG, ESPE America, L.P.	96–1200	03/13/96
Sutter Health/California Healthcare System, Memorial Hospitals Association, Memorial Hospitals Association	96–1201	03/13/96
General Electric Company, Kmart Corporation, Kmart Corporation	96–1207	03/13/96
Welsh, Carson, Anderson & Stowe VII, L.P., Aurora Electronics, Inc, Aurora Electronics, Inc.	96–1215	03/13/96
TPG Partners, L.P. Kotobuki Fudosan Ltd., a Japanese Company, Chateau St. Jean, a California corporation	96–1218	03/13/96
Scott K. Ginsburg, Richard M. Fairbanks and Virginia B. Fairbanks, Fairbanks Communications, Inc.	96–1227	03/13/96
FS Equity Partners III, L.P., Canadian Imperial Bank of Commerce (a Canadian corp.), America's Favorite Chicken Company	96–1235	03/13/96
Oce-van der Grinten N.V., Siemens Aktiengesellschaft, Siemens Nixdorf Informationssysteme AG	96–1236	03/13/96
NCI Building Systems, Inc., Anderson Industries, Inc., Mesco Metal Buildings Operation	96–1239	03/13/96
Compagnie de Saint-Gobain, Garry Wamsley, Insulate Industries, Inc.	96–1243	03/13/96
Mr. Yashuhiro Ohshima, The Mead Corporation, The Mead Corporation	96–1252	03/13/96
Pohang Iron & Steel Co., Ltd. (a Korean company), Allen Salmasi, NextWave Telecom Inc.	96–1255	03/13/96
Kalmar Industries AB, Kalmar AC, Inc., Kalmar AC, Inc.	96–1288	03/13/96
AT&T Corp, General Motors Corporation, DIRECTV Enterprises, Inc.	96–1127	03/14/96
Monsanto Company, Benson Eyecare Corporation, Optical Radiation Corporation	96–1171	03/14/96
Leasetec Corporation, Storage Technology Corporation, StorageTek Financial Services Corporation	96–1178	03/14/96
Fluor Corporation, Groundwater Technology, Inc., Groundwater Technology, Inc	96–1192	03/14/96
General Electric Company, Aon Corporation, The Life Insurance Company of Virginia	96–1196	03/14/96
Temasek Holdings (Private) Limited, Daimler-Benz AG, Dornier Medizintechnik GmbH	96–1198	03/14/96
DOS Partners, L.P., Tuboscope Vetco International Corporation, Tuboscope Vetco International Corporation	96–1212	03/14/96
SCF–III, L.P., Tuboscope Vetco International Corporation, Tuboscope Vetco International Corporation	96–1213	03/14/96
Vestar Equity Partners, L.P., Spring Industries, Inc., Fort Mill A Inc.	96–1221	03/14/96
HS Resources, Inc., Basin Exploration, Inc., Basin Exploration, Inc.	96–1225	03/14/96
BankAmerica Corporation, First Bank System, Inc., FBS Mortgage Corporation and First Bank Fsb	96–1229	03/14/96
Madison Dearborn Capital Partners, L.P., Mediq Incorporated, Mediq Mobil X-Ray Services, Inc	96–1230	03/14/96
Nuevo Energy Company, Unocal Corporation, Union Oil Company of California	96–1231	03/14/96
Dominion Resources Inc., Selim K. Zilkha, Zilkha Energy Company	96–1232	03/14/96
Regal Cinemas, Inc., Georgia State Theatres, Inc., Georgia State Theatres, Inc	96–1240	03/14/96
HFS Incorporated, George F. Kettle, Century 21 of Eastern Pennsylvania, Inc. and Century 21	96–1250	03/14/96
Code, Hennessy & Simmons II, L.P., Gerald B. and Patricia Anne Rivette Revocable Trust, Jeffrey Chain Corporation	96–1263	03/14/96
William Blair Capital Partners V, Limited Parternship, Dr. Michael Otto, CARA Corporation	96–1122	03/15/96
Telefonaktiebolaget LM Ericsson, Raychem Corporation, Ericsson Raynet	96–1210	03/15/96
Casino America Inc., Hemmetter Enterprises Inc. (Debtor-in-Possession), Grand Palais Riverboat Inc	96–1219	03/15/96
HCC Insurance Holdings, Inc., Stephen J. Lockwood, LDG Management Company Incorporated	96–1245	03/15/96
Swiss Reinsurance Company (a Swiss company), Enhance Financial Services Group, Inc., Enhance Financial Services Group, Inc	96–1247	03/15/96
Summer M. Redstone, Mergent Technologies Group, Inc., Mergent Technologies Group, Inc	96–1249	03/15/96
Kelso Investment Associates V, L.P., Cencom Cable Income Partners, L.P., Cencom Cable Income Partners, L.P	96–1254	03/15/96
Charterhouse Equity Partners, L.P., Cencom Cable Income Partners, L.P., Cencom Cable Income Partners, L.P	96–1256	03/15/96
Grand Eagle Companies Inc., Magnetek, Inc., Magnetek, Ohio Transformer, Inc	96–1268	03/15/96
Safilo S.p.A., Smith Sport Optics, Inc., Smith Sport Optics, Inc.	96–1276	03/15/96
Security Capital U.S. Realty, Storage USA, Inc., Storage USA, Inc.	96–1277	03/15/96
Alfonso Romo Garza, a Mexican citizen, DNA Plant Technology Corporation, DNA Plant Technology Corporation	96–1284	03/15/96
Acxiom Corporation, Direct Media, Inc., Direct Media, Inc.	96–1286	03/15/96
Marubeni Corporation, Compagnie Generale des Eaux, Sithe Energies, Inc.	96–1287	03/15/96
Excel Industries, Inc., Ralph F. Anderson, Anderson Industries, Inc.	96–1290	03/15/96
General Motors Corporation, Coastal Capital Funding Corporation, First Franklin Financial Corporation	96–1293	03/15/96
BTR plc, Alta Industries, Ltd., Alta Industries, Ltd.	96–1294	03/15/96
OMI Corp., General Electric Company, General Electric Capital Corporation	96–1297	03/15/96
Grand Metropolitan Public Limited Co., M.A. Garcia III, Davgar Restaurants, Inc.	96–1300	03/15/96
Victor Posner, NVF Company (debtor-in-possession), NVF Company (debtor-in-possession)	96–1318	03/15/96
First Brands Corp., Forest Technology Corp., Forest Technology Corp.	96–1224	03/18/96
Astrotech International Corporation, Mr. Timothy J. McDavid, Graver Holding Company	96–1312	03/18/96
Alfred Teo, Mobil Corporation, Tucker Housewares Inc.	96–1313	03/18/96
Robert F.X. Sillerman, Joseph Littlejohn & Levy Fund, L.P., Liberty Broadcasting, Incorporated	96–0612	03/19/96
Wolverine World Wide, Inc., The Florsheim Shoe Company, Hy-Test, Inc.	96–1097	03/19/96
Tuboscope Vetco International Corporation, D.O.S. Ltd. (a Bermuda company), D.O.S. Ltd.	96–1211	03/19/96
Sophus Berendsen A/S (a Danish company), BET Public Limited Company (a British company), BET Public Limited Company	96–1264	03/19/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031196 AND 040596—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Shaw Group Inc., R. Dale Brown, Sr. & Mildred Gayle O'Pry Brown, Alloy Piping Products, Inc.	96–1306	03/19/96
Paloma Industries, Ltd., Watsco, Inc., Watsco, Inc.	96–1316	03/19/96
Williams Holdings PLC, Mr. and Mrs. Donald E. Andres, Nighthawk Systems, Inc.	96–1333	03/19/96
Unilever, N.V., Gidwitz Family Partnership, Helene Curtis Industries, Inc.	96–1406	03/19/96
Tele-Communications, Inc., Continental Cablevision, Inc., Continental Cablevision of St. Louis County, Inc	96–1175	03/20/96
Continental Cablevision, Inc., Tele-Communications, Inc., TCI Cable Partners of St. Louis, L.P.	96–1176	03/20/96
Compagine de Saint-Gobain, Annette Edwards, Insulate Industries, Inc	96–1289	03/20/96
Casino Magic Corp., Capital Gaming International, Inc., Crescent City Capital Development Corp. (debt-in-poss)	96–1270	03/21/96
First Chicago NBD Corporation, The B.F. Goodrich Company, Adhesive Systems Division	96–1090	03/22/96
Packard Bell Electronics, Inc., Compagnie des Machines Bull (a French company), Zenith Data Systems Corporation	96–1191	03/22/96
Infinity Broadcasting Corporation, TDI Worldwide, Inc., TDI Worldwide, Inc	96–1220	03/22/96
Masayoshi Son, Yahoo! Inc., Yahoo! Inc	96–1324	03/22/96
Chartwell Leisure Associates L.P. II, National Lodging Corp., National Lodging Corp.	96–1327	03/22/96
BTR plc (a British company), Publicker Industries Inc., Fenwal Electronics Inc	96–1339	03/22/96
U.S. Office Products Company, Matthew A. King, Radar Holdings Corporation	96–1341	03/22/96
Tellabs, Inc., Steinbrecher Corporation, Steinbrecher Corporation	96–1346	03/22/96
Pfizer Inc., S. Daniel Abraham, Thompson Medical Company Inc	96–1349	03/22/96
Mutual Risk Management Ltd., Aon Corporation, Dearborn Insurance Company	96–1351	03/22/96
Sudelektra Holding AG, Glencore Holding AG, Glencore Holding AG,	96–1352	03/22/96
Blackstone Capital Partners II Merchant Banking Fund LP, Bliss & Laughlin Industries Inc., Bliss & Laughlin Industries Inc	96–1354	03/22/96
Temple University o/t Commonwealth System of Higher Ed., Jeanes Hospital, Jeanes Hospital	96–1217	03/25/96
Mr. Robert A. Belfer, Belco Oil & Gas Corp. (Joint Venture), Belco Oil & Gas Corp. (Joint Venture)	96–1319	03/25/96
Mr. Lawrence D. Belfer, Belco Oil & Gas Corp. (Joint Venture), Belco Oil & Gas Corp. (Joint Venture)	96–1322	03/25/96
Mr. Jack Saltz, Belco Oil & Gas Corp. (Joint Venture), Belco Oil & Gas Corp. (Joint Venture)	96–1323	03/25/96
Sonoco Products Company, Hamilton Hybar, Inc., Hamilton Hybar, Inc	96–1325	03/25/96
Matthew A. King, U.S. Office Products, U.S. Office Products	96–1328	03/25/96
Incentive AB, Lawrence R. Spira, M.D.,	96–1334	03/25/96
Warburg, Pincus Ventures, L.P., Western Publishing Group, Inc., Western Publishing Group, Inc	96–1338	03/25/96
Frontier Insurance Group Inc., Capsure Holdings Corp., United Holdings Company	96–1355	03/25/96
Host Marriott Corporation, Mutual Benefit Oklahoma City Marriott Associates, L.P., Mutual Benefit Oklahoma City Marriott Associates, L.P.	96–1356	03/25/96
Carl E. Hirsch, George G. Beasley, Beasley FM Acquisition Corp	96–1358	03/25/96
Trump Hotels & Casino Resorts, Inc., PNC Bank Corp., Missouri Boardwalk, Inc.	96–1361	03/25/96
First Mississippi Corporation, Potash Corporation of Saskatchewan (a Canadian company), White Springs Agricultural Chemicals, Inc.	96–1362	03/25/96
Mr. Michel Harouche, CML Group, Inc., Britches of Georgetowne, Inc.	96–1367	03/25/96
Charles Perez, CML Group, Inc., Britches of Georgetowne, Inc.	96–1368	03/25/96
The Society of NYH, Inc., Preferred Health Networks, Inc., Preferred Health Networks, Inc.	96–1407	03/25/96
Metropolitan Life Insurance Company, French Holdings, Inc., French Holdings, Inc.	96–1228	03/26/96
Hoechst Aktiengesellschaft, Alliance Pharmaceuticals Corp., Alliance Pharmaceuticals Corp.	96–1274	03/26/96
Bahrain International Bank (a Bahrain company), Alan Vituli, Carrols Holdings Corporation	96–1301	03/26/96
Host Marriott Corporation, Worldgate Hotel One Associates Limited Partnership, Worldgate Hotel One Associates Limited Partnership	96–1357	03/26/96
Robert M. Friedland, Falconbridge Limited, Falconbridge Limited	96–1375	03/26/96
Edward L. Mercaldo, Falconbridge Limited, Falconbridge Limited	96–1376	03/26/96
Sinclair Broadcast Group, Inc., Superior Communications Group, Inc., Superior Communications Group, Inc.	96–1382	03/26/96
Kelso Investment Associates V, L.P., Daniel L. Simon, Universal Outdoor Holdings, Inc.	96–1326	03/27/96
CG Smith Limited, ConAgra, Inc., Newco, Inc.	96–1359	03/27/96
Golder, Thoma, Cressey, RaunerFund IV, L.P., Morrie and Shirley Zimring, Allied Laundry Equipment Company	96–1365	03/27/96
Acadia Partners, L.P., AHIL Holdings, Ltd., Arlington Hotel Investors, Ltd.	96–1383	03/27/96
Loews Corporation, Policy Management Systems Corporation, Policy Management Systems Corporation	96–1391	03/27/96
Dairy Enterprises Corporation, Interbrew S.A. (a Belgian company), Lehigh Valley Dairies, Inc.	96–0631	03/28/96
Harold Snyder and Beatrice Snyder, Teva Pharmaceutical Industries Limited, an Israeli co., Teva Pharmaceutical Industries Limited	96–1167	03/28/96
Teva Pharmaceutical Industries Limited, an Israeli Co., Harold Snyder and Beatrice Snyder, Biocraft Laboratories, Inc	96–1168	03/28/96
HFS Incorporated, Philip J. Yeager, Century 21 Region V, Inc	96–1265	03/28/96
HFS Incorporated, William P. Yeager, Century 21 Region V, Inc	96–1266	03/28/96
Hicks, Muse, Tate & Furst Equity Fund II, L.P., Thomas H. Lee Equity Partners, L.P., Ghirardelli Holdings Corporation	96–1275	03/28/96
Nestle S.A., KSG Holdings, Inc., Koala Springs International, Inc	96–1291	03/28/96
Raytheon Company, Whittaker Corporation, Whittaker Corporation	96–1344	03/28/96
Whittaker Corporation, Raytheon Company, Xyplex, Inc	96–1345	03/28/96
ActaMed Corporation, United HealthCare Corporation, EDI Services, Inc	96–1216	03/29/96
EZ Communications, Inc., Infinity Broadcast Corporation of Washington, Infinity Broadcasting Corporation of Washington	96–1226	03/29/96
WMS Industries Inc., Time Warner Inc., Atari Games Corporation	96–1242	03/29/96
Nuevo Energy Company, Torchmark Corporation	96–1320	03/29/96
Dreyer's Grand Ice Cream, Inc., M–K–D Distributors, Inc., M–K–D Distributors, Inc	96–1329	03/29/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031196 AND 040596—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Torchmark Corporation, Nuevo Energy Company, Nuevo Energy Company	96–1331	03/29/96
American Mutual Life Insurance Company, AMAL Corporation, AMAL Corporation	96–1353	03/29/96
Ameritas Life Insurance Corp., AMAL Corporation, AMAL Corporation	96–1363	03/29/96
Baker Hughes Incorporated, Tuboscope Vetco International Corporation, Tuboscope Vetco International Corporation	96–1370	03/29/96
Fuqua Enterprises, Inc., Lumex, Inc., Lumex, Inc	96–1371	03/29/96
Lo Yuk Sui, Takeshi Sekiguchi, T.A.T. Los Angeles Co., Limited	96–1390	03/29/96
Alice S. White Trust, Dr. Gary B. Knapp, Roy H. Park Broadcasting of Washington, Inc	96–1392	03/29/96
Royal Dutch Petroleum Company, Apus, Inc., ARP Adhesives, Inc	96–1462	03/29/96
The Clayton & Dublier Private Equity Fund IV, L.P., Stanford Resources (U.S.) Limited, Stamford Resources (U.S.) Limited	96–1214	03/31/96
Reliance Steel & Aluminum Co., Wolfgang Grunewald, CCC Steel, Inc	96–1314	04/01/96
Dominion Resources, Inc., Resource Mortgage Capital, Inc., Resource Mortgage Capital, Inc.	96–1321	04/01/96
Scudder Family Voting Trust for A.N.I., Hollinger Inc., The (North Adams, MA) Transcript	96–1336	04/01/96
Hollinger Inc., Scudder Family Voting Trust for A.N.I., Johnston Tribune Publishing Company	96–1337	04/01/96
Alice S. White Trust, Tomlin Family Trust II, Roy H. Park Broadcasting of Washington, Inc.	96–1393	04/01/96
Chesapeake Corporation, Douglas R. Dyment, Dyment Limited	96–1233	04/02/96
Flagstar Companies, Inc., M. Francois Pinault (a natural person from France), FRI–M Corporation	96–1283	04/02/96
Chesapeake Corporation, Douglas R. Dyment Family Trust, Dyment Limited.	96–1307	04/02/96
Chesapeake Corporation, Donald B. Dyment Common Share Trust, Dyment Limited.	96–1308	04/02/96
Fund American Enterprises Holdings, Inc., Folksamerica Holding Company, Inc., Folksamerica Holding Company, Inc.	96–1342	04/02/96
S.A. Louis Dreyfus et Cie, The Coastal Corporation, Coastal Oil & Gas Corporation	96–1377	04/02/96
Robert F.X. Sillerman, Prism Radio Partners, L.P., Prism Radio Partners, L.P.	96–1381	04/02/96
Kvaerner a.s., Trafalgar House plc, Trafalgar House plc	96–1398	04/02/96
MDU Resources Group, Inc., ONEOK Inc., ONEOK Exploration Company	96–1408	04/02/96
Red Lion, L.P., Fiesta Hotels S.A., Ltd., Fiesta Hotels S.A., Ltd.	96–1410	04/02/96
John T. Mather Memorial Hospital (a non-profit corp.), St. Charles Corporation (a non-profit corporation), St. Charles Corporation (a non-profit corporation)	96–1416	04/02/96
St. Charles Corporation (a non-profit corporation), John T. Mather Memorial Hospital (a non-profit corp.), John T. Mather Memorial Hospital (a non-profit corp.)	96–1417	04/02/96
Catholic Healthcare West, Sisters of Charity of the Incarnate Word, Houston, TX, St. Mary Medical Center & St. Bernardine Medical Center	96–1423	04/02/96
NHP Incorporation, Commonwealth Overseas Trading Company Limited (Bermuda), WMF Holdings Ltd.	96–1424	04/02/96
CRA Managed Care, Inc., United HealthCare Corporation, Focus Healthcare Management, Inc.	96–1425	04/02/96
Citicorp, Evans Rents, Evans Rents.	96–1427	04/02/96
Columbia/HCA Healthcare Corporation, Cape Fear Memorial Health Care Corporation, Cape Fear Memorial Hospital, Incorporated.	96–1431	04/02/96
Clear Channel Communications, Inc., Ragan A. Henry, U.S. Radio, Inc.	96–1442	04/02/96
Caroline Hunt Trust Estate, Best Equipment Service and Sales Company, Best Equipment Service and Sale Company	96–1449	04/02/96
MDU Resources Group, Inc., Washington Public Employees Retirement System, Baldwin Contracting Company, Inc	96–1395	04/03/96
Infinity Broadcasting Corporation, Radio Associates, L.P., GCI Atlanta Holdings, Inc., et al.	96–1455	04/03/96
Frontenac VI Limited Partnership, Mr. George Mateljan, Jr., Health Valley Foods, Inc. and Health Valley Manufacturing	96–1469	04/04/96
Duferco Participations Holding Limited (Guensey), Thomas W. Kreher, Kreher Steel Co., Inc	96–1413	04/05/96
Lincoln National Corporation, UNUM Life Insurance Company of America, UNUM Life Insurance Company of America	96–1419	04/05/96
Stichting Adm. van aandelen Koninklijke BolsWessanen, Wal-Mart Stores, Inc., McLane/America, Inc	96–1434	04/05/96
Watsco, Inc., The Harry Lebensfeld Trust, Three States Supply Company, Inc	96–1450	04/05/96
Comair Holdings, Inc., Edward W. Homfeld, Spirit Airlines, Inc	96–1452	04/05/96
Knightsbridge Capital Fund I, L.P., United Companies Financial Corp., United Companies Life Insurance Company	96–1460	04/05/96
Willamette Industries, Inc., Hanson plc (a British company), Hanson Natural Resources Company	96–1463	04/05/96
Consolidated Stores Corportation, Melville Corporation, Kay-Bee Center, Inc	96–1465	04/05/96
Berwind Group Partners, Casi-Rusco Acquisition Corp., Casi-Rusco Acquisition Corp.	96–1467	04/05/96
Archer-Daniels-Midland Company, Steven H. Pala, Jr., Southern Cellulose Products, Inc	96–1470	04/05/96
James E. Farrell, Norcen Energy Resources Limited, Skelgas Propane, Inc	96–1477	04/05/96
Jay N. Whipple, III, Checkfree Corporation, Checkfree Corporation	96–1479	04/05/96
MidAmerican Energy Company, Enron Corp., Enron Oil & Gas Company	96–1485	04/05/96
All American Communications, Inc., The Interpublic Group of Companies, Inc., Mark Goodson Productions, L.L.C.	96–1486	04/05/96
Esterline Technologies Corporation, BTR plc, Mason Electric Company, Inc	96–1487	04/05/96
Sumner M. Redstone, Joseph M. Field, Entertainment Communications, Inc	96–1488	04/05/96
Joseph M. Field, Sumner M. Redstone, KBSG Inc. and KNDD Inc	96–1489	04/05/96
ONEOK Inc., SCANA Corporation, SCANA Petroleum Resources, Inc	96–1491	04/05/96
BWAY Corporation, James W. Milton, Milton Can Company, Inc	96–1494	04/05/96
Checkfree Corporation, Jay N. Whipple, III, Security APL, Inc	96–1495	04/05/96
Sundstrand Corporation, Leach Holding Corporation, Leach International Corp. & LRE Relais und Eleckronic	96–1497	04/05/96
Krausz Enterprises, Trizec Corporation Ltd. (a Canadian Company), Hahn-Puente Associates	96–1516	04/05/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–9554 Filed 4–17–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3210]

Ford Motor Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Dearborn, Michigan-based automobile manufacturer from making broad pollution-removal claims for its MicronAir Filtration System or any substantially similar system. The Consent Agreement settles allegations that Ford and its advertising agency, Young & Rubicam, Inc., made false claims about the extent to which the MicronAir Filtration System can remove air pollutants in automobile passenger cabins.

DATES: Comments must be received on or before June 17, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Linda K. Badger, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270.

Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Ford Motor Company, a corporation; File No. 952–3210.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Ford Motor Company, a corporation, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Ford Motor Company, a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Ford Motor Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at The American Road, Dearborn, Michigan 48121.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft Complaint, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, Ford Motor Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the labelling, advertising, promotion, offering for sale, sale or distribution of

the ''MicronAir Filtration System'' as configured in the 1995 Lincoln Continental or 1995 Mercury Mystique or any substantially similar product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that such product removes virtually all pollutants. For the purposes of this Order, ''substantially similar product'' shall mean any automotive cabin air filter which is an electrostatic filter, consisting of layers of non-woven fabric, with at least one layer that has been electrically charged.

II

It is further ordered that respondent, Ford Motor Company, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any automotive cabin air filter, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the efficacy of any such product in reducing or removing pollutants, unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including written complaints from consumers.

IV

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives or employees engaged in the preparation, review or placement of advertising or other materials covered by this Order.

VI

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Ford Motor Company (''Ford''), a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Ford manufactures and distributes automobiles, automotive parts, and other products to consumers. Certain models of Ford automobiles, such as the Mercury Mystique and Lincoln Continental, include an automotive cabin air filter called the ''MicronAir Filtration System.'' The Commission's complaint charges that Ford's advertising of this filter contained the false representation that it removes virtually all pollutants likely to be encountered by a driver. The complaint alleges that the MicronAir Filtration System does not, in fact, remove virtually all such pollutants. For example, the filter has no effect on gaseous pollutants, such as hydrocarbons, carbon monoxide, and nitrogen oxides.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from claiming that the ''MicronAir Filtration System'' as configured in the 1995 Lincoln Continental or 1995 Mercury Mystique, or any substantially similar product, removes virtually all pollutants.

Part II of the proposed order prohibits the company from making any representation, in any manner, directly or by implication, about the efficacy of any cabin air filter in reducing or removing pollutants, unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates such representation.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by

the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–9552 Filed 4–17–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3336]

Young & Rubicam, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York City-based advertising agency from making broad pollution-removal claims for Ford Motor Company's MicronAir Filtration System, and substantially similar cabin air filtration system, or any household air filtration system. The Consent Agreement settles allegations that Young & Rubicam, in their advertising campaigns for several 1995 models of Ford automobiles, made false claims about the extent to which the MicronAir Filtration System can remove air pollutants in automobile passenger cabins.

DATES: Comments must be received on or before June 17, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Linda K. Badger, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270;

Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Young & Rubicam Inc., a corporation; File No. 952–3336.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Young & Rubicam Inc. (''Young & Rubicam''), a corporation, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Young & Rubicam, a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Young & Rubicam is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 285 Madison Avenue, New York, New York 10017.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft Complaint, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, Young & Rubicam, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or promotion of the MicronAir Filtration System as configured in the 1995 Lincoln Continental and the 1995 Mercury Mystique or any substantially similar product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that such products remove virtually all pollutants. For the purposes of this Order, ''substantially similar product'' shall mean any automotive cabin air filter which is an electrostatic filter, consisting of layers of non-woven fabric, with at least one layer that has been electrically charged.

II

It is further ordered that respondent, Young & Rubicam, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or promotion of any household or automotive cabin air filter, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the efficacy of any such product in reducing or removing pollutants, unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, ''competent and reliable scientific evidence'' shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including written complaints from consumers.

IV

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives or employees engaged in the preparation or review of advertising or other materials covered by this Order.

VI

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Young & Rubicam Inc. (''Young & Rubicam''), a New York corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Young & Rubicam is an advertising agency which has prepared advertisements for Ford Motor Company (''Ford'') and the Lincoln-Mercury Dealers Associations (''LMDAs''). Young & Rubicam has prepared and disseminated advertising materials to promote the sale of Ford's Mercury Mystique and Lincoln Continental automobiles. These advertisements have included claims regarding the efficacy of the ''MicronAir Filtration System,'' a cabin air filter installed in Mercury Mystique and Lincoln Continental automobiles.

The Commission's complaint charges that Young & Rubicam has prepared advertisements for the MicronAir Filtration System which contain the false representation that this filter removes virtually all pollutants likely to be encountered by a driver. The complaint alleges that the MicronAir Filtration System does not, in fact, remove virtually all such pollutants. For example, the filter has no effect on gaseous pollutants, such as hydrocarbons, carbon monoxide, and nitrogen oxides. Furthermore, the

complaint alleges that Young & Rubicam knew or should have known that this claim was false.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from claiming that the ''MicronAir Filtration System'' as configured in the 1995 Lincoln Continental or 1995 Mercury Mystique, or any substantially similar product, removes virtually all pollutants.

Part II of the proposed order prohibits the company from making any representation, in any manner, directly or by implication, about the efficacy of any household or cabin air filter in reducing or removing pollutants, unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence, that substantiates such representation. Part II provides Young & Rubicam a defense to liability if it neither knew or had reason to know of an inadequacy in the substantiation for the representation.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–9553 Filed 4–17–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Availability FEIS

The General Services Administration (GSA) announces the release of the Final Environmental Impact Statement (FEIS), for the siting and proposed construction of a new Courthouse Annex in the Central Business Area (CBA) of Savannah, Georgia. The 30-day comment period for the FEIS closes Monday, May 20, 1996.

The EIS has examined the impacts of constructing an Annex to the Courthouse in the Savannah CBA. This includes impacts to historic and cultural resources, traffic and parking, and socioeconomics (including the impacts on local businesses and neighborhoods). The EIS examined ways to mitigate unavoidable adverse impacts of the proposed action. Concurrent with implementation of the National Environmental Policy Act requirements, GSA has also implemented its consultation requirements under Section 106 of the National Historic Preservation Act, regarding the impacts to historic properties as a result of undertaking the proposed action. GSA is very much aware of the potential for adverse affects on the National Historic Landmark District as a result of the proposed action, and has made every effort to identify and take into account such affects while planning this project.

The New Courthouse will house approximately 250 employees in a 165,000 occupiable square feet structure that will meet the 10-year and 30-year space requirements of the U.S. Courts. The project will contain five courtrooms, and office space for Court-related agencies, as well as space for GSA. After an exhaustive process of site identification and site screening, three potential sites and four configurations were considered technically feasible and analyzed in the EIS as follows:

- 1. ''No Action,'' that is, undertake no new construction.

Dated: April 11, 1996.

Phil Youngberg,

Regional Environmental Officer, 4PT.

- 2. Construction of a single building 80 feet tall on the sites of the current Juliet Gordon Low Buildings A&B including building over President Street. This is the GSA preferred alternative.
- 3. Construction two buildings 133 feet high on the sites of the current Juliet Gordon Low Buildings A&B and not building over President street.
- 4. Partial demolition and construction at the site of the Juliet Gordon Low Building currently housing the US Army Corps of Engineers.
- 5. Construction north of the existing Courthouse on a 1.4 acre parcel bounded by State, Bull, Broughton, and Whitaker Streets, leaving undisturbed the two buildings facing Bull Street, demolishing the remaining structures, and closing and building over Broughton Lane.

Public comments on the FEIS should be communicated to GSA by May 20 in writing at the following address with you and comments to: Mr. Philip Youngberg, Regional Environmental Officer—4PT, 401 West Peachtree Street, NW, Suite 3010, Atlanta, GA 30365–3010 or fax your comments to Mr. Youngberg at 404–331–4540. Comments should be received no later than May 20, 1996. GSA anticipates issuing a Record of Decision after the close of the 30-day comment period.

[FR Doc. 96–9534. Filed 4–17–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Device Industry; Notice of Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, and Office of the Southeast Region, New Orleans District) is announcing two free public workshops to discuss current good manufacturing practices (CGMP's) for medical gas manufacturers and transfillers who repack medical gas. The purpose of this workshop, sponsored by the New Orleans District FDA office, is to provide an overview to CGMP requirements and to discuss significant problems observed during inspection of the industry.

DATES: The public workshops are scheduled as follows:

1. Tuesday, April 23, 1996, 10 a.m. to 5 p.m., Baton Rouge, LA.

2. Thursday, April 25, 1996, 9 a.m. to 4 p.m., Jackson, MS.

ADDRESSES: The public workshops will be held at the following locations:

1. Baton Rouge—Louisiana State University Agricultural Center Bldg. (also known as the I. Norman Efferson Hall) in the large classroom, Highland Rd. and East Parker, Baton Rouge, LA.

2. Jackson—Mississippi Department of Health, Underwood Bldg., 2423 NorthState St., Jackson, MS.

FOR FURTHER INFORMATION CONTACT: Patricia K. Schafer, New Orleans District Office, FDA New Orleans District Office, 4298 Elysian Fields, Ave., New Orleans, LA 70122, 504–589–7184, FAX 504–589–4666.

Those persons interested in attending a workshop should register by faxing their name(s), firm name/affiliation, address,

telephone and FAX numbers, and any specific questions they want addressed at the workshops to the contact person listed above. There is no registration fee for these workshops, but advance registration is required. Interested persons are encouraged to register early because seating is limited to 100 registrants.

SUPPLEMENTARY INFORMATION: The purpose of these workshops is to provide training and dialogue among the medical gas industry, local, State, and Federal Government agencies. The workshops will provide a forum to discuss the regulation of the compressed gas industry, convey knowledge about FDA's operations and policies, and explain the requirements for compliance with CGMP regulations. The workshops will also provide a segment on enforcement procedures used by FDA.

Dated: April 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–9484 Filed 4–17–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier Agreement, HCFA 460; *Form No.:* HCFA 460; *Use:* The HCFA 460 is completed by nonparticipating physicians and suppliers if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits. *Frequency:* Once, unless re-enrolled; *Affected Public:* Individuals or Households, and Business or other for-profit; *Number of Respondents:* 70,000; *Total Annual Responses:* 70,000; *Total Annual Hours Requested:* 17,500.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospital Conditions of Participation—42 CFR Part 482; *Form No.:* HCFA–R–48; *Use:* Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 6,700; *Total Annual Responses:* 6,700; *Total Annual Hours Requested:* 62,657.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 12, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–9536 Filed 4–17–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

The Ryan White Comprehensive Aids Resources Emergency Act of 1990; Availability of Funds for Early Intervention Services

AGENCY: Health Resources and Services Administration.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the Federal Register on March 20, 1996 (61 FR 11424) for applications for discretionary grants to provide outpatient early intervention services including primary care services with respect to human immunodeficiency virus (HIV) disease. The new due date is June 12, 1996. All other information remains unchanged.

Dated: April 12, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–9542 Filed 4–17–96; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Correction of telephone number.

SUMMARY: The following correction should be made to the notice published in the Federal Register on Thursday, March 28, 1996 (61 FR 13861):

On page 13861 in the second column, last paragraph, the telephone number to receive application materials for awards should be (703) 821–8955. The toll-free number remains 1–800–221–9393.

All other information remains unchanged.

Dated: April 12, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–9541 Filed 4–17–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Submission for OMB Review; Comment Request; Familial Cancer and the BRCA1 Gene in the Jewish Community of Greater Washington

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National

Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the Federal Register on November 3, 1995, page 55845 and allowed 60 days for public comment. One public comment was received, requesting a copy of the NIH approved study protocol. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: Title: Familial Cancer and the BRCA1 Gene in the Jewish Community of Greater Washington. Type of Information Collection Request: EXTENSION. Need and Use of Information Collection: This research study will determine how common a particular alteration in the BRCA1 gene occurs in Jewish individuals, and what the risk of cancer is in individuals who carry this alteration. With the assistance of Jewish community leaders in the Washington, D.C. area, Jewish volunteers will be recruited for the study. Volunteers will donate a small blood sample and complete a self-administered questionnaire. The questionnaire will include a brief personal medical history, and a detailed family history of cancer. Participants will be notified of the overall study results, which may include recommendations about genetic testing and the availability of testing programs. Frequency of Response: One-time. Affected Public: Individuals. Type of Respondents: Jewish adult volunteers. The annual reporting burden is as follows: Estimated Number of Respondents: 7,700; Estimated Number of Responses per Respondent: 1; Average Burden Hours per Respondent: .50; and Estimated Total Annual Burden Hours Requested: 3850. The annualized cost to respondents is estimated at: $38,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Jeffery P. Struewing, Principal Investigator, Genetic Epidemiology Branch, NCI, NIH, Building EPN Room 439, 6130 Executive Blvd MSC 7372, Bethesda, MD 20892–7372, or call non-toll-free number (301) 496–4375 or E-mail your request, including your address to: struewing@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: April 1, 1996.

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 96–9526 Filed 4–17–96; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7057; fax 301/402–0220). A signed Confidential Disclosure Agreement (CDA) will be required to receive copies of the patent applications.

Dimeric Arylisoquinoline Alkaloids and Synthesis Methods Thereof

Bringmann, G., Boyd, M.R., Gotz, R., Kelly, T.R. (NCI)

Filed 23 Dec 94

Serial No. 08/363,684

Licensing Contact: Gloria Richmond, 301/496–7056 ext 268

The present invention relates to a new method of chemical synthesis of known and new dimeric arylisoquinoline alkaloids. These compounds are members of a general class known as naphthylisoquinoline alkaloids. These dimeric alkaloids have been found to be effective inhibitors of HIV replication in human immune cells. The method of this invention provides access not only to known but also heretofore unknown medically useful compounds. The invention also provides for new dimeric arylisoquinoline compounds and derivatives thereof. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

Dimeric Naphthylisoquinoline Alkaloids and Synthesis Methods Thereof

Bringmann, G., Harmsen, S., Boyd, M.R. (NCI)

Filed 22 July 94

Serial No. 08/279,339

Licensing Contact: Gloria Richmond, 301/496–7056 ext 268

This invention embodies the synthesis of homodimeric and heterodimeric naphthylisoquinoline alkaloids and derivatives. The methods presented in the invention are advantageous because they permit, for the first time, the *in vitro* synthesis of compounds for which the only known natural source is the rare tropical vine, *Ancistrocladus korupensis* of Central Africa. This class of compounds has been demonstrated to be effective in inhibiting the ability of HIV to replicate and infect cells. Therefore, the dimeric alkaloids appear to comprise a novel class of antiviral drugs that may be very useful by themselves or in combination with other treatments. (portfolio: Infectious Diseases—Therapeutics, antivirals, AIDS)

Monomeric Naphthylisoquinoline Alkaloids and Synthesis Methods Thereof

Bringmann, G., Gotz, R., Boyd, M.R. (NCI)
Filed 22 Jul 94
Serial No. 08/279,291
Licensing Contact: Gloria Richmond, 301/496–7056 ext 268

Monomeric naphthylisoquinoline alkaloids and their derivatives are medically useful for the treatment of parasitic infections including malaria. However, these particular alkaloids are available in a limited supply since they are obtained from scarce plants which have a limited geographic distribution. This invention embodies methods for the preparation of monomeric naphthylisoquinoline alkaloids, including the antiparasitic korupensamines and related compounds, as well as non-korupensamines. New, medically useful, naphthylisoquinoline compounds and derivatives are also described. (portfolio: Infectious Diseases—Therapeutics, anti-parasitic)

Antimalarial Naphthylisoquinoline Alkaloids and Pharmaceutical Compositions and Medicinal Uses Thereof

Francois, G., Bringmann, G., Phillipson, J.D., Boyd, M.R., Assi, L.A., Dochez, G., Schneider, C., Timperman, G. (NCI)
Filed 14 Feb 94
Serial No. 08/195,547
Licensing Contact: Gloria Richmond, 301/496–7056 ext 268

This is a new class of napthylisoquinoline alkaloid compounds, present in plant species of the *Ancistrocladaceae* and *Dioncophyllaceae* plant families which are found in tropical Africa and southern and southeast Asia, that exhibit effective antimalarial properties and offer important new weapons in the treatment of this devastating disease. The deadliest malarial parasites have become resistant to previously effective antimalarial drugs; therefore, effective new antimalarial drugs are urgently needed. These new naphthylisoquinoline compounds effectively inhibit the growth, reproduction, and pathologic effects of a broad spectrum of *Plasmodia* parasites, including drug-resistant strains. Licensees of this invention will be required to comport with all applicable federal and country-of-collection policies relating to biodiversity. (portfolio: Infectious Diseases—Therapeutics, anti-parasitic)

Antimalarial Korupensamines and Pharmaceutical Compositions and Medical Uses Thereof

Boyd, M.R., Francois, G., Bringmann, G., Hallock, Y.F., Manfredi, K.P., Cardellina, J.H. (NCI)
Serial No. 08/195,260
U.S. Patent No. 5,409,938 issued 25 Apr 95
Licensing Contact: Steve Ferguson, 301/496–7735 ext 266

The class of compounds known as korupensamines exhibit *in vitro* and *in vivo* antimalarial activity and offer a potent new means for treating and controlling this devastating disease. As many as 2–3 million people worldwide die from malaria each year, and many more suffer from long-term chronic infection. The deadliest malarial parasites have become resistant to previously effective antimalarial drugs such as chloroquine and other clinically useful agents; therefore, effective new antimalarial drugs are urgently needed. These korupensamine compounds, which are isolated from a new species of the plant genus *Ancistrocladus* which is found in tropical Africa and southern and southeast Asia, effectively inhibit the growth, reproduction, and pathologic effects of a broad spectrum of *Plasmodia* parasites when given alone or in conjunction with previously available antimalarial agents. Licensees of this invention will be required to comport with all applicable federal and country-of-collection policies relating to biodiversity. (portfolio: Infectious Diseases—Therapeutics, anti-parasitic)

Michellamine Antiviral Agents, Compositions, and Treatment Methods

Boyd, M.R., Cardellina, J.H., Manfredi, K.P., Blunt, J.W., Pannell, L.K., McMahon, J.B., Gulakowski, R.J., Cragg, G.M., Bringmann, G., Thomas, D., Jato, J. (NCI)
U.S. Patent 5,455,251 issued 3 Oct 95
Serial No. 08/049,824 (CIP of 07/684,197 with a priority date of 12 Apr 91)
Licensing Contact: Gloria H. Richmond, 301/496–7056 ext 268

Michellamines, structurally novel naphthalene tetrahydroisoquinoline alkaloids, are a new class of antiviral compounds present in the plant *Ancistrocladus korupensis*. The *Ancitrocladaceae* is a small paleotropical family, with 20 species known from Asia and tropical Africa. *A. korupensis* contains three distinct michellamines, A, B, and C. Michellamine B, the most prevalent and potent of the three, is capable of inhibiting two distinct stages of the HIV life cycle. The compound is able to inhibit HIV-induced cell killing of infected cells but has no effect on HIV virons or initial binding of HIV to target cells. In addition, michellamine B inhibits the enzymatic activity of both the normal HIV reverse transcriptase and the activity of several mutant transcriptases which are resistant to several nonucleoside inhibitors. The claims of this invention relate to michellamine compounds and derivatives, methods for the isolation of the michellamines from *A. korupensis*, and methods for the administration of these antiviral compounds for treating patients infected with HIV. Licensees of this invention will be required to comport with all applicable federal and country-of-collection policies relating to biodiversity. (portfolio: Infectious Diseases—Therapeutics, anti-virals, AIDS)

Dated: April 9, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–9527 Filed 4–17–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1996 Funding Opportunities for Knowledge Development and Application Cooperative Agreements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Addendum.

SUMMARY: Public notice was given in the Federal Register on April 9, 1996, Volume 61, Number 69, pages 15810–15815, that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and Center for Substance Abuse Treatment (CSAT) anticipate that FY 1996 funds will be available for Knowledge Development and Application cooperative agreements for the following five activities: Managed Care, Homelessness Prevention, Predictor Variables and Development, Wrap Around Services, and Cannabis Dependence Treatment.

The notice should have also stated that the full text of each of the five activities is available electronically via the following:

SAMHSA's World Wide Web Home Page (address: HTTP://WWW.SAMHSA.GOV); SAMHSA's Bulletin Board (800–424–2294 or 301–443–0040); the Center for Mental Health

Services' Knowledge Exchange Network (KEN) (voice line 800–789–2647 or Electronic Bulletin Board 800–790–2647); and the Center for Substance Abuse Treatment Forum electronic bulletin board system (call Paula Younger at 301–495–1080 for information).

Dated: April 15, 1996.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 96–9540 Filed 4–17–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4037–N–02]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due June 17, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4255, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Midred M. Hamman, (202)–708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended)

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing—Comprehensive Improvement Assistance Program.

OMB Control Number: 2577–0044.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) that own or operate fewer than 250 units are eligible to apply and compete for modernization funds under the CIAP.

Agency form numbers, if applicable: HUD–52822, HUD–50071, HUD–2880, HUD–52825, HUD–52820, HUD–50070, HUD–53001.

Members of affected public: PHAs; IHAs.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: on an annual basis, 1,375 respondents, 11.33 responses per respondent, 15,580 total responses, 33,465 total burden hours.

Status of the proposed information collection: Revision of currently approved collection, with minor changes.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 10, 1996.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 96–9545 Filed 4–17–96; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–3917–N–65]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: June 17, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Paul DiIonno, Telephone number (202) 708–1241 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Acquired Asset Management System (SAMS).

OMB Control Number: 2502–0486.

Description of the need for the information and the proposed use: This information collection is integral to HUD's ability to create and maintain sound financial management practices and effective internal controls over the property disposition program. Without it, the program's accounting and financial data integrity would be severely compromised.

Agency form numbers: SAMS–1100, 1101, 1103, 1106, 1108, 1110, 1111 and SAMS–1117.

Members of affected public: Business or other for-profit.

An estimation of the total numbers of hours needed to prepare the information collection is 165,470; number of respondents is 75,000; frequency response is on occasion of the application process and the hour of response is 0.16 of an hour. Status of the proposed information collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–9547 Filed 4–17–96; 8:45 am]

BILLING CODE 4210–27–M

Office of General Counsel

[Docket No. FR–3917–N–64]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: June 17, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing & Urban Development, 451—7th Street, SW., Room 10245, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, particularly through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

DESCRIPTION OF INFORMATION COLLECTION: Pursuant to Section III.A. of the Consent Decree in *NAACP, Boston Chapter* v. *Cisneros,* C.A. No. 78–0850–S (D.Mass.), HUD is required to submit semi-annual reports to the Court setting forth the current racial makeup, family composition and vacancy rate of HUD-assisted multifamily rental housing located in the City of Boston. The information collection is conducted in order to prepare these reports. Owners and managers of HUD-assisted multifamily housing (five or more units) are asked to fill out a form, which may be mailed or faxed to HUD's Boston Office of Housing, which reports the following information:

- Identification of the development, including name, address and project number;
- Identification of the owner, including name, address and telephone number;
- Type of assistance received by the development (i.e., federal, state and/or local);
- Number of vacant, unavailable and occupied units in the development;
- Number of units, by number of bedrooms per unit
- Number of units occupied by elderly and non-elderly families, and number of units occupied by female head-of-household
- Number of White, Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native household heads.

ADDITIONAL INFORMATION:

Title of Proposal: Information Request to Owners of HUD-assisted Multifamily Housing in Boston, Pursuant to Section III.A. of Consent Decree in *NAACP, Boston Chapter* v. *Cisneros.*

OMB Control Number, if applicable: 2510–0008.

Description of the need for the information and proposed use: Pursuant to Section III.A. of the Consent Decree in *NAACP, Boston Chapter* v. *Cisneros,* HUD is required to submit semi-annual reports to the Court setting forth the current racial makeup, family composition and vacancy rate of HUD-assisted multifamily rental housing located in the City of Boston. The information collection is required in order to prepare these reports, which are used to determine whether there have been any changes in the composition of HUD-assisted housing subsequent to entry of the Consent Decree, and whether there has been any progress toward achieving the goals of the Consent Decree.

Agency form numbers, if applicable: None.

Members of affected public: Owners and managers of HUD-assisted multifamily housing in the City of Boston, Mass.

Estimation of the total numbers of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Respondents: 213.

Frequency of Submission: Twice per year.

Reporting Burden:

Number of respondents: 213.

Total burden hours (@ 1 hour per response): 426.

Total Estimated Burden Hours: 426 per year.

Status of the proposed information collection: This is an extension of a currently approved collection.

Contact person and telephone number (this is not a toll-free number) for copies of available documents: Linda G. Katz, Office of Assistant General Counsel for New England, (617) 565–5126.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 1996.

Nelson A. Díaz,

General Counsel.

[FR Doc. 96–9548 Filed 4–17–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3917–N–63]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting pubic comments on the subject proposal.

DATES: *Comments due*. June 17, 1996

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty Belin, Telephone number (202) 708–3652 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Insurance Benefits Claim Package.

OMB Control Number: 2502–0415.

Description of the need for the information and the proposed use: When terms of a Multifamily contract are breached or when mortgage meets conditions stated within the Multifamily contract for an automated assignment, the holder of the mortgage may file for insurance benefits. The law which supports this action is Statute 12 USC 1713(g) and Title II, Section 207(g) of the National Housing Act. This act provides in part " * * * the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interest arising under the mortgage so in default: (2) all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction: (3) all policies of title or other insurance of surety bonds or guaranties and any all claims thereunder: (4) any balance of the mortgage loan not advance to the mortgagor: (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for account of the mortgagor and which have been applied in reduction of the principal of the mortgage indebtedness: and (6) all records, documents, books, papers, and counts relating to the mortgage transaction."

Agency form numbers; HUD–2742, 2744A, 2744B, 2744C, 2744D, 2744E.

Members of affected public: Business or other for profit.

An estimation of the total numbers of hours needed to prepare the information collection is 1,050 number of respondents is 300 frequency response is on occasion and the hour of response is 3.50 of an hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 4, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–9549 Filed 4–17–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–62]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment; Quality Control Plan for Approved Mortgagees

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due June 17, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jack Kinkaid, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, Room 9278, 451—7th Street, SW., Washington, DC 20410; Telephone number (202) 708–0614, extension 2057; TDD (202) 708–4594 (this is not a toll-free number) for copies of the proposed forms and other available documents contact Oliver Walker, Chief Directives, Reports and Forms Branch on 708–1694 extension 2144.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collected of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Quality Control Plan for Approved Mortgagees.

OMB Control Number, if applicable: OMB# 2502–0432.

Description of the need for the information and proposed use:

The Mortgagee Letter establishes minimum requirements for an acceptable Quality Control Plan for HUD/FHA approved mortgagees in the origination and servicing of HUD/FHA insured mortgages. The purpose of these requirements is to improve the quality of loan origination and servicing by approved mortgagees and to reduce risk and losses to HUD's insurance funds. The Department's regulations at 24 CFR 202.12(j) presently require all approved

mortgagees to maintain a Quality Control Plan. The Department set forth guidelines in 1980 for mortgagee quality control procedures. These guidelines are now insufficient to provide adequate assurance to the Department that approved mortgagees have adequate quality control procedures to assure quality loan origination and servicing. The new requirements are used by a large segment of the mortgage lending industry and should not impose any undue burden on mortgagees participating in the HUD/FHA mortgage insurance programs.

The Quality Control Plan requirements will be used by all HUD/FHA approved mortgagees that participate in the Department's mortgage insurance programs. They will also be used by HUD's Office of Lender Activities and Program Compliance to monitor and evaluate the performance of HUD/FHA approved mortgagees. The Quality Control Plan is intended to help prevent losses to the HUD/FHA insurance funds through improving the quality of loan origination and servicing by HUD/FHA approved mortgagees.

Agency form numbers, if applicable: Not Applicable.

Members of affected public: State, Local Government & Business, Institutions & Non-profit Institutions & Small Business & Organizations.

The estimation of the total numbers of hours needed to prepare the information collection 93,600, the total number of respondents is 1,800, the frequency of response is on occasion, and the hours of response is 0.25 an hour.

Status of the proposed information collection: Revision of a currently approved collection that has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 5, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–9550 Filed 4–17–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3961–N–03]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: May 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10234, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may to obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995. 44 U.S.C. 35, as amended.

Dated: April 9, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Early Childhood Development Program (FR–3961).

Office: Community Planning and Development.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: The Early Childhood Development Program is authorized under Section 222 of the Housing and Urban-Rural Recovery Act of 1983 and the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1994 and 1995. The purpose of this program is to award grants to assist non-profit organizations in providing early childhood development services for lower-income families who reside in public housing, and also for homeless families or those at risk of becoming homeless.

Form Number: SF–424.

Respondents: Individuals or Households and Not-For-Profit Institutions.

Frequency of Submission: On Occasion and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	105		1		64		6,720
Progress Reports	42		1		10		420

Total Estimated Burden Hours: 7,140.
Status: New.
Contact: Liz Butler, HUD, (202) 708–2290, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 9, 1996.

[FR Doc. 96–9544 Filed 4–17–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–810541

Applicant: Keith Halstead, Greer, SC.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–813344

Applicant: Thomas Doyle, Alpharetta, GA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–813620

Applicant: Minnesota Zoological Garden, Apple Valley, MN.

The applicant requests a permit to import one male captive-born Siberian tiger (*Panthera tigris altaica*) from the Institute of Biology and Soils, Far Eastern Division of Russian Academy of Science, Vladivostok, Russia for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: April 12, 1996.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–9516 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[CO–050–1020–00]

Call for Nominations for the Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill a position which has recently been vacated on the Bureau of Land Management (BLM), Front Range Resource Advisory Council.

This council provides advice and recommendations to BLM on management of the public lands. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to establish advisory councils to provide advice on land use planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). In order to reflect a fair balance of viewpoints, the membership of Resource Advisory Councils must be representative of the various interests concerned with the management of public lands and users of the public lands. The position to be filled on the Front Range Resource Advisory Council is in Category 1—holders of federal grazing permits; representatives of energy and mining development; transportation or right-of-way; timber industry; off-road vehicle use and developed recreation. Individuals may nominate themselves or others. Nominees must be residents of Colorado. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed Nomination/Background Information Form, as well as any other information that speaks to the nominee's qualifications.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the BLM, Canon City District office on or before June 3, 1996.

ADDRESSES: For more information and a Nomination/Background Information Form contact the Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado 81212 or call Ken Smith, Telephone (719) 269–8553; TDD (719) 269–8597. Completed Nomination/Background Forms should be returned to the same addressed listed above.

SUPPLEMENTARY INFORMATION: Nominees will be evaluated based on their education, training, and experience with the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 96–9500 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR–030–06–1220–00: GP6–0120]

Notice of Meeting of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held May 6, 1996 from 8:00 a.m. to 9:00 p.m. and May 7, 1996 from 8:00 a.m. to 5:00 p.m. at the Malheur County Public Library, 388 SW 2nd Street, Ontario, Oregon.

At an appropriate time, the Council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., May 6. Topics to be discussed are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and standards and guidelines for livestock grazing on public lands.

DATES: The meeting will begin at 8:00 a.m. and run to 9:00 p.m. May 6, 1996 and 8:00 a.m. to 5:00 p.m. May 7, 1996.

ADDRESSES: The meeting will take place in the Malheur County Public Library, 388 SW 2nd Street, Ontario, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone (541) 473–3144).

Lynn Findley,

ADM Operations.

[FR Doc. 96–9502 Filed 4–17–95; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–980–06–0777–75; 1535]

Arizona; Notice of Change of Mailing Address and Telephone Number; Correction

AGENCY: Bureau of Land Management, Yuma District Office, Arizona.

ACTION: Correction.

SUMMARY: In the previous notice of the above title, the telephone numbers for both entities will change from (520) 726–6300 to (520) 317–3200; not 371–3200 as was published.

DATES: Effective April 22, 1996.

FOR FURTHER INFORMATION CONTACT: Assistant District Manager for Administration Maureen A. Merrell, (520) 317–3200.

Dated: April 9, 1996.

Maureen A. Merrell,

Assistant District Manager, Administration/ Acting District Manager.

[FR Doc. 96–9499 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–32–P

[NV–930–1430–01; N–57459]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Pahrump, Nye County, Nevada has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 54 E.,

Sec. 31, E½NE¼NW¼SE¼.

Containing 5 acres, more or less.

This parcel of land, situated in Pahrump is being offered as a non-competitive FLPMA sale to Mr. Edward E. Wheeler.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Nye County/the City of Pahrump. Upon publication of this notice in the Federal Register, the above described land will continue to be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

Publication of this notice in the Federal Register previously occurred on Tuesday, December 27, 1994, [59 FR 49251], and Thursday, July 13, 1995, [60 FR 36157]. The December 27, 1994 publication allowed for the required 45 day comment period. Publication of this notice will not initiate an additional comment period. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws.

Dated April 9, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–9501 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–HC–P

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., April 8, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 23, and the survey of lots 1 and 4 in section 23, T. 15 N., R. 19 E., Boise Meridian, Idaho, Group No. 902, was accepted, April 8, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: April 8, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–9503 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–66–M

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., April 8, 1996.

The plat representing the dependent resurvey of portions of the Idaho and Nevada State Boundary, between mile posts 10 and 12 (south boundary), T. 16 S., R. 19 E., Boise Meridian, Idaho, Group No. 924, was accepted, April 8, 1996.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: April 8, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–9504 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: Title XII of Public Law 103–434 directs the Secretary of the Interior, in consultation with the State of Washington, the Yakima Indian Nation, Yakima River Basin irrigators and other interested parties, to establish the Yakima River Basin Water Conservation Advisory Group within 12 months of enactment. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Meetings will be held at the Arboretum in Yakima, 1401 Arboretum Drive, Yakima, Washington, beginning at 9 a.m. on the following dates: April 29 and 30, 1996, May 21 and 22, 1996, June 17 and 18, 1996.

FOR FURTHER INFORMATION CONTACT: Walt Fite, Program Manager, Yakima River Water Enhancement Project, P.O. Box 1749, Yakima, Washington 98907, (509) 575–5848 ext. 267.

SUPPLEMENTARY INFORMATION: The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: April 1, 1996.

Norbert S. Ries,

Acting Area Manager.

[FR Doc. 96–9537 Filed 4–17–96; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

[USITC SE–96–07]

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 29, 1996 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–746 (Preliminary) (Beryllium Metal and High-beryllium Alloys from Kazakhstan)—briefing and vote.
5. Inv. Nos. 731–TA–726, 727, and 729 (Final) (Polyvinyl Alcohol from the People's Republic of China, Japan, and Taiwan)—briefing and vote.
6. Inv. Nos. TA–201–65 and NAFTA–302–1 (Broom Corn Brooms)—briefing and vote.
7. Outstanding action jackets:
   1. ID–96–005, Phaseout of the Nonrubber Footwear Quarterly report in Investigation No. 332–191.
   2. INV–96–016, Dismissal of request for a review investigation under section 751(b) of the Tariff Act of 1930.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: April 15, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–9727 Filed 4–16–96; 2:05 pm]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: May 9–10, 1996, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard Kaplan, Program Director, Centers Program, Suite 1122, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: (703) 306–1963.

Purpose of Meeting: To provide advice and recommendations concerning Partnerships for Advanced Computational Infrastructure pre-proposals submitted to NSF.

Agenda: To review and evaluate Partnerships for Advanced Computational Infrastructure pre-proposals as part of the selection process for awards, as explained in NSF publication 96–31.

Reason of Closing: The pre-proposals being reviewed include information of a proprietary or confidential nature, including (but not limited to) technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9581 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry and Molecular Structure and Function—(1134) (Panel C).

Date and Time: Wednesday through Friday, May 8–10, 1996, 9:00 a.m. to 5:00 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Rona Hirschberg, Program Director and Dr. Susan Porter Ridley Snyder, Program Manager for Metabolic Biochemistry, Division of Molecular and Cellular Biosciences, Room 655 South, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 703/306–1443.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9588 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biochemistry and Molecular Structure and Function—(1134) (Panel B).

Date and Time: Monday, Tuesday, and Wednesday, May 6, 7, & 8, 1996 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Kamal Shukla and Dr. Martin Poe, Program Directors for Molecular Biophysics, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1444).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9589 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: May 8–10, 1996, 8:00 a.m.–5:00 p.m.

Place: Holiday Inn, 4610 N. Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: John Cross, Program Director, and Karl Koehler, Program Director, Biological Instrumentation and Instrument Development, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for acquisition of Biological Instrumentation and Instrument Development for the Academic Research Infrastructure (ARI) program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9582 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: May 9–10, 1996, 8:30 a.m.–6:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Eve Ida Barak, Program Director for Cellular Organization, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, Arlington, VA 22230 Telephone: 703/306–1442.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Molecular and Cellular Biosciences.

Agenda: To review and evaluate proposals submitted to the Division of Molecular and Cellular Biosciences in response to Program Announcement number 93–130, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including: technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9590 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(#1194).

Date and Time: May 6–7, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Darryl Gorman, SBIR Program Manager, (703) 306–1391 and Dr. Al Harvey, ECS/ENG Program Manager, (703) 306–1339, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Technology Transfer (STTR) Phase I proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9583 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: May 7, 1996, 8:00 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George A. Hazelrigg, Design and Integration Engineering Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Academic Research Infrastructure (ARI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9584 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: May 7, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Anthony Centodocati, SBIR Program Manager, (703) 306–1391, Dr. Leonard Johnson, Earth Sciences, Program Manager, (703) 306–1559, and Dr. Charles Myers, Polar Sciences, Program Manager, (703) 306–1031, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Polar and Earth Sciences Phase II proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9585 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name of Committee: Special Emphasis panel in Elementary, Secondary & Informal Education (#59).

Dates and Times: May 5, 1996, 3:00 p.m.–5:00 p.m.; May 6, 1996, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 885, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Gerhard Salinger, Program Officer, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Advanced Technological Education program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9580 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics and Nucleic Acids (1149) (Panel B)

Date and Time: Monday, May 6, through Wednesday, May 8, 1996, from 8:30 a.m. to 5:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. DeLill Nasser, Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Eukaryotic Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9586 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics and Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics and Nucleic Acids (1149) (Panel A).

Date and Time: Thursday, May 09 through Saturday, May 11, 1996 at 8:30 am to 5:00 pm.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Closed.

Contacat Person: Dr. Philip Harriman (Program Director) or Dr. S. Porter Ridley (Program Manager) for Microbial Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1441.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Microbial Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9587 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: May 8–10, 1995 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Rm 370, 4201 Wilson Boulevard., Arlington, VA

Type of Meeting: Part-open.

Contact Person: Dr. John Edwards, Program Director, Developmental Neuroscience, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: May 9, 11:00 a.m. to 12:00 p.m., to discuss goals and assessment procedures. *Closed Session:* May 8, 9:00 a.m. to 5:00 p.m., May 9, 9:00 a.m. to 11:00 a.m. and 12:00 p.m. to 5:00 p.m., and May 10, 9:00 a.m. to 5:00 p.m. To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9579 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Physics (#1208).

Date: May 8–10, 1996.

Place: Stanford University, Room AP 299, Ginzton Laboratory, Stanford, California.

Type of Meeting: Closed.

Contact Person: Dr. Richard Isaacson, Program Director, Gravitational Physics Program, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1899.

Purpose of Meeting: To evaluate the proposed Stanford Advanced Gravitational-Wave Laser Interferometer Program, headed by Professor Robert Byer.

Agenda: The Panel will review Stanford's proposed new research activities, and their relation to the LIGO project. They will examine the group's experimental facilities and laboratories. Detailed discussions will be held on technical issues, as well as organization and management of the planned R&D.

Reason for Closing: The Proposal being reviewed includes information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–9591 Filed 4–17–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32714]

DowElanco, Environmental Assessment: Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Material License Number 13–26398–01

ACTION: The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to NRC License No. 13–26398–01, for continued use of carbon-14 (C–14) in pesticide testing at the DowElanco Greenfield Field Research Station (Greenfield, Indiana).

FOR FURTHER INFORMATION CONTACT: Susanne Woods, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, telephone (301) 415–7267.

Environmental Assessment

Description of the Proposed Action

The proposed action is to amend NRC Byproduct Material License No. 13–26398–01, issued to DowElanco on September 21, 1992, and amended on May 14, 1993. Pursuant to the 1993 amendment, the license presently authorizes DowElanco personnel to complete the following: (1) use byproduct material at the DowElanco Indianapolis Research and Development Site (Zionsville Road, Indianapolis, Indiana); and (2) conduct C–14-labeled pesticide studies, during 1993, on small, controlled, outdoor, test areas at the DowElanco Greenfield Field Research Station (Greenfield, Indiana) (hereafter referred to as the Station). The proposed NRC license amendment will authorize DowElanco personnel to continue to use C–14 in pesticide studies, using the same methods, control areas, and small test plots examined during the environmental assessment (EA) process that accompanied the 1993 amendment authorization for field studies at the Station. Authorization granted by the proposed amendment will be in effect until the next license renewal, at which time the environmental impacts will again be examined and assessed as deemed necessary. The EA and Finding of No Significant Impact (FONSI) for the proposed action, presented herein, accompanies the proposed amendment and, as will be discussed, encompasses a period of time that is expected to exceed the date of the next license renewal (i.e., a period that also exceeds the duration of the proposed amendment to the license and assumes many years of DowElanco ownership and use of the Station for the required C–14 studies). The purpose of the pesticide studies was further explained in NRC's ''Environmental Assessment: Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Material License 13–26398–01, DowElanco,'' published prior to the 1993 studies in the Federal Register (FR) on May 14, 1993 (58 FR 28638).

The non-site-specific aspects of the C–14-labeled pesticide studies continue to be performed under DowElanco's current authority, as provided in NRC License No. 13–26398–01 (e.g., possession of C–14 before application; preparation of C–14-labeled pesticides; use and subsequent laboratory analysis of C–14 in soil and plant samples; disposal of waste consisting of radioactive material; and compliance with regulatory requirements for C–14 use and bioassay).

Background

As stated in the 1993 EA (58 FR 28638), the Vice President of DowElanco Research and Development requested an NRC license (application dated March 6, 1992). The request included authorization to perform C–14-labeled pesticide research and registration studies on plants growing in a farm and orchard environment at the Station. DowElanco manufactures and develops a variety of chemicals for agricultural use, including pesticides (i.e., insecticides, fungicides, and herbicides) for treating ornamental plants, food crops, and feed crops. The exploratory research studies are conducted to examine the fate of pesticides in and on various plant species. The studies are being completed, as required by the U.S. Environmental Protection Agency (EPA), for registering the pesticide and permitting sale in the United States and other countries. Specifically, pesticides intended for use on agricultural commodities must be registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (as amended), as required by the Federal Food, Drug, and Cosmetic Act (as amended).

DowElanco requested the following three types of field studies using C–14: two specific types of pesticide field studies for registration with the EPA, requiring use of C–14-labeled pesticides in an outdoor environment (referred to as the nature-of-the-residue and confined-rotational-crop studies); and lysimeter studies to augment the EPA studies. Further, DowElanco anticipates that open-field (i.e., outdoor) C–14 pesticide studies will be conducted at

the Station for the duration of the license.

Individual trees or plots may continue to be used to study the effects from a particular pesticide application, for periods lasting from a few weeks up to 18 months. DowElanco will limit the amount of C–14 applied at the Station to 370 Megabecquerel (MBq) [10 millicuries (mCi)], during any 24-hour period. Further, DowElanco will apply no more than 1,110 MBq (30 mCi) of C–14 at the Station, in a calendar year.

As specified for the 1993 EA, DowElanco personnel will follow specific procedures to contain the C–14 to the study plots or specific trees and branches, as well as monitor and maintain established C–14 levels in surface water, subsurface water, and soil.

Assessment of the Environmental Impacts of the Proposed Action

Many of the environmental impacts for the proposed action were previously analyzed in the EA prepared for the 1993 license amendment (58 FR 28638). Information and analyses previously presented include: (a) site location and geology; (b) studies to be performed; (c) need for the proposed action (proposed studies); (d) affected environment; (e) study protocols; (f) pathways to the environment; (g) pathways to humans; (h) effects on other species; and (i) alternatives to the proposed action (proposed studies). Specific aspects of the studies for the current licensing action (e.g., site, plants, pesticides, application, and soil/water clean-up procedures) are the same as those described in the 1993 EA. Additionally, the C–14 will continue to be released into the environment as a tracer for labeling the studies. Unlike the 1993 EA, however, the proposed action, described herein, involves a greater duration of study. Accordingly, this EA included consideration of possible impacts from the increased quantity of C–14 introduced into the environment. The FONSI for this EA forms a basis for authorizing continuation of the studies at the Station. To ensure that all relevant impacts are considered for continuation of the studies (i.e., the current licensing action), discussions of impacts are either referenced (as noted above) from the previous notice (58 FR 28638) or provided herein.

As described in the 1993 EA (58 FR 28638), the C–14-labeled studies are limited to one field (designated as Block 10), as the site for lysimeter and open-field C–14 crop studies, and one orchard (designated as Block 3). In turn, applications of the labeled pesticides will be limited to individual trees and/or branches for Block 3 studies and individual subplots for Block 10 studies. (Before NRC-licensed material can be used in any other field/orchard application outside of Blocks 3 or 10, a new EA must be completed for a new license amendment.) As specified in the 1993 EA, members of the general public (i.e., individuals other than DowElanco personnel working at the Station or Eli Lilly and Company security personnel responsible for providing Station surveillance) are not expected to come into direct contact with the C–14, pesticide, study plots, or vegetation.

Impacts to the Human Environment

The potential impact to the human environment from the proposed studies were evaluated by NRC using two different methodologies (as implemented in computer codes) for assessing radiation doses delivered to individuals living either on the study site (i.e., the Station) or offsite. Onsite impacts from all possible pathways for delivering dose to humans were assessed using the RESRAD code (implementing the U.S. Department of Energy guidelines for residual radioactive material) (Yu, C., *et al.*, 1993). Surface-water and groundwater pathways were identified as the relevant pathways for delivering radiation doses offsite. Offsite water pathways were assessed using the MEPAS code (Multimedia Environmental Pollutant Assessment System) (Droppo, J.G., Jr., *et al.*, 1989). Specifically, the dose assessments examined a maximum C–14 application of 1,110 MBq (30 mCi) per year at the Station, with DowElanco's soil and surface water residual contamination (i.e., remediation levels after removal of test plot vegetation and soil) set at 1.11 Bq/gram(g) [30 picocuries(pCi)/g] and 851 Bq/l (23,000 pCi/l), respectively. Existing contamination, resulting from the studies authorized by the 1993 license amendment, was considered in the current assessment.

Site-specific parameters were established, using conservative assumptions, for modeling in both the RESRAD and MEPAS assessments. The RESRAD analysis (onsite impact analysis), assumed a family-farm scenario where radiation exposure (C–14) to residents of the farm results from all pathways [i.e., external radiation exposure and internal radiation exposure via ingestion (water, crops, livestock, vegetation, fish, milk, and soil) and inhalation]. Additionally, the first sand and gravel layer [13.7–36.6 meters(m) {45–120 feet(ft)}] was assumed to be the upper-most aquifer, with the shallowest depth [13.7 m (45 ft)] as the depth representing the top of the screened interval for the family drinking-water well. The contaminated topsoil and the aquifer were separated by an unsaturated, uncontaminated, 13.1-m-thick (43-ft-thick), clay layer. The modeled site was assumed to be a plot of ground, equal in size to Block 10, and contaminated with 1.11 Bq/g (30 pCi/g) of C–14 throughout the entire layer of topsoil [0.61-m (2-ft) deep] above the clay layer (without cover or controls).

The offsite scenario assessed the pathway established via overland transport of the site surface water, which was assumed to drain immediately into Wilson's ditch. For the modeled scenario, the ditch was conservatively assumed to border the study block and empty into a receptor well (drinking water) at 183 m (600 ft) downstream from the Station. (The actual locations of the ditch and pathway of the water in the ditch are at greater distances from the site.) For both the offsite and onsite assessments, the existing tile drain field for the Station was considered inoperable, allowing all infiltrating water to eventually encounter the upper-most aquifer (i.e., the drinking water supply below the soil surface).

The maximum total effective dose equivalent (TEDE) indicated for an individual living onsite, using the family-farm scenario, was 17 microsieverts [1.7 millirem (mrem)] per year and occurs via water-independent pathways (i.e., pathways that do not result from water as the medium of transport for the C–14 from the soil to humans) during the first year of the model. Hence, the maximum dose does not exceed the 1 millisievert (mSv) (100 mrem) per year (TEDE) public dose limit established in 10 CFR Part 20. This annual dose rapidly reduces after the first year and reaches zero after approximately 20 years. By comparison, assessment of primarily water-dependent pathways (i.e., water is the medium of transport for C–14), using the family-farm scenario, indicates that this pathway, alone, would deliver a maximum 15 microsievert (1.5 mrem) per year dose (TEDE) at approximately 15 years into the family-farm model. With specific regard to groundwater, computer modeling predicted that a peak dose of 0.26 microsievert/yr (0.026 mrem/yr) from ground water at the site is possible at 10.92 years, with a C–14 concentration of 0.625 Bq/l (16.9 pCi/l) of water.

Offsite impacts were calculated using a maximum lifetime exposure (70 years). The analysis indicated an individual's peak lifetime exposure will

be 0.29 mSv (29 mrem) (TEDE) from the groundwater pathway at approximately 500 years into the model, with a peak groundwater concentration of C–14 in year 486. Overland transport to offsite surface water was calculated to result in an expected individual peak lifetime dose of 0.13 microsievert (13 microrem), with a peak water concentration in year 117. The yearly average TEDE for an individual, based on a 70-year exposure period, will be approximately 4 microsieverts (0.4 mrem) and 0.002 microsievert (0.2 microrem), for the groundwater and surface water pathways, respectively.

These models assume the tile drainage system to be inoperable. However, the system will presumably remain operable during the licensed period of the site (to prevent flooding and costly destruction to vegetation and research analyses). Although the drain system has the potential to collect C–14 that does not escape the soil by other means of transport, effluent from the drainage system will be monitored to determine compliance with 10 CFR Part 20.

During operation, air releases of C–14 are expected at the Station. DowElanco completed analysis of these releases using the COMPLY analysis computer code developed for EPA. NRC review of the analysis determined that conservative estimates were used for various site parameters. Further, the COMPLY code resulted in a dose of less than 10 microsieverts (1 mrem) to an individual living 244 m (approximately 267 yards) from the site. Further evaluation of the offsite analysis was not considered necessary.

Endangered or Threatened Species

During this EA, DowElanco forwarded a listing of ''Endangered, Threatened, and Rare Species of Hancock County, Indiana,'' assembled by the Indiana Natural Heritage Data Center from reports of individual observations (the Station is in Hancock County). The listing includes a number of mammals, birds, mussels, and plants that do not appear on the Federal listing of endangered species. The names of two species appearing on the Hancock County listing, the Indiana bat (*Myotis sodalis*) and the clubshell (*Pleurobema clava*), also appear on the Federal listing of endangered species.

The clubshell habitat is the clean swept sand and gravel existing in rivers. The species feeds and respires by filtering water. The larval stage of the clubshell reproductive cycle depends upon attachment to, and nourishment from, a fish host. As of 1993, the club-shell was known to exist in two Indiana Rivers—the Tippecanoe River (Kosciusko, Fulton, Pulaskia, and Tippecanoe Counties, Indiana); and Fish Creek of the St. Josephs River (DeKalb County, Indiana, and Williams County, Ohio) (Tolin, 1993, 58 FR 5638).

At the Station, surface water and tile drainage from Blocks 3 and 10 drain into Little Sugar Creek, approximately 11 to 16 kilometers (7 to 10 miles) from the Station, via Wilson's Ditch. Water is not always present in Wilson's Ditch. Hence, the ditch is not expected to support the aquatic life cycle of the clubshell. Water carrying C–14 from Blocks 3 and 10 is expected to be significantly diluted with other surface water and tile drainage leaving the other areas of the Station and additional offsite locations, before being transported the distance to Little Sugar Creek. Additionally, carbon-dioxide gas dispersion from the transported water and siltation are examples of ways in which C–14 may depart the water pathway over this distance. Based on the aforementioned analyses, offsite radiation doses delivered to a clubshell population in Little Sugar Creek (or subsequent waterways receiving Station water), should such a population exist, are not expected to have a significant impact on members of the species.

The Indiana bat population hibernates in caves through the winter months in only several, large aggregates. Few caves provide the cool, stable temperatures the species requires during hibernation. Disturbance during hibernation can cause a bat to expend 10 to 30 days of its otherwise conserved fat supply (Clawson, 1987). Natural catastrophe, vandalism, cave commercialization, or other human disturbance at one cave can destroy a substantial portion of the overall population directly or indirectly, by altering the cave microclimate. The species was placed on the Federal listing because of this vulnerability associated with its hibernating behavior.

Female Indiana bats and their young live in nurseries. Migrating bats leave the midwestern caves beginning in late March and return in August (the time period of C–14 application and crop growth at the Station). Roosting begins again in approximately November. Just before roosting, the Indiana bat is likely to increase its body weight by up to 50 percent from consuming insects available in the vicinity of the cave (Humphrey and Sylvia, 1978). No caves are known to be in the vicinity of the Station.

Some maternity roosts have been located along natural water banks, in floodplain forests, and behind loose bark in a tree hollow. Bats use mature trees as one of their summer habitats, for both roosting and foraging near the treetops. As insectivors, the Indiana bat consumes numerous types of insects, preferring moths (*Lepidoptera*), beetles (*Coleoptera*), flies, and midges (*Diptera*) (Clawson, 1987).

Mature trees are not used in Blocks 3 and 10 at the Station. Additionally, C–14-labeled insecticide applied to specific tree areas will, presumably, decrease or eliminate insects available for any bats foraging in such study trees. The C–14 pesticide is applied in a controlled manner to a single limb or larger portions of a tree. After pesticide application, the area is covered with netting; hence, the access bats may have to the C–14-labeled pesticide is limited. Additionally, much of the vegetation at the Station will be harvested by November. Thus, a bat's possible intake of C–14 is further limited during the period when maximized retention of C–14 is estimated to affect approximately 50 percent (or less) of an individual bat's collected body mass. Given the information available and a hypothetical scenario in which an Indiana bat ingests contaminated insects or comes into contact with the C–14 through some other means, the possible radiation dose received is not expected to have a significant impact.

Agencies and Persons Contacted

Greg E. Socha, the Radiation Safety Officer for DowElanco, provided clarifying information. Additionally, NRC consulted J. Ruyack, Director of Indoor and Radiological Health for the Indiana State Department of Health, in a letter dated February 23, 1994. The letter explained this EA effort, stated NRC's intent to publish the findings in the Federal Register, and requested comments, concerns, or other information believed necessary to be considered during the assessment process. The letter was followed by a telephone call (April 11, 1994) in which it was established that no additional information, comments, nor concerns were identified.

Finding of No Significant Impact

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR Part 51, the Commission has determined that there will not be a significant effect on the quality of the human environment resulting from the continued use of C–14 in pesticide studies conducted at the Station. Further, an environmental impact statement is not required for the proposed amendment to Byproduct Material License No. 13–26398–01, which will authorize continuation of C–

14-labeled pesticide studies at the Station. This determination is based on the foregoing EA performed in accordance with the procedures and criteria in 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' The EA described herein confirms the Finding of No Significant Impact for the studies authorized at the Station by the 1993 license amendment.

For further details of this action, see the license application dated March 6, 1992 (License Number 13–26398–01), and other related correspondence. Details of the impact analyses completed are available for both the RESRAD and MEPAS computer code evaluations. The documents (in Docket No. 030–32714) may be examined or copied for a fee, in the NRC's Region III Public Document Room, 801 Warrenville Road, Lisle, IL 60532–4351.

References

1. Brack, Virgil, Jr., ''Hibernacula of the Endangered Indiana Bat in Indiana,'' *Proceedings of the Indiana Academy of Science* (1983) Vol. 93, pp. 463–468. Clawson, Richard L., ''Indiana Bats: Down for the Count,'' *BATS*, (1987) Vol. 5, No. 2, pp. 3–5.

2. Droppo, J.G., Jr., et al. *Multimedia Environmental Pollutant Assessment System (MEPAS) Application Guidance*, PNL–7216, Pacific Northwest Laboratory, Richland, WA, 1989.

3. Howe, D.B., U.S. Nuclear Regulatory Commission. ''Environmental Assessment: Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Material License 13–26398–01, DowElanco,'' Federal Register, Washington, D.D., Vol. 58, pp. 28638–28645, 1993.

4. Humphrey, Stephen R. and Sylvia J. Scudder, Florida State Museum. *Rare and Endangered Biota of Florida*, Volume One: Mammals, University Press of Florida, Gainesville, FL, pp. 3 and 4, 1978.

5. Tolin, William A., U.S. Fish and Wildlife Service, ''Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Northern Riffleshell Mussel (*Eploblasma torulosa rangiana*) and the Clubshell Mussel (*Pleuroblema clava*),'' Federal Register, Washington, D.C., Vol. 58, pp. 5638–42, 1993.

6. Yu, C., et al., *Manual for Implementing Residual Radioactive Material Guidelines Using RESRAD, Version 5.0*, ANL/EAD/LD–2, Argonne National Laboratory, Argonne, IL, 1993.

Notice of Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of publication of this notice in the Federal Register and must be served on the NRC staff by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852; and must be served on the applicant by mail or delivery to DowElanco, Building 306, 9410 Zionsville Road, Indianapolis, Indiana 46268. The request for a hearing must comply with the requirements set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Material Licensing Proceedings.'' Subpart L of 10 CFR Part 2 may be examined or copied for a fee in the Commission's Region III Public Document Room at 801 Warrenville Road, Lisle, Illinois 60532–4351, or in the NRC Public Document Room, 2120 L Street, N.W., Lower Level, Washington, DC 20555.

As required by 10 CFR Part 2, Subpart L (10 CFR 2.1205), the request for hearing must describe in detail: (1) the interest of the requestor in the proceeding; (2) how that interest may be affected by the results of the proceedings, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (g) of 10 CFR 2.1205; (3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) of 10 CFR 2.1205.

The factors in 10 CFR 2.1205(g) that must be addressed in the request for hearing include: (1) the nature of the requestor's right, under the Atomic Energy Act of 1954, to be made a party to the proceeding; (2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding, upon the requestor's interest.

Dated at Rockville, Maryland this 11th day of April, 1996.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Chief Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–9539 Filed 4–17–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

April 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of April 1, 1996, of 14 rescission proposals and six deferrals contained in five special messages for FY 1996. These messages were transmitted to Congress on October 19, 1995; and on February 21, February 23, March 5, and March 13, 1996.

Rescissions (Attachments A and C)

As of April 1, 1996, 14 rescission proposals totaling $1.0 billion had been transmitted to the Congress. Attachment C shows the status of the FY 1996 rescission proposals.

Deferrals (Attachments B and D)

As of April 1, 1996, $2,715.2 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1996.

Information From Special Message

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the Federal Register cited below:

60 FR 55154, Friday, October 27, 1995
61 FR 8691, Tuesday, March 5, 1996
61 FR 10812, Friday, March 15, 1996
61 FR 13350, Tuesday, March 26, 1996

Alice M. Rivlin,

Director.

ATTACHMENT A.—STATUS OF FY 1996 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	1,025.5
Rejected by the Congress	.....
Currently before the Congress	1,025.5

ATTACHMENT B.—STATUS OF FY 1996 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,689.6
Routine Executive releases through April 1, 1996	−974.4
(OMB/Agency releases of $974.4 million, partially offset by cumulative positive adjustment of $4 thousand.)	
Overturned by the Congress	.....
Currently before the Congress	2,715.2

BILLING CODE 3110–01–P

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of April 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research, Education, and Extension Service								
Buildings and facilities	R96-8	12,000		3-5-96				
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Air Force	R96-1	310,000		2-21-96				
Other procurement, Air Force	R96-2	265,000		2-21-96				
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation Army	R96-4	19,500		2-23-96				
Research, development, test, and evaluation Navy	R96-5	35,000		2-23-96				
Research, development, test, and evaluation Air Force	R96-3	245,000		2-21-96				
	R96-6	44,900		2-23-96				
Research, development, test, and evaluation Defense-wide	R96-7	40,600		2-23-96				
Military Construction								
Military contruction, Army	R96-21	10,000		3-13-96				
Military contruction, Navy	R96-22	8,000		3-13-96				
Military contruction, Air Force	R96-23	15,000		3-13-96				
Military contruction, Defense-wide	R96-24	13,000		3-13-96				
Military contruction, Air National Guard	R96-25	4,000		3-13-96				
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R96-9	3,500		3-5-96				
TOTAL RESCISSIONS		1,025,500	0		0		0	

ATTACHMENT D
Status of FY 1996 Deferrals - As of April 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 4-1-96
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D96-1	75,000		10-19-95					
	D96-1A		1,942,076	2-23-96	889,823			4	1,127,257
Foreign military financing program	D96-4	1,385,140		2-23-96					1,385,140
Foreign military financing loan program	D96-5	64,400		2-23-96					64,400
Agency for International Development									
International disaster assistance, Executive	D96-6	124,625		2-23-96	84,000				40,625
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					
	D96-3A		50,545	3-5-96	546				90,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					7,321
TOTAL, DEFERRALS		**1,696,972**	**1,992,621**		**974,369**			**4**	**2,715,228**

[FR Doc. 96–9529 Filed 4–17–96; 8:45 am]
BILLING CODE 3110–01–C

POSTAL RATE COMMISSION

Notice of Commission Visits

April 12, 1996.

Notice is hereby given that members of the Postal Rate Commission and certain advisory staff members will visit the following businesses and U.S. Postal Service mail processing facility to observe their operations:

Columbia House, Terre Haute, Indiana, April 15–16, 1996

U.S. Postal Service Air Hub Operation, Indianapolis, Indiana, April 16, 1996

BMG Direct Marketing, Inc., Indianapolis, Indiana, April 17, 1996

Federal Express Hub, Memphis, Tennessee, May 14–15, 1996

Reports of these visits will be placed on file in the Commission's Docket Room.

FOR FURTHER INFORMATION CONTACT: Margaret P. Crenshaw, Secretary of the Commission at 202/789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–9507 Filed 4–17–96; 8:45 am]

BILLING CODE 7715–01–P

POSTAL SERVICE

Board of Governors; Addition to Closed Meeting Agenda; Sunshine Act Meeting

By telephone vote on April 11, 1996, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its May 6, 1996, meeting, closed to public observation, consideration of a funding request for delivery vehicles.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate a proposed management action.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–9751 Filed 4–16–96; 2:05 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37106; File No. SR–NASD–96–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes in the Structure of the NASD Board of Governors

April 11, 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 January 16, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') [1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of ninety (90) days.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Following is the full text of a proposed rule change to amend the NASD's By-Laws to reconfigure the NASD's Board of Governors. Below is the text of the proposed rule change.[2] Proposed new language is italicized; proposed deletions are in brackets.

BY-LAWS

ARTICLE VII

BOARD OF GOVERNORS

Composition *and Qualifications* of the Board

Sec. 4. [(a)] The management and administration of the affairs of the Corporation shall be vested in a Board of Governors composed of [from twenty-five to twenty-nine Governors as determined from time to time by the Board. The Board shall consist of: (1) At least thirteen but not more than fifteen Governors to be elected by the members of the various districts in accordance with the provisions of subsection (b) hereof; (2) at least eleven but not more than thirteen Governors to be elected by the Board in accordance with the provisions of subsection (c) hereof; (3) the President of the Corporation to be selected by the Board in accordance with the provisions of Article X, Section 2 of the By-Laws. The Board, in exercising its power to determine its size and composition under this subsection (a), shall be required to select its members in a manner such that when all vacancies, if any, are filled, the number of Governors elected by the members of the various districts in accordance with subsection (b) hereof shall exceed the number of Governors (including the President) not so elected.

(b) The several districts shall be represented on the Board. Each district shall elect at least one Governor. The Board shall determine from time to time which districts, if any, shall elect more than one Governor, so as to provide fair representation of the Corporation's members and of its various districts on the Board. The determination of which districts shall elect more than one Governor need not be submitted to the membership for approval and shall become effective at such time as the Board may prescribe. The Board shall, from time to time, consider the fairness of the representation of members and of the various districts on the Board. Whenever the Board finds any unfairness in such representation to exist, it shall make appropriate changes in the number of boundaries of the

[1] The NASD subsequently made three amendments to its filing. On January 24, 1996, the NASD submitted the final report of the vote with respect to Notice to Members 95–101. On April 10, 1996, the NASD submitted Amendment No. 2 which superseded the original rule filing and eliminated those parts of the original rule filing that proposed to eliminate Article V to the By-Laws and amend Section 7 to Article VII of the By-Laws to establish a new procedure for nomination of the members of the Board of Governors. These amendments are not being proposed at this time. On April 11, 1996, the NASD submitted its third and fourth amendment to this filing which superseded all previous amendments and the original filing. The NASD at this time is proposing to amend Sections 4 and 6 of Article VII of its By-laws on a temporary 90 day basis. *See* letter from T. Grant Callery, NASD, to Mark Barracca, SEC (April 11, 1996).

[2] Article and section designations of the provisions covered by this rule change will be modified to conform to a new rule numbering system for the NASD Manual anticipated to be effective no later than May 1, 1996. *See* Exchange Act Release No. 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996).

districts or the number of Governors elected by each district to provide fair representation of members and districts.] *five or more members, the number thereof to be determined from time to time by resolution of the Board of Governors, and shall include at all times: (1) the Chief Executive Officer; (2) one or more Non-Industry Governors representative of issuers and investors and not associated with a member of the Corporation; (3) one or more Industry Governors; and (4) a majority of Non-Industry Governors, unless (A) there shall be a vacancy in the position of a Non-Industry Governor, in which case such vacancy shall be filled by a person satisfying the criteria for a Non-Industry Governor in accordance with the provisions of Section 6 of this Article or (B) a Governor elected as a Non-Industry Governor becomes an Industry Governor and his remaining term of office is six months or less. If a Governor elected as a Non-Industry Governor becomes an Industry Governor and his remaining term of office is more than six months, or a Governor elected as an Industry Governor becomes a Non-Industry Governor and his remaining term of office is more than six months, he shall be automatically removed from office unless the Board determines otherwise.*

[(c) The Board shall elect (1) at least three Governors representative of investors, none of whom are associated with a member or any broker or dealer; (2) at least three Governors representative of issuers, at least one of whom is not associated with a member or any broker or dealer; (3) at least three Governors chosen from members; (4) at least one Governor representative of the principal underwriters of investment company shares or affiliated members; and (5) at least one Governor representative of insurance companies or insurance company affiliated members.]

Term of Office of Governors

Sec. 5. No change.

[Succession to Office]

Filling of Vacancies

Sec. 6.(a) [The office of a retiring Governor elected under subsection (b) of Section 4 of this Article shall be filled by the election of a Governor from the same district as that of the retiring Governor. The office of a retiring Governor elected under subsection (c) of Section 4 of this Article shall be filled by election by the Board as provided in subsection (c) of Section 4 of this Article.] *Any vacancy in the office of a Governor, whether occurring by reason of death, disability, disqualification, removal, or resignation, other than a vacancy occurring by reason of an increase in the size of the Board, shall be filled by majority vote of the remaining Governors then in office and any person elected to fill such vacancy shall satisfy the qualifications and criteria for the governorship being filled as provided in Section 4 of this Article.*

(b) [Notwithstanding subsection (a) of this Section 6, the Board shall prescribe the succession of office in cases affected by a change in the number of Governors constituting the Board, the composition of the Board, the number or boundaries of districts, or the number of Governors elected by a district.] *Any vacancy in the office of a Governor occurring by reason of an increase in the size of the Board shall be filled by majority vote of the Board and any person elected to fill such vacancy shall satisfy the criteria for such newly created governorship as shall be established by resolution of the Board, provided that the filing of any such vacancy shall not be inconsistent with any other provision of these By-Laws.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Background

In 1995, the NASD Board of Governors (''Board'') appointed The Select Committee on Structure and Governance (the ''Select Committee'') to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. The Select Committee reported to the Board of Governors at the September 1995 meeting and recommended, among other things, the establishment of two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market.℠ The Select Committee recommended that each subsidiary have an independent Board of Directors and that the NASD remain as parent corporation overseeing the operations of both subsidiaries.

The NASD is proposing to amend Article VII of the NASD By-Laws in order to begin the restructuring necessary to implement the principles articulated in the report of the Select Committee. The Board of Governors of the NASD has adopted the Select Committee proposal that the NASD create a new subsidiary responsible for regulation and the provision of member and constituent services, with the NASD retaining responsibility for general oversight of the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries; The Nasdaq Stock Market, Inc. and NASD Regulation, Inc.[3] (''NASDR''), and final policy making authority for the Association as a whole.[4] The Board also adopted Select Committee proposals to implement policies that will: ensure a balance of non-industry and industry representation on Boards of Directors of The Nasdaq Stock Market and NASDR; and reduce the size and structure the Board of Governors of the NASD to have a majority of non-industry members.

In summary, the NASD is proposing to reorganize its Board of Governors as a majority non-industry board comprising the CEO and ''Industry'' and ''Non-Industry'' Governors, and reduces the minimum size of the Board from 25 to 5. The term ''Industry Governor'' means a persons associated with an NASD member. The term ''Non-Industry Governor'' means a person representing investors and issuers pursuant to criteria that will be adopted by the NASD Board of Governors. The implementation plan adopted by the NASD Board at its November 1995 meeting specified that beginning in the second quarter of 1996 the NASD Board of Governors will be comprised of nine persons: the CEO, three Industry, and five Non-Industry Governors.

Simultaneously with the submission of this rule change, the NASD is also submitting a temporary rule change in SR–NASD–96–16 to propose a Plan of Allocation and Delegation of Functions By NASD to Subsidiaries that sets forth the purpose, functions, governance, procedures, and responsibilities of the

[3] A new subsidiary has been incorporated as ''NASD Regulation, Inc.'' to carry out the NASD's obligations to regulate the broker/dealer industry.

[4] The Nasdaq Stock Market, Inc. is a wholly-owned subsidiary of the NASD.

NASD, the NASDR and Nasdaq following the reorganization of the NASD.[5]

Description of Proposed Amendments

Article VII of the By-Laws

Section 4—Composition of the Board

The NASD is proposing to delete rule language relating to the method by which representatives of the NASD's District Offices are elected to the Board of Governors and to add new rule language that would require that the Board of Governors be composed of at least five members, with the exact number to be determined from time-to-time by the Board of Governors. The proposed new provision would require that the NASD Board of Governors include the Chief Executive Officer; one or more Non-Industry Governors, representative of issuers and investors and not associated with a member of the NASD; one or more Industry Governors; and a majority of Non-Industry Governors. ''Industry Governor'' means a person associated with an NASD member. The term ''Non-Industry Governor'' means a person that satisfies criteria that will be adopted from time-to-time by the NASD Board of Governors.[6] An exception to the latter requirement is provided for situations where there is a vacancy in the position of a Non-Industry Governor or a person elected as a Non-Industry Governor becomes an Industry Governor at a time when the person's remaining term of office is no more than six months. The proposed new provision also provides that if a Non-Industry Governor becomes an Industry Governor at a time when the person's remaining term of office is more than six months, the person will be removed from office unless the Board of Governors determines otherwise.

The NASD is also proposing to delete Subsection (c) to Section 4 which currently sets forth the requirements for the composition of the Board of Governors, which the NASD is herein proposing be included in the amendments.

Section 6—Succession to Office

The NASD is proposing to delete the current language of Subsection (a) which provides that, in case of an in-term vacancy, a Governor elected from a District will be replaced by a successor from that District, as District representatives will not serve on the Board of Governors of the NASD. Instead, District representatives will serve on the Board of the NASD's regulatory subsidiary, NASDR. The NASD is proposing to retitle this section ''Filling of Vacancies.'' The proposed new rule language under Subsection (a) would require that all vacancies on the NASD's Board of Governors that occur during a term of office of a sitting Governor will be filled by a majority vote of the remaining Governors. The provision further clarifies that any person so elected shall be required to fulfill the criteria set forth in new Section 4.

The NASD is also proposing to delete the current language of Subsection (b) which authorizes the Board to prescribe the succession of offices where there is a change in the number of Governors comprising the Board, the number of boundaries of Districts, or the number of Governors elected by each District. New rule language is proposed that would provide that any vacancy in the office of Governor that occurs by reason of an increase in the size of the Board shall be filled by a majority vote of the Board and that any person so elected is required to fulfill the criteria set forth in new Section 4.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b) (2), (4), and (6) of the Act.[7] in that the restructured organization will: (1) enhance the NASD's ability to carry out its regulatory obligations under the Act and enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD; (2) provide for the fair representation of members, issuers and investors on the Board of Governors and in the administration of the NASD's affairs; and (3) enhance the NASD's ability to protect investors and the public interest in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not solicited with respect to the proposed rule change published for member vote in Notice to Members 95–101 (December 11, 1995)[8] (attached as Exhibit 2 to the rule filing) or the publication of an explanation of planned changes to the NASD's disciplinary and enforcement procedures published for information in Notice to Members 95–102 (December 11, 1995) (attached as Exhibit 3 to the rule filing). Nonetheless, three comments were received with respect to the proposed rule change published in Notice to Members 95–101 and the concepts included in Notice to Members 95–102 that are attached as Exhibit 4 hereto. Two comments were opposed to the proposed rule change and one comment was in favor, with a request for modification of the rule change.

One Commentor (No. 2) indicated that the member had voted ''yes'' with respect to the proposed rule change, but recommended that the industry would be more effectively served by a structure that provides for minority non-industry public representation on the Boards of the NASD and the two operating subsidiaries. This Commentor also asked that it receive information related to the budget for the reorganization and the NASD's plan for funding the changes.

Another Commentor (No. 3) stated that the NASD was being turned over to the SEC.

One Commentor (No. 1) was opposed to the proposed rule change and stated in a cover letter that the NASD was relinquishing self-regulation and peer review of disciplinary matters. The Commentor stated that these are principles basic to why the NASD was formed and why it has stayed in existence. In a separate letter, attached as an exhibit to the cover letter, the Commentor states that there was extensive consideration given to the formation of the NASD and that there is no evidence that the organization was to be anything else but self-regulatory. This Commentor states, ''* * * we are taking the 'self' out of regulatory and making it an 'outside' regulatory organization * * *.'' The Commentor objects to the inclusion on the Board of the NASD of people with no knowledge of the securities business and the elimination of District representation on the Board. The Commentor does not believe that the peer review system for disciplinary matters should be eliminated. The Commentor also argues that in light of the dramatic changes

[5] *See,* Securities Exchange Act Release No. 37107 (April 11, 1996).

[6] Non-Industry Governors will be ''representative of issuers and investors and not associated with a member of the Corporation.''

[7] 15 U.S.C. § 78*o*–3.

[8] Notice to Members 95–101 also proposed to eliminate Article V to the By-Laws and amend Section 7 to Article VII of the By-Laws to establish a new procedure for nomination of the members of the Board of Governors. These amendments are not being proposed at this time. *See also* note 1, *supra.*

being proposed, there should be time and opportunity for public comment and objects that there was less than a month over a holiday period to complete the ballot associated with Notice to Members 95–101.

This Commentor urges that the proposed changes set forth in the two notices will result in inefficiency and ineffectiveness. It is argued that greater industry participation is needed on all levels and that there should be greater shared responsibility with the SEC.

The Commentor states that the proposed changes are not adequately supported by the report of the Select Committee, pointing out that the 200 interviews did not include industry persons in an industry with over 500,000 individual registered persons and over 5,400 member firms and that the report of the Select Committee states that the ''NASD has done its job exceedingly well.'' The Commentor argues that the significant changes proposed by the NASD should be accompanied by greater industry consensus and states the Commentor's belief that the proposal is intended only to ''appease'' the public perception.

In response to the foregoing comments, the NASD believes that the NASD Select Committee on Structure and Governance did the most thorough analysis of this organization in the history of the NASD. The Select Committee concluded that the NASD has discharged its responsibilities ''professionally and reasonably'' but not ''with perfection or without difficulty * * *''. In particular, the Select Committee determined that the NASD's governance structure had failed to keep pace with the significant growth and continuing evolution of the Nasdaq market, and the concomitant expansion of the NASD's regulatory responsibilities. The Select Committee concluded that the structure of the NASD would benefit from increasing public representation on the NASD's governing bodies. The Select Committee found, in this regard, that public governors on the NASD's Board constitute 21% of the Board in comparison to 50% public membership on the Boards of other self-regulatory organizations. The Select Committee pointed out that majority public representation was necessary to ensure adequate representation of the public interest as the NASD carries out its quasi-governmental functions; to maintain and enhance Nasdaq's competitive position; and to preserve public confidence in the NASD's oversight of the broker/dealer profession.

With respect to the Commentors' concerns regarding the potential elimination of self-regulation, the Select Committee stated that they believed that such greater public participation on the Boards of the NASD and its subsidiaries would not detract from self-regulation. The Select Committee believed that public confidence in the self-regulatory process would be enhanced by giving non-members a more significant role in the decision-making process and that the self-regulatory concept is not sacrificed by increasing public representation on the NASD's governing Boards. Finally, the Select Committee pointed that NASD members would still be fairly represented in the Association's affairs and have ample opportunity to bring their expertise and viewpoint to bear.[9]

With respect to the NASD's disciplinary process, which was focused on by Commentor No. 3, the Select Committee indicated that the core of the NASD's disciplinary process was sound, but emphasized that the disciplinary process had become more contentious, complex and consequential than the existing system was designed to accommodate. The Select Committee pointed out that the issues that the NASD addresses today increasingly turn on questions of law rather than industry standards and practice. Further, the NASD is now more likely to impose more severe penalties when infractions are found. These changes in the disciplinary environment lead to the greater likelihood that respondents in NASD disciplinary actions will more often retain counsel and NASD hearings have increasingly resembled a courtroom, rather than the traditional business forum for which the existing procedures were designed. As a result, the Select Committee recommended that the NASD adopt procedures and rules that would enhance the fairness and orderly conduct of the more complex and contentious disciplinary proceedings that now are prevalent.[10]

The NASD believes that the proposed rule change to amend the NASD By-Laws will begin the restructuring necessary to implement the principles set forth in the report of the Select Committee and that such changes will benefit the membership by enhancing public confidence in the NASD's regulation of the securities industry.

[9] *See,* Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors (''Report''), at C–12, C–13, C–21.

[10] Report, at C–17, C–21, C–22.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to be able to carry out the purposes of the Act and to comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (subject to further changes consistent with the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries to be submitted to the NASD membership) to assure a fair representation of the NASD's members, in the selection of its directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these temporary rules and subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(6) in particular and the Act in general.

The Commission finds good cause for temporarily approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the proposed rule change is intended to enhance the NASD's ability to carry out its regulatory obligations under the Act by restructuring the NASD's Board of Governors in conformance with the recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The proposed changes to the structure of the Board would also be in conformance the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries, submitted in a separate rule filing to the SEC, that set forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the

NASDR and Nasdaq following the reorganization of the NASD. Because the NASD's Board of Governors has been reorganized to be consistent with the proposed rule change and is to hold its first meeting on April 11, 1996, accelerating approval of the proposed rule change on a temporary basis will benefit members and the public interest by permitting the NASD Board of Governors to conduct business at its first meeting.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1996.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved and effective through July 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9511 Filed 4–17–96; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–37107; File No. SR–NASD–96–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Allocation and Delegation of Authority and Responsibilities by the National Association of Securities Dealers, Inc., to NASD Regulation, Inc., and the Nasdaq Stock Market, Inc.

April 11, 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 April 10 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed [1] with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change for a period of ninety (90) days.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its rules to: (1) add new Rule 0130 [2] to the NASD's rules delegating to the subsidiaries of the NASD, NASD Regulation, Inc. (''NASDR'') and The Nasdaq Stock Market, Inc. (''Nasdaq''), the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 (''Act''), and (2) adopting a Plan of Allocation and Delegation (Plan) setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR and Nasdaq, following the reorganization of the NASD.

Below is the text of the proposed rule change. All language is new.

[1] On April 11, 1996, the NASD filed an amendment to its filing. This amendment supersedes the original filing. This Notice reflects the amendments.

[2] The SEC recently approved rule filing SR–NASD–95–51 which reorganizes the NASD Manual. The proposed new rule contained in this rule filing is numbered according to the numbering methodology adopted with the new Manual.

0130 Delegation, Authority and Access

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and The Nasdaq Stock Market, Inc., hereinafter ''Subsidiaries'') the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 (''Act'').

(b) Notwithstanding any delegation of authority to the Subsidiaries pursuant to this rule, the staff, books, records and premises of the Subsidiaries are the staff, books, records and premises of the Association subject to oversight pursuant to the Act, and all officers, directors, employees and agents of the Subsidiaries are the officers, directors, employees and agents of the Association for purposes of the Act.

Plan of Allocation and Delegation of Functions by NASD to Subsidiaries

I. NASD, Inc.

The NASD, Inc. (referenced as ''NASD''), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as ''NASDR'') and The Nasdaq Stock Market, Inc. (referenced individually as ''Nasdaq'') (referenced collectively as the ''Subsidiaries''). The term ''Association'' shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members

The following definitions are applicable to Governors of the NASD, Directors of the Subsidiaries, and Members of Committees of the NASD and the Subsidiaries.

1. ''Industry'' Governors, Directors or Committee Members shall include (a) officers, directors and employees of brokers and dealers and persons who have been employed in any such capacity at any time within the prior three years; and (b) persons who have consulting or employment relationships with or provide professional services to the Association and persons who have had any such relationship or provided any such services at any time within the prior three years.

2. ''Non-industry'' Governors, Directors or Committee Members shall be (a) Public Governors; (b) officers and employees of issuers of securities listed on the Nasdaq Stock Market or traded in the over-the-counter market; (c) persons affiliated with brokers and dealers that

operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); (d) employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of the non-member entity; and (e) other individuals who would not be Industry Governors, Directors or Committee Members.

3. ''Public'' Governors, Directors or Committee Members shall be non-industry persons who have no material business relationship with a broker, dealer or the Association.

B. Functions and Authority of NASD

The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A. and III. A, the NASD has delegated certain authority and functions to its subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the Exchange Act or as set forth in the articles of incorporation or the by-laws is hereby reserved, except as expressly delegated to the subsidiaries. In addition, the NASD expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations and functions are fulfilled.

2. To delegate authority to the Subsidiaries to take actions on behalf of the NASD.

3. To elect the Subsidiary Boards of Directors.

4. To review the rulemaking and disciplinary decisions of the Subsidiaries (See Sections II.C. and III.C. below).

5. To coordinate actions of the Subsidiary Boards as necessary.

6. To resolve any disputes between the Subsidiaries.

7. To administer common overhead and technology of the Subsidiaries.

8. To administer the Office of Internal Review as provided in Section I.D.4 below.

9. To manage external Association relations on major policy issues.

10. To direct the Subsidiaries to take action necessary to effectuate the purposes and functions of the Association.

C. Board of Governors

1. Composition

The NASD Board of Governors (''NASD Board'') shall be composed of at least Nine (9) and no more than Thirteen (13) Governors, a majority of whom shall be Non-industry (including at least Two (2) Public Governors). The Chief Executive Officer (''CEO'') of NASD shall be a Governor. In the event that the NASD Board shall consist of Eleven (11) or more Governors, at least Three (3) shall be Public Governors.

2. Election Procedures

a. Commencing with the selection of Governors to take office in April of 1997, Governors (except the CEO of NASD) shall be elected by a majority vote of those members of the NASD casting ballots on a slate of nominees presented to the NASD membership by the National Nominating Committee for election by secret ballot.

b. National Nominating Committee:

(1) The National Nominating Committee shall be composed of at least Six (6) and not more than Nine (9) members, equally balanced between Industry and Non-industry Committee Members (including at least Two (2) Public Committee Members). In the event that the Nominating Committee shall consist of Seven (7) or more members at least Three (3) shall be Public Committee Members. If at any time there shall be an odd number of members of the National Nominating Committee, Non-industry Committee Members shall be in the majority. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. Two members of the National Nominating Committee shall be selected by each of the Subsidiaries and the NASD. No more than three of the Committee Members and no more than two of the Industry Committee Members shall be current members of the NASD Board or of the Board of Directors of one of the Subsidiaries (collectively the ''Association Boards''). Any member of the National Nominating Committee who is a current member of any Association Board shall be in his/her final year of service on any Association Board.

(2) Members of the National Nominating Committee shall be appointed annually by the NASD Board and may be removed for cause by a majority vote of the NASD Board.

(3) The National Nominating Committee shall propose to the NASD Board one or more nominees for each vacant or new Governor position, and for each Director position on the Boards of Directors of the Subsidiaries.

3. Contested Elections

a. A candidate for the NASD Board who has not been nominated may be included on the ballot if the candidate presents duly executed petitions to the National Nominating Committee demonstrating that such candidate has the support of Two (2) percent of the members of the NASD.

b. A candidate for the NASD Board shall be certified by the National Nominating Committee and included on the ballot only if the Committee certifies that the candidate's petitions are duly executed by the requisite number of members of the NASD and that the candidate meets the qualifications for the position to be filled, as defined in Section I.A. above.

4. Term of Office

a. Each Governor shall hold office for a term of not more than three years, or until a successor is elected and qualified, or until death, disqualification, resignation, or removal. Except as provided in paragraph (b) and (c), Governors may not serve more than two consecutive terms of office on any Association Board.

b. The CEO of the NASD shall serve as a member of the NASD Board until a successor is selected and qualified, or until death, resignation, disqualification, or removal.

c. Where a Governor is appointed to fill a term of less than one year, such Governor shall not be precluded from serving two additional terms of office.

5. Vacancies

a. If a Governor position becomes vacant before the expiration of the Governor's term of office, the National Nominating Committee shall recommend, and the NASD Board shall elect by majority vote of the remaining Governors, a person satisfying the criteria for a Governor position of the type (Industry, Non-industry or Public), vacated as defined in Section I.A. above, unless such Governor has a remaining term of office of no more than six months, in which case no replacement will be required.

b. If a Governor no longer satisfies the criteria for the category in which he or she was elected (Industry, Non-industry or Public) and has a remaining term of office of more than six months, such

Governor shall be automatically removed from office unless the remaining members of the NASD Board determine otherwise by a majority vote and the failure to remove the Governor does not affect the proportional representation set forth in Section I.C.1. above.

D. Audit Committee

1. The Audit Committee shall be a committee of the NASD Board and shall include the following functions:

a. To ensure the existence of adequate controls and the integrity of the financial reporting process of the Association.

b. To recommend to the NASD Board, and to monitor the independence and performance of, the certified public accountants retained as outside auditors by the NASD.

c. To direct and oversee all the activities of the Association's internal review function, including but not limited to management's responses to the internal review function.

2. Composition: The Audit Committee shall be composed of Four (4) or Five (5) members of the NASD Board, none of whom are officers or employees of the Association. The Committee shall include at least one Public Committee Member who shall serve as Chairperson of the Committee. The Committee shall have no more than two Industry Committee Members. If the Committee shall have Four (4) members it shall have not more than One (1) Industry Committee Member. In the event that the size of the NASD Board shall at any time consist of Eleven (11) or more members, the Audit Committee shall include Two (2) Public Committee Members. In addition, each Subsidiary shall designate a Public Member of its Board as a liaison to the Audit Committee. The Audit Committee may consult with that person on issues relating to the functions of the Subsidiary, but neither the liaison nor any officer or employee of the Association shall serve on the Audit Committee in any voting or non-voting capacity.

3. No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular NASD member, company or individual if he or she has a material interest in, or a professional, business or personal relationship with, that member, company or individual or if such participation shall create an appearance of impropriety. Committee members shall consult with the General Counsel of NASD to determine if recusal is necessary. In the event that a member of the Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Committee.

4. Office of Internal Review: The Audit Committee shall have exclusive authority: (a) To hire or terminate the Director of Internal Review, (b) to determine the compensation of the Director of Internal Review, and (c) to determine the budget for the Office of Internal Review. The Office of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the NASD on matters it deems appropriate and may request that senior NASD management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.

E. Management Compensation Committee

1. The Management Compensation Committee shall be a Committee of the NASD Board and shall have the following functions: To consider and recommend compensation policies, programs and practices for employees of the Association.

2. Composition: The Management Compensation Committee shall be composed of Four (4) or more Members of the NASD Board, equally balanced between Industry and Non-industry Governors. If at any time there shall be an odd number of members of the Management Compensation Committee, Non-industry Committee Members shall be in the majority.

F. Access to and Status of Officers, Directors, Employees, Books, Records and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Section II.A. and III.A. below, the staff, books, records and premises of the Subsidiaries are the staff, books, records and premises of the NASD subject to oversight pursuant to the Securities Exchange Act of 1934 (''Act''), and all officers, directors, employees and agents of the Subsidiaries are officers and directors, employees and agents of the NASD for purposes of the Act.

II. NASD Regulation, Inc. (''NASDR'')

A. Delegation of Functions and Authority

1. The NASD hereby delegates to the NASDR and the NASDR assumes the following responsibilities and functions as a registered securities association:

a. To establish rules and regulations for NASD members including, but not limited to fees and membership requirements and the Code of Arbitration and Mediation Procedure.

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) arbitration of disputes among and between NASD members, associated persons and customers, (ii) public and private sale or distribution of securities including underwriting arrangements and compensation, (iii) financial responsibility, (iv) qualifications for NASD membership and association with NASD members, (v) clearance and settlement of securities transactions, (vi) NASD member advertising practices, (vii) administration, interpretation and enforcement of Association rules, (viii) administration and enforcement of Municipal Securities Rulemaking Board (''MSRB'') rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, and (ix) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. To take necessary or appropriate action to assure compliance with Association policy, Association and MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.

d. To administer programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market.

e. To examine and investigate NASD members and associated persons to determine if they have violated Association or MSRB rules, the federal securities laws, and other laws, rules and regulations the Association has the authority to administer, interpret or enforce.

f. To administer Association enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions.

g. To administer the Association's office of professional hearing officers.

h. To conduct arbitrations, mediations and other dispute resolution programs.

i. To conduct qualification examinations and continuing education programs.

j. To operate the Central Registration Depository (''CRD'').

k. To determine whether applicants for NASD membership have met the requirements for membership established by the Association.

l. To place restrictions on the business activities of NASD members consistent with the public interest, the protection of investors and the federal securities laws.

m. To determine whether persons seeking to register as associated persons of NASD members have met such qualifications for registration as may be established by the Association, including whether statutorily disqualified persons will be permitted to associate with particular NASD members and the conditions of such association.

n. To oversee all District Office activities.

o. To establish the annual budget and business plan for NASDR.

p. To determine allocation of NASDR resources.

q. To establish and assess fees and other charges on NASD members, persons associated with NASD members and others using the services or facilities of NASDR.

r. To manage external relations on enforcement, regulatory and other policy issues with Congress, the Securities and Exchange Commission (''SEC''), state regulators, other self-regulatory organizations, business groups, and the public.

2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

B. Board of Directors

1. Subsequent to January of 1997, the NASDR Board of Directors (''NASDR Board'') shall be composed of at least Twenty-one (21) and no more than Twenty-five (25) Directors. The President of NASDR shall be a member of the NASDR Board and the remaining members shall be equally balanced between Industry and Non-industry Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. The NASDR Board shall include Seven (7) representatives of NASD members representing geographical regions defined by the NASDR Board, and at least Three (3) at-large industry representatives. The NASDR Board shall include at least Ten (10) Non-industry Directors, including at least Three (3) Public Directors. In the event that the NASDR Board shall consist of more than Twenty-two (22) Members, at least Four (4) shall be Public Directors. The NASDR Board shall include representatives of an issuer of investment company shares or an affiliate of such an issuer and an insurance company or an affiliated NASD member. The CEO of NASD shall be an ex-officio non-voting member of the NASDR Board.

2. Election Procedures.

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the NASDR Board.

b. The Seven (7) Industry Members of the NASDR Board shall be nominated by Regional Nominating Committees for consideration by the National Nominating Committee. A Regional Nominating Committee shall consist of equal numbers of members from each district comprising the regions and members shall be selected by the District Committee for that District.

c. Any officer, director or employee of an NASD member who has not otherwise been nominated by the Regional Nominating Committee may seek nomination if the candidate presents duly executed petitions to the Regional Nominating Committee for the appropriate geographical region demonstrating that such candidate has the support of at least Ten (10) percent of the NASD members in that region. The Regional Nominating Committee shall submit the names of its nominees and of all the candidates presenting qualifying petitions to the members in that region for nomination by secret ballot. The Regional Nominating Committee shall nominate to the National Nominating Committee the candidate receiving the most votes.

d. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under Section I.C.4. and 5. above.

C. NASDR Board Procedures

1. Disciplinary Action—Any initial disciplinary decision of the Association, including dismissals, may be appealed to the NBCC within 15 calendar days, or called for review by the NBCC within 45 calendar days, as set forth in the Code of Procedure. A decision of the NBCC may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or NASD Board. Any disciplinary decision not appealed or called for review shall become the final action of the Association upon the expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

2. Statutory Disqualification Decisions—Any decision of the NBCC with respect to statutory disqualification may be called for review by any member of the NASDR Board not later than its meeting next following the NBCC's decision. A decision of the NBCC or the NASDR Board may be called for review by any member of the NASD Board not later than its meeting next following the decision of the NBCC or NASDR Board but which is 15 calendar days or more following the decision of the NBCC or the NASDR Board. Any decision that is not called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. A respondent has the right to appeal a final action of the Association taken by the NBCC, NASDR or NASD to the SEC.

3. Rule Filings—Any rule change adopted by the NASDR Board that imposes fees or other charges on persons or entities other than NASD members or that the NASDR Board refers to the NASD Board because in the view of the NASDR Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the NASDR Board does not refer a rule change to the NASD Board for review, the NASDR Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the NASDR Board's action but which is 15 calendar days or more following the action of the NASDR Board. During the process of developing rule proposals, NASDR staff shall consult with and seek the advice of Nasdaq staff before presenting any rule proposal to the NASDR Board.

D. Supplemental Delegation Regarding the Formation of Committees

1. The NASDR Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the NASDR Board in carrying out the functions and authority delegated to the NASDR by the NASD.

Such delegations shall be in conformance with law, the charter and the by-laws and the requirement as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NASDR Board in accordance with procedures established by the NASDR Board.

(a) National Business Conduct Committee—A National Business Conduct Committee may be created for the purpose of:

(i) Hearing and deciding appeals of initial disciplinary decisions of the Association.

(ii) Considering and recommending to the NASDR Board policy and rule changes relating to the business and sales practices of NASD members and associated persons.

(iii) Considering and recommending Association enforcement policies, including policies with respect to fines and other sanctions.

(b) The NBCC shall be composed of at least Eight (8) members of the NASDR Board equally balanced between Industry and Non-industry Committee Members (including at least one Public Member). If at any time there shall be an odd number of Committee Members, a majority of the Members shall be Non-industry. Each NBCC Member shall be elected to serve a one-year term.

2. Other Committees—With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in 1. above, such committee shall be created in accordance with the by-laws by resolution or resolutions adopted by a majority of the whole NASDR Board.

III. Delegation to Nasdaq

A. Delegation of Functions and Authority

1. The NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.

b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports and comparisons of transactions.

c. To collect, process, consolidate and provide to NASDR the information requisite to operation of the surveillance audit trail.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over-the-counter market, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. To develop and adopt rules, interpretations, policies and procedures to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.

g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.

h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or the trading in the third market for securities listed on a registered exchange.

i. To develop, adopt and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.

j. To establish standards for participation in The Nasdaq Stock Market, other markets or systems operated by Nasdaq and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in any of such markets and systems have met the standards established for participants; and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.

k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.

l. To establish the annual budget and business plan for Nasdaq.

m. To determine allocation of Nasdaq resources.

n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by the Nasdaq Stock Market with Congress, the SEC, state regulators, other self-regulatory organizations, business groups, and the public.

2. All action taken pursuant to authority delegated pursuant to 1. shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.

B. Board of Directors

1. Composition—As of January of 1997 the Nasdaq Board of Directors (''Nasdaq Board'') shall be composed of at least Eleven (11) and not more than Fifteen (15) Directors. The President of Nasdaq shall be a member of the Nasdaq Board and the remaining Members shall be equally balanced between Industry and Non-industry Directors, including at least two (2) Public Directors. If at any time there shall be an odd number of Directors, excluding the President, a majority of the Directors other than the President shall be Non-industry. In the event that the Nasdaq Board shall consist of more than Twelve (12) Members, at least Three (3) shall be Public Directors. The CEO of NASD shall be an ex-officio non-voting member of the Nasdaq Board.

2. Election Procedures.

a. The National Nominating Committee shall propose to the NASD Board nominees for each position on the Nasdaq Board.

b. Terms of Office and Vacancies: The terms of office of Directors and the procedures for the filling of vacancies shall be the same as those set forth under I.C.4. and 5. above.

C. Nasdaq Board Procedures

1. Listing/Delisting Decisions—Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Committee (''Listing Committee'') within 15 calendar days, or called for review by any member of the Listing Committee within 45 days, as set forth in the Code of Procedure. A decision of the Listing Committee may be called for review by any member of the Nasdaq Board not later than its meeting next following the Listing Committee's decision. A decision of the Nasdaq Board may be called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's decision but which is 15 calendar days or more following the decision of the Listing Committee or the Nasdaq Board. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the

time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Committee, Nasdaq Board or NASD to the SEC.

2. Rule Filings—Any rule change adopted by the Nasdaq Board that imposes fees or other charges on persons or entities other than NASD members or issuers or that the Nasdaq Board determines to refer to the NASD Board because in the view of the Nasdaq Board it raises significant policy issues shall be reviewed and ratified by the NASD Board before becoming the final action of the Association. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action will become the final action of the Association unless called for review by any member of the NASD Board not later than its meeting next following the Nasdaq Board's action but which is 15 calendar days or more following the action of the Nasdaq Board. During the process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASDR staff before presenting any rule proposal to the Nasdaq Board.

D. Supplemental Delegation Regarding the Formation of Committees

The Nasdaq Board may designate one or more committees and delegate to such committees such powers and authority, as necessary and appropriate, to act on behalf of the Nasdaq Board in carrying out the functions and authority delegated to Nasdaq by the NASD. Such delegations shall be in conformance with law, the charter and the by-laws and the requirements as set forth below as part of this Plan of Allocation and Delegation. Any action taken by a committee pursuant to delegated authority shall be subject to review, ratification or rejection by the Nasdaq Board.

1. Specific Committees

a. Quality of Markets Committee (''QOMC'')

(1) The QOMC shall be a committee appointed by the Nasdaq Board on issues relating to the fairness, integrity, efficiency and competitiveness of the information, order handling and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms, and Nasdaq-listed companies, and other participants in The Nasdaq Stock Market.

(ii) To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.

(2) The QOMC will have broad representation that is equally balanced between industry and non-industry committee members. The committee members shall include broad representation of participants in The Nasdaq Stock Market, including investors, market makers, integrated retail firms and order entry firms.

b. Market Operations Review Committee (''MORC'')

(1) the MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in Section 70 of the Uniform Practice Code (''UPC''), in accordance with the procedures specified therein. NASDR shall receive weekly reports of all determinations made by the staff or MORC under Section 70 of the UPC for regulatory review.

(2) The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10% of its total revenues.

c. Firm Operations and Clearance Committee (''FOCC'')

(1) The FOCC shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To issue interpretations or rulings with respect to Sections 4–10, 12, 46, 67–68 and 71 of the UPC, as well as any other provision of the UPC pertaining to transactions and post execution processing.

(ii) To advise the Nasdaq Board with respect to modifications to the UPC dealing with the transactions and post execution processing.

d. Nasdaq Listing and Hearing Review Committee (''Listing Committee'')

(1) The Listing Committee shall be a committee appointed by the Nasdaq Board and shall have the following functions:

(i) To advise the Nasdaq Board on the formulation or modification of initial or maintenance eligibility criteria and fees applicable to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.

(ii) To exercise the functions set forth in Article IX of the Code of Procedure, in accordance with the procedures specified therein.

(2) The Listing Committee shall be appointed by resolution of the Nasdaq Board and shall have no more than Fifty (50) percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed 10% of its total revenues.

2. Other Committees

With respect to any other committees that may be formed pursuant to this Section D for purposes other than those set forth in (1) above, such committee shall be created in accordance with the By-laws by resolution or resolutions adopted by a majority of the whole Nasdaq Board.

E. Stockwatch

The Stockwatch section handles the trading halt functions for The Nasdaq Stock Market and exchange-listed securities traded in the over-the-counter market (i.e., the Third Market). Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by NASDR, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that the NASDR may deem necessary. NASDR staff at all times will have access to all records and files of the Stockwatch function.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to implement a reorganization of the NASD and to create two new operating subsidiaries, NASD Regulation, Inc. (''NASDR'') and The Nasdaq Stock Market, Inc. (''Nasdaq''), the NASD is proposing to: (1) adopt a new rule delegating to the NASD's subsidiaries, NASDR and

Nasdaq, the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Act; and, (2) adopt a Plan of Allocation and Delegation setting forth the purpose, function, governance, procedures and responsibilities of the NASD, NASDR, and Nasdaq, following the reorganization of the NASD.

The proposed Plan is organized in three principal parts, one each of the three major entities that will constitute the reorganized NASD: the parent corporation, National Association of Securities Dealers, Inc.; the regulatory subsidiary, NASD Regulation, Inc.; and the stock market operating subsidiary, The Nasdaq Stock Market, Inc.[3] The Plan, the contents of which are self-explanatory, describes the purposes, functions, governance, procedures and responsibilities of each entity.

The first part of the Plan describes the parent corporation, National Association of Securities Dealers, Inc. The Plan sets forth the purpose and function of the NASD; the composition of the Board of Governors, including provisions relating to the qualifications for Governors, election procedures, term of office, vacancies and removal from office; the function, composition and reporting structure of the Audit Committee and the Office of Internal Review; the function and composition of the Management Composition Committee; and the SEC's access to and status of officers, directors, employees, books, records and premises of the subsidiaries.

The second part of the Plan describes the regulatory subsidiary, NASD Regulation, Inc. The Plan sets forth the delegation of authority to the NASDR by the NASD; the purpose, function and authority of the NASDR; the composition of the qualifications for members of the Board of Directors from 1997 forward, including, provisions relating to election procedures; the function and composition the National Business Conduct Committee; the Board's procedures for reviewing disciplinary actions, statutory disqualification decisions and proposed rule change recommendations; and the Board's procedures for initiating actions.

The third part of the Plan describes the stock market operating subsidiary, the Nasdaq Stock Market, Inc. The Plan sets forth the delegation of authority to Nasdaq; the purpose and function of Nasdaq; the composition of and qualifications for members of the Board of Directors, including, provisions relating to election procedures and the authority of the Board; the Board's procedures for reviewing listing/delisting decisions, and rule change recommendations; the Board's procedures for initiating actions; the functions and composition of the Quality of Markets Committee; and functions of the Stockwatch Department.

In connection with establishing the composition of and qualifications for members of the Boards, Parts I.A.2.(c) and (d) of the Plan provides for an alternative definition of ''Non-Industry'' Governors, Directors or Committee Members. The alternative definition would include as ''Non-Industry:''

> persons affiliated with brokers and dealers that operate solely to assist the securities-related activities of the business of non-member affiliates (such as a broker or dealer established to (i) distribute an affiliate's securities which are issued on a continuous or regular basis, or (ii) process the limited buy and sell orders of the shares of employee owners of the affiliate); [and] employees of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who are primarily engaged in the business of non-member entity. * * *.

This provision is intended to recognize that certain individuals represent primarily non-industry constituencies, even though their company has an affiliated or subsidiary member firm where the member engages in the securities business solely or primarily to assist in the non-securities activities of its affiliates. For examples, certain large industrial corporations engage in nearly continuous distributions of debt securities to enable them to do business and do so through an affiliated member firm. In addition, insurance companies and investment companies (or their sponsors) often have an affiliated member firm that engages solely or primarily in the distribution of their affiliate's securities. In these and similar instances, the NASD does not believe that employees of the member's affiliate should be categorized as ''industry'' Governors, Directors or Committee Members on the basis that their primary constituency is non-industry and their involvement with the securities industry is only incidental to their non-industry responsibilities.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act[4] in that the terms of the Plan will provide for the organization of the Association in a manner that will permit the Association, through its operating subsidiaries, to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by Association members and persons associated with members with the Act, the rules and regulations thereunder, the rules of the Association and the federal securities laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission believes that the proposed rule change will allow the NASD to be able to carry out the purposes of the Act to comply with, and enforce compliance by its members and associated persons, with the provisions of the Act, the rules and regulations thereunder, and the rules of the NASD. Furthermore, the amendments are designed (subject to further changes consistent with the NASD Plan of Allocation and Delegation of Functions by NASD to Subsidiaries to be submitted to the NASD membership) to assure a fair representation of the NASD's members, in the selection of its

[3] The Plan does not discuss other wholly owned subsidiary corporations of the NASD, such as the Securities Dealers Risk Purchasing Group, Inc. and Securities Dealers Insurance Co., Ltd. These and any other wholly owned subsidiaries of the NADS not described in the Plan do not perform any of the Association's regulatory functions or the operating functions related to the operation of the Nasdaq Stock Market. In addition, the Plan does not address the NADS's ownership role in corporations such as the National Securities Clearing Corporation or the Depository Trust Company.

[4] 15 U.S.C. § 78*o*–3.

directors and administration of its affairs as well as comply with the public and non-industry participant requirements of the Act. It is envisioned that these temporary rules and subsequent changes that may be implemented from time-to-time will enable the NASD to better comply with the requirements of Section 15A(b)(6) in particular and the Act in general.

The Commission finds good cause for temporarily approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will enhance the NASD's ability to carry out its regulatory obligations under the Act. The Commission believes that the proposed rule change is intended to accomplish certain allocations and delegations of authority necessary to reorganize the NASD, and establish as separate subsidiaries the NASDR and Nasdaq in accordance with the recommendations of The Select Committee on Structure and Governance in order to enable the NASD to meet its regulatory and business obligations. The Plan, which is part of this proposed rule change sets forth the purpose, functions, governance, procedures, and responsibilities of the NASD, the NASDR and Nasdaq following the reorganization of the NASD. The NASD's Board of Governors, which has been reorganized to be consistent with the proposed rule change, will hold its first meeting on April 11, 1996. The reorganization of the NASD Board of Governors is also reflected in proposed rule changes to the NASD By-Laws submitted in a separate rule filing and which the Commission is approving on an accelerated basis. Accordingly, the Commission believes that accelerating the approval of the proposed rule change will benefit members and the public interest by permitting the NASD Board of Governors to conduct business at its meeting on April 11, 1996.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 9, 1996.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved and effective through July 10, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–9512 Filed 4–17–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders. Also, the publication of these indexes and digests should assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., Suite 925, Washington, DC 20004: telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the Federal Register (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. the FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	**Federal Register** publication
10/1/90–12/31/90 ...	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ...	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ...	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93 ...	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.

Dates of quarter	**Federal Register** publication
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94*	60 FR 4454; 1/23/95*.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95	61 FR 1972; 1/24/96.

*Due to administrative oversight, the index for the third quarter of 1994, including information pertaining to the decisions and orders issued by the Administrator between July 1 and September 30, 1994, was not published on time. The information regarding the third quarter's decisions and orders, as well as the fourth quarter's decisions and orders in 1994, were included in the index published on January 23, 1995.

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Also, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from January 1, 1996, to March 31, 1996.)

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1/4/96	CP94**0089.
96–2	Skydiving Center of D.C.
1/5/96	CP94EA0261.
96–3	America West Airlines.
2/13/96	CP93WP0172, CP93WP0173, CP93WP0174.
96–4	South Aero.
2/13/96	CP94SW0023.
96–5	Alphin Aircraft.
2/13/96	CP93EA0334.
96–6	Evgeniy V. Ignatov.
2/13/96	CP94GL0076.
96–7	Delta Air Lines.
2/15/96	CP94SO0003.
96–8	Empire Airlines.
2/29/96	CP95NM0034.
96–9	[Airport Operator].
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96–10	USAir.
3/11/96	CP95EA0100.
96–11	USAir.
3/19/96	CP94GL0190.
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Civil Penalty Actions—Orders Issued by the Administrator

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Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of March 31, 1996)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1996, to March 31, 1996. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of [Airport Operator]

Order No. 96–1 (1/4/96)

Vehicle Gates Must Control Pedestrian Access. This case arose when FAA security inspectors found gaps, under or near two vehicle gates at the airport, that were large enough to permit unauthorized individuals to slip through into the air operations area. Despite repeated requests and warnings from the inspectors, the airport operator failed to correct the problem. The airport operator argued that it did not violate 14 CFR 107.13(a)(1), the regulation requiring it to control access to the air operations area, because the gates were vehicle gates. Contrary to the airport operator's arguments, the vehicle gates must control pedestrian access.

Regulation Not Unconstitutional. Section 107.13(a)(1) is not unconstitutionally vague or overboard.

Penalty. The law judge's imposition of a $1,000 civil penalty is affirmed.

In the Matter of Skydiving Center of Washington, D.C.

Order No. 96–2 (1/5/96)

Appeal Dismissed. Complainant has failed to perfect its appeal by filing an appeal brief, as required by the Rules of Practice. Therefore, its appeal is dismissed.

In the Matter of America West Airlines

Order No. 96–3 (2/13/96)

Failure to use methods acceptable to the Administrator. America West violated 14 CFR 43.13(a) when it repaired three Boeing 737s with speed tape. It employed methods that were not in the Boeing Structural Repair Manual and had not been accepted or approved by the Administrator for this type and extent of damage to these aircraft. America West failed to prove that it had used practices that were in keeping with those employed in the industry for this type of damage to these aircraft. Air carriers must use repair methods that have been approved or accepted by the Administrator even if the actual minor repair on a particular aircraft does not have to be inspected by a FAA representative before putting the aircraft back into service.

Airworthiness. There is a two-prong test for airworthiness: (1) the aircraft must conform to its type design or supplemental type design and to any applicable airworthiness directives, and (2) it must be in a condition for safe operation. In this case, the parties stipulated that the aircraft with the minor damage and temporary speed tape repairs did not present a safety problem. However, the aircraft with the minor damage (engine fan cowl puncture of a Boeing 737–300, and flap trailing edge delamination of a Boeing 737–200 and a Boeing 737–300) and the speed tape were not in conformity with their type designs. Although the type designed were not introduced into evidence, there was still sufficient circumstantial evidence to prove that the aircraft did not conform to their type designs. Consequently, America West violated 14 CFR 121.153 when it operated these aircraft in an unairworthy condition.

Sanction. The civil penalties totalling $44,750, for these operational and maintenance violations are affirmed.

In the Matter of South Aero

Order No. 96–4 (2/13/96)

Competency Check Flights. Competency check flights administered by a company check pilot in a company plane occurred on duty time rather than rest time and therefore needed to be recorded on the company's flight and duty time records, even though the air carrier did not pay the pilots specifically for the time the pilots spent taking their competency checks.

In the Matter of Alphin Aircraft, Inc.

Order No. 96–5 (2/13/96)

Petition for Modification Granted. FAA Order No. 95–22 is modified in part to allow Alphin Aircraft to file an appeal brief within 30 days of service of FAA Order No. 96–5.

In the Matter of Evgeniy V. Ignatov

Order No. 96–6 (2/13/96)

Assault and Interference with Crewmember. Willful intent to injure need not be present to show assault under 14 CFR 91.11, which prohibits assaulting, intimidating, threatening, or interfering with a crewmember in the performance of the crewmember's duties. Under Section 91.11, assault includes the concept of battery. In the instant case, Respondent committed two separate violations of Section 91.11. The first violation, which consisted of interfering with a crewmember, occurred when Respondent refused to sit down in compliance with the seat belt light and the flight attendant's request, and when he blocked the flight attendant's passage as she was attempting to serve the passengers. The second violation, which consisted of assault, occurred when Respondent pushed past the flight attendant when there was not enough room to get by safely, grabbed the flight attendant's shoulders, and stepped on the flight attendant's foot, causing her sharp pain and a bruise.

Sanction. The civil penalty the law judge imposed, of $750 for one violation and $1,000 for the other, is not too severe. Although Respondent points out that in another case involving the same regulation, the civil penalty assessed was only $1,000, that case involved only one violation of Section 91.11, while the instant case involves two separate violations.

In the Matter of Delta Air Lines, Inc.

Order No. 96–7 (2/15/96)

Appeals Dismissed. The parties have withdrawn their respective notices of appeal in this matter. Therefore, the cross-appeals are dismissed.

In the Matter of Empire Airlines, Inc.

Order No. 96–8 (2/29/96)

Appeals Dismissed. The parties have withdrawn their respective notices of appeal in this matter. Therefore, the cross-appeals are dismissed.

In the Matter of [Airport Operator]

Order No. 96–9 (3/5/96)

Reconsideration Denied. Nothing in the airport operator's petition for reconsideration warrants modification or reversal of Order No. 96–1. Notably absent from the petition is any case law or other legal authority to support the airport operator's contention that Order No. 96–1 was in error. Moreover, the principal arguments contained in the petition are not new. They have already been considered and rejected by the

Administrator. Section 13.234(d) of the Rules of Practice, 14 CFR 13.234(d), permits the Administrator to dismiss summarily petitions to reconsider that are repetitious.

In the Matter of USAir, Inc.

Order No. 96–10 (3/11/96)

Appeals dismissed. Complainant withdrew its appeal from the law judge's initial decision. Complainant's appeal is dismissed.

In the Matter of USAir, Inc.

Order No. 96–11 (3/19/96)

Appeal dismissed. Respondent withdrew its appeal from the law judge's initial decision. Respondent's appeal is dismissed.

In the Matter of USAir, Inc.

Order No. 96–12 (3/19/96)

Appeal dismissed. Respondent withdrew its appeal from the law judge's initial decision. Respondent's appeal is dismissed.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

AvLex, published by Aviation Daily, 1156 15th Street, NW, Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483, is placing the decisions on CD–ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on Compuserve and FedWorld.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on April 11, 1996.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 96–9493 Filed 4–17–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 7, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A),

800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington DC., on April 11, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28167.

Petitioner: Mr. Reid W. Dennis.

Sections of the FAR Affected: 14 CFR 91.313(d).

Description of Relief Sought: To allow carriage of non-paying passengers (including photographic personnel and other non-crew members mission support personnel) on Mr. Dennis' Gruman HU–16C, Registration No. N44RD, restricted category civil aircraft on photographic historical research missions and for associated travel with their equipment onboard the aircraft as it makes it way between intended photographic locations at remote historical sites.

[FR Doc. 96–9494 Filed 4–17–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 162; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 162 meeting to be held May 7–9, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Approval of the Minutes of the Previous Meeting; (4) Reports of Related Activities Being Conducted by Other Organizations; (5) Review of ''ATN Avionics MOPS''; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 11, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–9495 Filed 4–17–96; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held May 6–9, 1996, starting at 9:30 a.m. on May 6. The meeting will be held at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Monday, May 6, Plenary Convenes at 9:30 a.m.: (1) Introductory Remarks; (2) Approval of the Agenda; (3) Review and Approve the Summary of the Previous Meeting; (4) Discussion of High Level System Design Tutorial of TDMA (Technical Overview, Operational Applications, and Tuning Issues); (5) Reports on CSMA Validation and FAA Vocoder Activity. Tuesday, May 7, Working Group (WG) 2, VHF Data Radio Signal-in-Space MASPS, Report on ICAO AMCP 4, and continue refinement of upper layers. Wednesday, May 8, (Morning) WG 2 Continues; (Afternoon) WG 3 Review Activities in VHF Digital Radio MOPS Document Program. Thursday, May 9, Plenary Reconvenes at 9:00 a.m.; (6) Reports from WG 2 and WG 3; (7) Address Future Work; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 11, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–9496 Filed 4–17–96; 8:45 am]

BILLING CODE 4810–13–M

Federal Highway Administration

[FHWA Docket No. MC–96–14]

Notice of Request for Reinstatement of an Expired Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to reinstate the expired information collection that documents the qualification of commercial motor vehicle drivers and the expired information collection that notifies the FHWA of a new motor carrier.

DATES: Comments must be submitted on or before June 17, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202)

366–5763, 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:

Title: Driver Qualification Files.

OMB Number: 2125–0065.

Background: The authority for driver qualification files is contained in 49 U.S.C. 504, 31133, 31136, and 31502, and 49 CFR 1.48, with penalty provisions in 49 U.S.C. 521 and 522. 49 CFR 391.51 requires a motor carrier to maintain a driver qualification file for each regularly employed driver and each intermittent, casual, and occasional driver. The file contains the minimum amount of information necessary to document that a driver is qualified to drive a commercial motor vehicle in interstate commerce. A driver qualification file is used by the FHWA and motor carrier to ensure that a driver who operates a commercial motor vehicle in interstate commerce, can by reason of experience and/or training, safely operate a type of commercial motor vehicle; has been issued an appropriate driver's license; and has not been disqualified to operate a commercial motor vehicle. Public demand for highway safety requires that the hiring of commercial motor vehicle drivers be restricted to those drivers with records which prove their ability to safely operate a commercial motor vehicle.

Respondents: Motor Carriers.

Estimated Annual Burden on Respondents: 34 minutes for newly hired drivers; 8 minutes for drivers employed longer than one year; 1 minute for intermittent, casual, and occasional drivers.

Estimated Total Annual Burden: 1,047,749 hours.

Frequency: The requirements pertaining to driver qualification files are recordkeeping requirements. A driver qualification file must be kept by a motor carrier as long as the driver is employed by such motor carrier and for 3 years thereafter.

Title: Motor Carrier Identification Report.

OMB Number: 2125–0544.

Background: Section 206 of the Motor Carrier Safety Act of 1984 requires the Secretary of Transportation to establish minimum safety standards for commercial motor vehicle safety. 49 U.S.C. 504 provides the Secretary of Transportation authority to require special reports containing answers to questions asked by the Secretary and to prescribe the form of records. Authority pertaining to commercial motor vehicle safety has been delegated to the FHWA. In order to administer its safety standards, the FHWA needs to possess a database of entities that are subject to the agency's standards. A database necessitates that entities subject to the FHWA's standards notify the agency of their existence. Therefore, 49 CFR 385.21 requires all motor carriers beginning operations to file the Motor Carrier Identification Report, Form MCS–150, within 90 days of beginning operations.

Respondents: Motor Carriers.

Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 2,917 hours.

Frequency: One-time reporting requirement.

Authority: 23 U.S.C. 315; sec. 3506(c)(2)(A) of Pub.L. 104–13; 49 CFR 1.48.

Issued on: April 8, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–9562 Filed 4–17–96; 8:45 am]

BILLING CODE 4910–22–P

Environmental Impact Statement: Anchorage, AK

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement; Reference: Federal Register, 59 FR 46879, 9/12/94, 95 lines.

SUMMARY: The FHWA is issuing this notice to inform the public that an environmental impact statement (EIS) will not be prepared for the proposed upgrading and extension of Dowling Road from the Raspberry Road Interchange at Minnesota Drive eastward to Lake Otis Parkway. The scope of the proposed project has been reduced and there should be no significant environmental impacts as a result of this project.

FOR FURTHER INFORMATION CONTACT: James Bryson, Right-of-Way/Environmental Engineer, Federal Highway Administration, P.O. Box 021648, Juneau, AK 99802–1648 or; Steven R. Horn, Preliminary Design & Environmental Supervisor, Alaska Department of Transportation and Public Facilities (ADOT&PF), P.O. Box 196900, Anchorage, AK 99519–6900.

SUPPLEMENTARY INFORMATION: The new project scope considers the upgrading of Dowling Road between the Old Seward Highway and Lake Otis Parkway, a distance approximately 1.7 km (1 mi.). The revised proposal would widen this segment of Dowling Road to a four-lane urban arterial with auxiliary lanes. Any consideration of the upgrading or extension of Dowling Road as defined by the original project scope will be deferred until a Major Investment Study (MIS) is performed for the area.

The adoption of this proposal is supported by written and oral comments gathered during the public scoping process that commenced in August 1994. Public comments favored the early upgrading of the most heavily travelled portion of the existing roadway, but questioned the need for extending Dowling Road to Minnesota Drive. Since the shortened project would relieve traffic congestion and have independent utility, it was decided to reduce the project scope and defer action on the remainder of the route until the MIS is completed.

Issued on April 8, 1996.

Robert E. Ruby,

Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 96–9533 Filed 4–17–96; 8:45 am]

BILLING CODE 4910–22–M

UNITED STATES INFORMATION AGENCY

Curriculm Consultants Exchange Program with the New Independent States

ACTION: Notice; request for proposals.

SUMMARY: The Office of Academic Programs, Academic Exchange Programs Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Applications from U.S. educational, cultural, and other nonprofit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply for assistance to exchange qualified educators or advanced graduate students from the United States, Armenia, Azerbaijan*, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, the Russian Federation, Ukraine and Uzbekistan for up to one academic year for the purposes of curriculum consultations and development in the fields of the humanities and social sciences.

*Please note: Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant

overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

The administering organization for the Curriculum Consultants Exchange Program will be responsible for recruiting, selecting, placing, monitoring and evaluating participants. Applicants should have the capability to recruit foreign participants from and place U.S. participants in all NIS countries It is expected that USIA funding will contribute to the exchange, but not entirely support it. Due to budgetary considerations, and to encourage broad participation, on the cost per participant to USIA will weigh heavily in the consideration of organizational applications.

PROGRAM DATES: *Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5:00 p.m. Eastern Standard Time on Friday, May 31, 1996. Faxed documents will not be accepted, nor will documents postmarked May 31, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

DURATION: Preference for the duration of Curriculum Consultant Exchanges is one academic semester, but proposals up to one academic year will also be considered. Programs may not start before August 31, 1996. It is estimated that the majority of programs will begin Spring semester, 1997, with a minimal number of placements in Fall semester, 1997.

FOR FURTHER INFORMATION CONTACT: Contact the Office of Academic Programs, Academic Exchange Programs Division, European Programs Branch, E/AEE Room 246, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 205–0525, (202) 260–7985 (fax), to request a Solicitation Package, which includes more detailed award criteria, all applications forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet

The Solicitation Package maybe downloaded from USIA's website at http://www/usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Select ''Education and Cultural Exchanges'', then select ''Current Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before beginning to download.

Please specify the Curriculum Consultants Exchange Program—E/AEE, on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

Program Authorization

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 7 copies of the application, as well as a disk submission (outlined below) should be sent to U.S. Information Agency, Ref.: E/AEE–96–05, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Disk Submission: Applicants must also submit to E/XE the ''Executive Summary'' and ''Proposal Narrative'' sections of each proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Announcement Name and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/AEE–96–05.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' and 'Geographic Diversity' sections for specific suggestions on incorporating diversity into the total proposal. Please note that in order to increase the geographical and ethnic diversity of the Curriculum Consultants Exchange Program, not more than ten percent of the total participants exchanged can be from or placed in Moscow or St. Petersburg.

Visa/Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Proposed Budget

Applicants must submit a comprehensive line item budget based on the budget guidelines in the Proposal Submission Instructions (PSI). Budget award may not exceed $250,000. The Agency reserves the right to reduce, increase or revise programs and budgets in accordance with the needs of the program. It is required that requested administrative funds not exceed twenty percent of the total amount requested, including administrative expenses for orientation. Cost-sharing and matching are expected from the administering organization and should be detailed in the proposed budget. Host and sponsor institutions are strongly encouraged to provide cost-sharing toward stipends and/or room and board expenses so that more may participate. Cost-sharing may also be in the form of direct program and participant costs.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (Revised), Subpart C.23. Grants will

only be awarded to eligible organizations with four years or more experience in conducting international exchange programs.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete formatting instructions. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) International travel (via American flag carrier);

(2) Domestic travel for foreign participants only;

(3) Travel and lodging for academic or professional meetings (not to exceed $700 per participant);

(4) Stipend/Maintenance costs;

(5) Housing;

(6) Materials allowance/curriculum translation (not interpretation);

(7) Orientation costs;

(8) Insurance;

Please refer to the Solicitation Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the program office, the appropriate geographic area office, the USIA post overseas, and the budget and contracts office. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea—Proposals should reflect academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to partner country, proposed follow-up, and qualifications of program staff and participants.

2. Program planning—Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives—Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

4. Multiplier effect/impact—Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of diversity—Proposals should demonstrate the substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation, program meetings, resource materials and follow-up activities). Proposals should demonstrate organizational capacity to recruit from and place program participants in areas outside Moscow and St. Petersburg and countries in the NIS outside the Russian Federation.

6. Organizational capacity—Proposed personnel and organizational resources should be adequate and appropriate to achieve the program or project's goals.

7. Organization's record/ability—Proposals should demonstrate an organizational record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on activities—Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Project evaluation—Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness—The overhead and administrative components of the proposal, including salaries, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing—Proposals should maximize cost-sharing through other private sector support as well as organizational direct funding contributions.

12. Value to U.S.-partner country relations—Proposed programs should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 12, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–9597 Filed 4–17–96; 8:45 am]

BILLING CODE 8230–01–M

Foreign Language and Area Studies—U.S. Students and Scholars; Request for Proposals

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop and administer programs in

cooperation with USIA that will assist U.S. citizens who are graduate students and postdoctoral scholars in North African, Middle Eastern and South Asian studies. Activities permitted under this program include foreign language training, foreign area studies and foreign area research for periods ranging from two to twenty-four months abroad.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Near and Middle East Research and Training Act (Pub. L. 102–138 section 228 as amended by Pub. L. 103–236 section 233).

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

For the purpose of this program, the geographic area refers to the region consisting of countries and peoples covered by the Bureau of Near Eastern and South Asian Affairs of the U.S. Department of State as of October 1991, and Turkey.

Current eligible locales for overseas research are: Mauritania, Morocco, Tunisia, Egypt, Israel, the West Bank and Gaza, Jordan, Syria, Turkey, Saudi Arabia, Kuwait, United Arab Emirates, Bahrain, Oman, Qatar, Yemen, Pakistan, India, Sri Lanka, Bangladesh and Nepal.

Funding of proposals for the above places is subject to official security and/or travel restrictions.

NMERTA grantees are required to provide proof of insurance to the grant-making organizations before fellowship funds can be released. Health and accident, MEDEVAC and repatriation insurance is recommended.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEN–96–01.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, May 31, 1996. Faxed documents will not be accepted, nor will documents postmarked May 31, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Grants should begin no earlier than September 1, 1996 and no later than September 31, 1996 and end no later than 24 months thereafter.

FOR FURTHER INFORMATION CONTACT: Patricia Spann or John Sedlins in the North Africa, Middle East and South Asia Branch, E/AEN, Room 212, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 619–5368, fax number (202) 205–2466, Internet address PSPANN@USIA.GOV or JSEDLINS@USIA.GOV to request a Solicitation Package continuing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/ or from the Internet Gopher at gopher://gopher.usia.gov. Select ''Education and Cultural Exchanges'', then select ''Current Request for Proposals (RFPs).'' Please read ''About the Following RFPs'' before beginning to download.

Please specify USIA Program Assistant Patricia Spann on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and nine copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEN–96–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547. Applicants must also submit the ''Executive Summary'' and ''Proposed Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

Pursuant to the Agency's authorizing legislation, (the Fulbright-Hays Act, Pub. L. 87–256), programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Support is offered in two categories. Organizations may address one or both categories, but must submit a separate proposal for each category. Special emphasis will be given to the social sciences and humanities.

Category A—Pre-doctoral students. Organizations that are awarded funding shall solicit and receive applications from U.S.-citizen, graduate students nationwide who seek to conduct overseas study and research in the eligible locales listed above. Eligible fields of study and research shall be open to students of all disciplines with a new or established interest in topics requiring study or research in the geographic area(s). Eligibility shall be restricted to applicants who have a baccalaureate degree and who are already enrolled in graduate-level academic programs.

Category B—Postdoctoral scholars. Organizations that are awarded funding shall solicit and receive applications from U.S.-citizen, postdoctoral scholars nationwide who seek to conduct overseas study and research in the eligible locales listed above. Eligible fields of study and research shall be open to students of all disciplines with a new or established interest in topics requiring study or research in the geographic area(s). Eligibility shall be

restricted to applicants who have a Ph.D. and who have postdoctoral college or university teaching experience.

Guidelines

In preparing a proposal, organizations should address the subjects of program design and scheduling, as well as program administration. At a minimum, a successful proposal should clearly cover publicity, selection process, orientation for participants, and logistical and scheduling measures. A basic plan for post-program follow-up and evaluation should also be included. The proposal must be typewritten, double-spaced and may not exceed twenty (20) pages including budget attachments.

Proposed Budget

Awards will not exceed $200,000. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive, line-item budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Budget guidelines apply to both category A and B described above.

Allowable costs for the program include, but are not limited to, the following:

(1) Roundtrip international travel via an American flag carrier;

(2) Domestic travel;

(3) Maintenance and per diem;

(4) Academic program costs (e.g. book allowance);

(5) Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);

(6) Cultural enrichment costs (e.g. admissions, tickets, etc.);

(7) USA-based administration costs (e.g. advertisement, recruitment and selection costs).

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Administrative costs are not to exceed 20 percent of the requested budget. Cost-sharing is encouraged.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the appropriate USIA Area Office and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 6, 1996.

Dell Pendergrast,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 96–9361 Filed 4–17–96; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 61, No. 76
Thursday, April 18, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-190-000]

Colorado Interstate Gas Company; Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–8725 begining on page 15792 in the issue of Tuesday, April 9, 1996, the Docket number is corrected to read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-119-002]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–7081 appearing on page 12069 in the issue of Monday, March 25, 1996, the Docket number is added to read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0033]

John D. Copanos; Denial of Hearing; Final Debarment Order

Correction

In notice document 96–5687 beginning on page 9711 in the issue of Monday, March 11, 1996, make the following correction:

On page 9713, in the first column, in the fifth line, ''(*insert date of publication in the* Federal Register)'' should read ''March 11, 1996''.

BILLING CODE 1505–01–D

federal register

Thursday
April 18, 1996

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 92, et al.
Importation of Animals and Animal Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. 94–106–1]

RIN 0579–AA71

Importation of Animals and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning importation of animals and animal products. The proposed changes include a complete rewrite of 9 CFR part 92, subparts D (ruminants) and E (swine), a transfer of current part 92 to 9 CFR part 93, and the establishment of a new part 92. We are proposing to establish criteria for foreign ''regions'' based on risk class levels. The criteria would be used to establish importation requirements for particular animals and animal products from different regions outside of the United States. We believe this change is in accordance with international trade agreements entered into by the United States. We are also proposing to allow, under certain conditions, the unloading and reloading at the port of arrival of meat and other animal products otherwise prohibited entry into the United States. We believe this change is warranted because it would remove unnecessary restrictions on the importation of meat and other animal products into the United States.

DATES: Consideration will be given only to comments received on or before July 17, 1996.

ADDRESSES: Comments may be submitted as paper copies or by electronic mail. If you submit paper copies, please send an original and three copies of your comments to Docket No. 94–106–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–106–1. We encourage the submission of copies by electronic mail, since this both facilitates our analysis of the comments and allows us to make the text of comments available to the public via the Internet. The e-mail address for comments on this proposed rule is 94–106–1@aphis.usda.gov. Please be sure to include your full name and organization in any comments you submit by e-mail. If your e-mail comment is a duplicate of a paper copy you have submitted, please state this in the first line of your e-mail message. Comments submitted by e-mail will be posted to the APHIS Regionalization Proposal Web Page within a few days after receipt. This Web page also contains copies of the proposed rule in several formats and related information. The Web page URL is http://www.aphis.usda.gov/PPD/region. Both paper and e-mail comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), has promulgated regulations regarding the importation of animals and animal products in order to guard against the introduction into the United States of animal diseases not currently present or prevalent in this country. These regulations are set forth in the Code of Federal Regulations (CFR), title 9, chapter 1.

Under the current regulations, with several exceptions, restrictions on the importation of animals and animal products are based on whether a particular disease exists in any part of the foreign country from which the animals or animal products originate or transit before importation into the United States. (In a few cases, restrictions are placed on the importation of animal products from countries where a certain disease is not known to exist, because of risk factors such as those countries' importation policies or proximity to countries where the disease exists.)

The current USDA policy of prohibiting or restricting importations based solely on whether a disease exists anywhere within a national entity does not take into account whether regions within a country, or regions made up of several countries, have in place adequate natural and man-made defenses against the introduction or spread of animal diseases in those regions. Nor, we believe, do the current regulations adequately address variations in the risk of disease transmission both between regions where a disease exists and between those where the disease is not present. We believe that these policies unnecessarily prohibit or restrict the importation of animals and animal products in many situations where such importation can be carried out with insignificant risk of introducing disease agents into the United States.

Therefore, in this document, we are proposing to revise the regulations in six different parts of 9 CFR to establish importation criteria for certain animals and animal products based on the level of disease risk in specified geographical regions. We believe that these regulatory changes are consistent with and meet the requirements of international trade agreements that have recently been entered into by the United States, as discussed below under the heading ''International Trade Agreements.''

Limits of This Proposed Rule

It is important to note that the changes we are proposing at this time apply only to the importation of ruminants and swine, and their products. The importation of all other types of animals would continue to be governed by the current regulations, rather than by a regionalized, risk class approach. It is our intent, however, to extend, in future rulemaking, the regionalized, risk class approach to the importation of all animals and animal products that are subject to the regulations.

International Trade Agreements

Both the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT) Uruguay Round agreements contain provisions establishing the rights and obligations of signatory countries concerning sanitary and phytosanitary (SPS) regulation. SPS measures are generally defined as governmental measures intended to protect human, animal, or plant life or health. The applicable provisions are, respectively: Articles 709 through 724 of the NAFTA (''NAFTA–SPS''); and the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (''WTO–SPS'').

Although the two agreements differ in a few respects, both NAFTA–SPS and WTO–SPS provide that:

> A Member Country shall recognize the concepts of regions of low pest or disease prevalence, and shall ensure that its sanitary and phytosanitary measures are adapted to take into account the characteristics of regions from which products originate and to which products are destined. In doing so, the

Member should take into account relevant geography, ecology, methods of surveillance and effectiveness of control systems. [NAFTA–SPS, Article 716; WTO–SPS, Articles 6.1–6.2]

The changes being proposed in this regulation are intended to comply with U.S. obligations under NAFTA–SPS and WTO–SPS with respect to the importation of live animals and animal products.

Format Changes to 9 CFR

Because we are proposing to make significant substantive changes to the current regulations in order to incorporate provisions regarding both regionalization and the risk classification of exporting regions, we believe it is necessary, to aid readers of the regulations, to make several major formatting changes to 9 CFR. Although we are proposing to amend in some way parts 92, 93, 94, 95, 96, and 98, only two of those parts—parts 92 and 93—would require extensive structural reformatting. We would make a number of substantive changes to part 94, but that part would largely retain its current format. Parts 95, 96, and 98 would require fewer substantive changes and no format changes.

Parts 92 and 93

The regulations in current parts 92 and 93 govern the importation into the United States of certain live animals, in order to prevent animals infected with certain diseases from transmitting those diseases to livestock and poultry in the United States. The animals regulated by current part 92 include birds, poultry, horses, ruminants, swine, dogs, hedgehogs and possums. Current part 93 regulates the importation of elephants, hippopotami, rhinoceroses, and tapirs.

As part of the format changes we are proposing, we would move the regulations in current part 92 to part 93. Along with this relocation of the current part 92 regulations, we would make extensive changes to two of the subparts in current part 92—subpart D (ruminants) and subpart E (swine). These changes are discussed in detail below in this supplementary information.

The movement of current part 92 to part 93 would leave no regulations at part 92. We are proposing to fill the vacated part 92 with an entirely new set of regulations, which would include criteria for establishing geographical regions for the purpose of importing animals and animal products, and criteria for classifying regions according to the disease risk (risk assessment and classification) that animals and animal products from those regions would pose to U.S. livestock if no import restrictions were in place. New part 92 would also include a list of restricted diseases for the purposes of the import regulations. Each of these provisions is discussed in detail below.

Additionally, new § 92.4 would include a listing of the risk classification APHIS has assigned to each region of the world for each restricted disease agent. The listing in this proposed rule consists, for the most part, of countries, because, under the existing regulations, disease status is determined on a country-by-country basis. However, this proposed rule would allow for application for regional status for areas smaller or larger than individual countries. The application process is discussed in this Supplementary Information under the heading ''Application for Risk Class Recognition.''

Proposed Part 92

As noted above, we are proposing to set forth in part 92 the criteria for classification of regions according to risk assessment as required by NAFTA and GATT. These criteria would be incorporated into the amended regulations in parts 93, 94, 95, 96 and 98, which contain restrictions on the importation of certain animals and animal products.

As revised, § 92.2 would list those disease agents and vectors of agents that would be restricted entry into the United States, either because they are not known to exist in the United States or because they are subject to Federal or cooperative Federal/State control or eradication programs in the United States. Some of the diseases that we are proposing to list in revised § 92.2 are already addressed in the current import regulations. In addition, we are proposing to add other specified diseases.

The diseases we would add to those already addressed in the regulations have, in many cases, been of concern even under the current regulations, but have not posed a significant practical risk because the countries in which they exist have also been countries in which rinderpest or foot-and-mouth disease (FMD) exists. The current regulations ban the importation into the United States of most animals and animal products from countries in which rinderpest or foot-and-mouth disease exists. In those cases where animals and animal products are allowed to be imported from these countries, they must meet stringent quarantine or processing requirements. These prohibitions and safeguards effectively ban many animals and products affected with other diseases.

However, we believe that several factors now make it necessary to provide specific regulatory restrictions for certain diseases not currently addressed in the regulations. The first factor is this proposed revision of the import regulations, which would provide for regionalization and for various classification levels of disease risk. Under this proposal, for example, and unlike under the current regulations, the fact that FMD exists in one region of a country may not significantly restrict the importation of animals and animal products from another region of the same country, if the two regions are so separated and monitored that the risk of the disease being transferred from one region to the other is negligible. This is a departure from the current regulations, in which FMD in any part of country determines the FMD status of the entire country.

The second factor is the progress many countries have made in eradicating, or moving toward eradication of, rinderpest and FMD in specific regions. In countries where FMD exists, an increasing number of regions have eradicated or come close to eradicating the disease. Therefore, under this proposal, import restrictions due to FMD in one part of a country could no longer be relied upon to guard against the importation of diseases not specifically addressed in the regulations.

In addition to FMD and rinderpest viruses, other disease agents that are specifically addressed in current parts 92 and 94 are: In part 94, African swine fever virus, hog cholera (also known as classical swine fever virus), swine vesicular disease virus, velogenic Newcastle disease virus (also known as avian pneumoencephalitis or VVND virus), fowl pest (also known as fowl plague or highly pathogenic avian influenza), bovine spongiform encephalopathy, and Salmonella enteritidis phage type 4; in part 92, Akabane virus, bluetongue virus, epizootic hemorrhagic disease virus, contagious pleuropneumonia, surra caused by *Trypanosoma evansi,* fever ticks and other ticks, vesicular stomatitis, *Trypanosoma vivax,* dourine caused by *Trypanosoma equigenitalium,* glanders caused by *Pseudomonas mallei,* equine piroplasmosis caused by *Babesia equi* or *B. caballi,* equine infectious anemia, contagious equine metritis caused by *Taylorella equigenitalis,* African horse sickness virus, Venezuelan equine encephalitis virus, epizootic lymphangitis caused by *Histoplasma farciminosum,* and *Taenia*

multiceps (also known as *Taenia coenurus*).

Additions of Exotic Diseases

In this document, we are proposing to add the following exotic diseases to the list of restricted diseases mentioned above. A description of the disease that would be added is included with each entry.

African or wildebeest or alcephalene malignant catarrhal fever (MCF) is caused by a herpesvirus found in Africa, and is primarily transmitted from carrier wildebeest to cattle when the wildebeest calve. Wildebeest are the primary reservoir of this virus. The ''sheep-associated form'' of MCF is present in most of the world, including the United States. Neither the wildebeest-transmitted form nor the sheep-associated form of MCF are known to spread directly from cattle to cattle, so the principal concern would be importation of wildebeest or other host species from Africa that could increase the spread and seriousness of the disease in cattle or native wildlife species, some of which have been shown to be susceptible. (Heuschele, W. P., 1992, *Foreign Animal Diseases,* U. S. Animal Health Assoc., Richmond, VA, 273–284.) Because it cannot be concluded with certainty that other ruminants cannot spread the disease, the restrictions of this proposal with regard to MCF would apply to all ruminants.

Aino virus is a Bunyavirus of the Simbu group that produces fatal deformities in cattle similarly to Akabane virus. It has been found in Australia and Asia, particularly in Japan and Taiwan. It is transmitted by various species of Culicoides and, because of the distribution of potential vectors in the southern United States, could potentially become endemic in that area if it were to become established. (Moriwaki, M. *et al.* 1977. Natl. Inst. Anim. Heal. Qtrly, Jap. 17(3):95–106.; St. George, T. D. *et al.* 1989, in The Arboviruses: Epidemiology and Ecology. Vol IV. Ed. Monath, T.P. CRC Press, Boca Raton, FL, 145–166.; Fukutomi, T. 1991. J. Jap. Vet. Med. Assoc. 44(1):17–19.)

Bovine ephemeral fever, also known as Kotonkan, Obadhiang, Puchong, or bovine epizootic fever virus, is an arthropod-borne viral disease of cattle and water buffalo in Africa, Australia and Asia. Affected cattle suffer severe loss of weight and condition, decreased milk production, and infertility in males. The reservoir hosts are not known, but water buffalo have been shown to have a prolonged viremia (Young, P.L., 1979, Austl Vet J. 55(7):349–350). It could be a potentially serious problem in the southern States of the United States because of the distribution of potential vectors. If it were to become established, there would be little likelihood that it could be eradicated. (St. George, T. D., 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 125–133.)

Bovine infectious petechial fever, also known as Ondiri disease, is caused by the rickettsia *Erlichia* (*Cytocetes*) *ondiri* in cattle and results in high mortality, abortion, and reduced lactation. It is found primarily in east Africa, and a tick vector is suspected. Infected cattle can remain infected for many months. There may be potential ticks or other vectors in the United States that can transmit the rickettsial cause of this disease. (Davies, G. 1993. Vet. Microbiol. 34(2):103–121.)

Brucella melitensis has been eradicated from the United States, but is found in Mexico, Central and South America, southern Europe, Asia, and Africa. It is a serious disease, causing abortion in sheep and goats, and can also infect cattle. It is also a serious human health risk. (Alton, G.G., 1990, in Animal Brucellosis., Ed. Neilson, K. and J. R. Duncan, CRC Press, Boca Raton, FL, 383–410.)

Congo or Crimean hemorrhagic disease virus is caused by tick-transmitted virus and causes fever, anorexia and depression in cattle and goats in Africa and Asia. It may cause a sporadic, severe, and often fatal disease in people. A tick-rodent-cattle cycle maintains the virus in nature. Birds are responsible for distributing infected ticks, but most birds are resistant. Infection has been reported in ratites. Transmission to humans has been reported to occur with direct contact with blood of infected cattle and ostriches. This group of viruses is not found in the Western hemisphere but could possibly become established, and would be virtually impossible to eradicate. (Lvov, D.K., 1994, in Handbook of Zoonoses, 2nd Ed. Section B., ed. Beran, G. W., CRC Press, Boca Raton, FL, 251–252.)

Contagious agalactia of sheep and goats caused by *Mycoplasma agalactiae* results in fever, malaise, arthritis, eye lesions, and, in females, mastitis and reduced milk production. Losses are due to high morbidity and loss of milk and meat production. It is found in parts of Europe, Asia, and North Africa and has been reported from Australia, South Africa, and South America. Low virulence strains are found in North America, but do not cause classical disease. Infected animals are the primary reservoir. This is potentially a costly disease for the milk goat industry in the United States. (Maré, J., 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 140–145.)

Globidiosis is due to the protozoan parasites *Besnoitia besnoiti* that affect ruminants, causing damage to skin, subcutis, blood vessels, mucous membranes and other tissues. They cause large, thick-walled cysts and severe debilitation of the animal. Convalescence is slow, and permanent sterility can occur in male animals. Affected animals are lifelong carriers, but cats and other felines are the definitive carrier host. It is found in southern Europe, Africa, Asia, and South America, and is transmitted by several biting flies, many species of which exist in the United States. A related species, *Besnoitia bennetti* is rare, but has been found in the southern States of the United States, and can cause a chronic disease in horses. This species would not be considered a restricted agent. (Levine, N.D., 1985, Veterinary Protozology, Iowa St. U. Press, Ames, IA, 256–259.)

Goat pox and *sheep pox* viruses cause acute to chronic generalized pox lesions, fever, and pneumonia with a long recovery and occasionally high mortality in sheep and goats. They are found in Africa, Asia, and parts of Europe. Besides loss of animal productivity, these viruses cause damage to hides and wool. The viruses are very resistant and can be carried on hides or wool. (House, J. A, 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 343–350.)

Heartwater, also known as Cowdriosis, is caused by a rickettsia *Cowdria ruminantium* and produces an acute disease of ruminants transmitted by ticks. It is primarily transmitted by ticks of the genus *Amblyomma.* It is one of the three most serious livestock diseases in Africa, and has been found on some of the islands of the Caribbean. Two native North American species of *Amblyomma* have been found capable of transmitting the disease. Some wild ruminant species in Africa are known to be carriers of the infection. This is potentially one of the most serious exotic disease threats to the U. S. livestock industry. (Mare, J., 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 218–228.)

Japanese encephalitis virus causes encephalitis in people and horses. Its primary reservoir is in birds and in swine, in which it causes stillbirths. It is transmitted by various species of

mosquitoes. It is primarily found in temperate and tropical eastern Asia. (Shope, R. E., 1992. Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 246–253.)

Jembrana disease, also known as Tabanan disease, is caused by a retrovirus related to Bovine Immunodeficiency-like Virus (Chadwick, B. J., 1995, J. Gen. Virol. 76(1):189–192). It causes a rinderpest-like disease of cattle and buffalo, and has caused heavy losses in Indonesia. Recovered cattle may be lifetime carriers. Ticks are thought to be a vector. (Hartaningih, N., *et al.*, 1993. Vet. Microbiol. 38(1–2):15–23; ibid. 38(1–2):23–29; Darma, D.M.N, *et al.*, 1994. Vet. Immunol. & Immunopath. 44(1):31–44.) This virus could be a serious disease problem in much of the world. Until the epidemiology is better known, great care should be taken to avoid importing animals that may carry this virus into the United States.

Lumpy skin disease virus, also known as Neethling virus, causes an acute or chronic disease in cattle characterized by skin nodules and lymphadenitis. The virus is similar to sheep pox and goat pox viruses. It is found throughout Africa and the Middle East. It is transmitted primarily by biting flies. Losses are primarily due to a prolonged recovery, with emaciation, lowered milk production, hide damage, and other secondary infections. The virus may persist for long periods on contaminated premises. The disease is very difficult to eradicate once it becomes established. (House, J. A., 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 264–272.)

Melioidosis, caused by the saprophytic soil bacteria *Pseudomonas pseudomallei,* affects people and a wide variety of animals and resembles glanders. It occurs widely throughout southeastern Asia and parts of the tropical Americas, including Puerto Rico. It is a serious public health problem in southeastern Asia and also causes serious loss of production in animals. Animals may be latently infected for many months. Once the soil becomes contaminated, it is virtually impossible to eliminate the organism. The soil of the southeastern States in the United States could readily become endemically contaminated with the organism. Care must be taken to be certain that imported animals are not the source of introduced contamination with the organism, as they would more likely result in soil contamination than infected humans. (Grove, M. G., Harrington, K. S., 1994, Handbook of Zoonoses, Section A. 2nd Ed., CRC Press, Boca Raton, FL, 155–165.)

Near east encephalomyelitis affects horses and domestic ruminants, causing a low-grade fever, nervous signs and death. The causative agent is uncertain, but a tick-borne virus is suspected. The disease is similar to Borna disease, which is found in Europe. The disease is found in the Middle East and Asia. (Robertson, 1976, Handbook on Animal Diseases in the Tropics, British Vet. Assoc., London, Eng, UK. 67–68.)

Nairobi sheep disease virus, also known as Dugbe or Ganjam virus, is transmitted by ticks to sheep and goats and is characterized by acute hemorrhagic gastroenteritis and high mortality. The disease is found in Africa and Asia (Ganjam virus). The primary reservoir is the tick *Rhipicephalus appendiculatus,* in which transovarial transmission of the virus occurs. Other ticks have been found able to transmit the virus, but cannot maintain the virus because they do not transmit it through their eggs. (Groocock, C. M., 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 285–292.)

Parafilaria bovicola is a filarial worm that causes hemorrhagic nodules on the skin, with bruise-like lesions under the skin and in muscle tissues. Several licking flies have been shown to be capable of transmitting the parasite, including some present in the United States. Although the parasite has been found in imported cattle in Canada, it does not appear to have become established. All regions of the world except Australia, New Zealand, North America, and South America appear to be affected with this parasite. Losses include damage to hides, and condemnation of meat from slaughtered animals. (Steen Bech-Nielsen, 1992, Foreign Animal Diseases, U. S. Animal Health Assoc., Richmond, VA, 293–302.)

Peste des petits ruminants, also known as goat plague, is a contagious disease due to a virus similar to rinderpest virus in sheep and goats. Rare cases have been described in cattle and swine, but these animals appear unable to transmit the disease to other animals. It occurs in Africa, the Middle East and southern Asia. Wild ungulates such as the white-tailed deer in the United States are susceptible. The virus could become established in sheep or goats in the United States and cause severe losses if it became established in white-tailed deer herds or other native North American wild ruminants. (Saliki, J. T., 1992, Foreign Animal Diseases, U.S. Anim. Health Assoc., Richmond, VA, 303–310.)

Rift Valley fever virus affects ruminants, dogs, cats and people. It causes abortions and a fatal illness in young animals, and is transmitted by various species of mosquitoes, including native North American species. Its distribution has been limited to Africa. Animals do not remain carriers of the virus for long periods of time. (Peters, C. J. and K. J. Linthicum, 1994, in Handbook of Zoonoses, 2nd Ed., Section B., Ed. Beran, G. W., CRC Press, Boca Raton, FL, 125–138.)

Teschen disease, also known as polioencephalomalacia of swine, Talfan disease, or benign enzootic paresis, is an infectious nervous disease of pigs caused by an enterovirus similar to human poliomyelitis. It has been found only in Europe and parts of Africa. Control programs in Europe have virtually eliminated the virulent form of the virus in Europe. Similar enteroviruses of swine with low pathogenicity are found throughout the world, including North America. Infected swine may shed the virus for several weeks even though they may be asymptomatic. (Derbyshire, J. B., 1989, in Virus Infections of Porcines, Ed. M. B. Pensaert, Elsevier Science Publishers, B.V., New York, NY, 225–239.)

Theileriosis, also known as east coast fever, corridor disease, or Mediterranean fever, are a group of diseases that affect cattle and that occur primarily in Africa and the Mediterranean area. The causative agent of east coast fever, *Theileria parva*, and the causative agent of corridor disease, *T. lawrenci*, are limited in their distribution to Africa by the distribution of *Rhipicephalus* spp. ticks, which are the intermediate host. However, the existence of potential vectors in the United States could make introduction of this agent an animal health problem in this country. Mediterranean fever is caused by *T. annulata,* which is found in the Mediterranean area and eastern Europe and for which the intermediate host are ticks of the *Hyalomma* genus. Malignant theileriosis of sheep and goats is caused by *T. hirci*, and the intermediate host has been shown to be ticks of the genus *Rhipicephalus* and *Hyalomma*. It is similar to *T. annulata* in its distribution. (Young, A. S. and C. M. Groocock, 1992, Foreign Animal Diseases, U.S. Anim. Heal. Assoc., Richmond, VA, 177–187; 1976, Handbook on Animal Diseases in the Tropics, Ed. Robertson, A., British Vet. Assoc., London, Eng., 178–189.)

Tick-borne encephalitis, also known as louping ill or Central European encephalitis, is caused by a tick-transmitted group of viruses found in Asia and Europe. Louping ill primarily affects sheep with an acute, often fatal, encephalitis. Swine, cattle, horses, and humans may also be affected. There may

be ticks in the United States that could transmit these agents, but they have not been sufficiently researched. (Timoney, P. J., 1992, Foreign Animal Diseases, U.S. Animal Health Assoc. Richmond, VA, 254–263.)

Tick-borne fever (TBF), due to the rickettsia *Erlichia (Cytocetes)* phagocytophilia, affects domestic and wild ruminants, causing high fever, reduced lactation and abortion. It is transmitted by various ticks. It is found in Africa, Asia and Europe. The carrier state in cattle lasts for several months. The disease is seldom fatal but causes a severe immunosuppression that exacerbates other latent infections, such as Johne's disease. (Larsen, H. J. S. *et al.*, 1994, Res. Vet. Sci. 56(2):216–224.) It may be able to be transmitted by some native North American ticks, so care should be taken to prevent introduction. (Robertson, A., 1976, Handbook on Animal Diseases in the Tropics, Brit. Vet. Assoc. London, Eng. U.K. 88–90.)

Wesselsbron virus causes abortions, neonatal death and congenital abnormalities primarily in sheep, but also has caused mild disease in cattle, goats, pigs, equines, camels, rodents, dogs, and humans in sub-Saharan Africa. It is carried by many species of African wildlife and is transmitted by mosquitoes. This disease, if introduced into the United States, could probably become established. It is likely that mosquito vectors in the United States could easily transmit the virus. (Barnard, B.J.H., 1990, in Virus Infections of Ruminants, Ed. Dinter, Z. and B. Morein, Elsevier Sci. Publishers, New York, NY, 291–294.)

Additions of Domestic Diseases

In addition to import restrictions to guard against the importation into the United States of animal diseases from other countries, the regulations in 9 CFR contain requirements regarding livestock disease agents that exist in the United States but that are subject to Federal or cooperative Federal/State control or eradication programs. For ruminants and swine, these diseases include *Brucella abortus, B. suis* (9 CFR part 78), *Mycobacterium bovis* (9 CFR part 77), pseudorabies virus (9 CFR part 85), scabies (9 CFR part 73), and scrapie (9 CFR parts 54 and 79). With our proposed shift to a regionalized approach, we believe it is now necessary to specifically address these diseases in the import regulations.

Definition of Region

In §§ 92.1, 93.401, 93,501, 94.1, 95.1, and 96.1 of this proposed rule, we would define the term *region* to mean ''any defined geographic land region identifiable by geological, political, or surveyed boundaries.'' Under this definition, a region may be a national entity, part of a national entity, combined parts of several national entities, or a group of several national entities combined into a single trading block. Section 92.5 of this proposed rule contains procedures, discussed below under the heading ''Application for Risk Class Recognition,'' for requesting establishment of a specific region.

Criteria for Risk Classification

As discussed above, this proposed rule is a departure from the current regulations in that a region would not be classified simply as one in which a specific disease is or is not known to exist. Rather, a region in which we have determined that a certain disease does not exist would be classified as one of three different risk class levels, depending on the risk that the disease might be introduced into the region. Likewise, under this approach, two separate risk classifications for regions in which a disease is known to exist would be established, as well as one additional risk class category for countries or regions that do not yet have specific classification as another risk class level. Therefore, under this proposed rule, regions would fall into one of six risk class levels or categories.

The six risk class levels would be titled ''RN'' or ''negligible risk class regions,'' ''R1'' or ''slight risk class region,'' ''R2'' or ''low risk class region,'' ''R3'' or ''moderate risk class region,'' ''R4'' or ''high risk class region,'' and ''RU'' or ''unknown or unclassified risk class region.'' The criteria for each risk class are set forth in § 92.3 of this proposal. A region classified as RN would present the least risk of disease transmission, with R1, R2, R3, and R4 presenting increasing risk of disease transmission. An RU region would be one that has not yet been classified.

It is important to note that each of the risk classifications would be based on unrestricted importation of animals and animal products—i.e., the risk of a disease being imported into the United States if no mitigating biosecurity measures were in place. Under this proposal, the actual biosecurity measures for the importation of animals and animal products become increasingly stringent as the risk class number increases. With these biosecurity measures in place, we believe that the disease risk from the importation of animals and animal products from each of the regions would be negligible, or equivalent to that of a Risk Class RN. In some cases, however, because of the virulent nature of the disease in question, no importations of susceptible animals or animal products would be allowed from regions classified as Risk Class R3, R4, or RU.

Under this proposal, it is possible that a region would have two or more different classifications for different diseases that affect the same type of animal. For example, with regard to diseases that affect swine, a region could theoretically be classified as RN for African swine fever and R3 for hog cholera. In such a case, the risk classification with the more stringent restrictions (in this case R3 for hog cholera) would govern the importation of any swine from the region, in order to assure that the most protective restrictions are applied.

Criteria for Risk Classification

A region could seek a particular risk classification in one of two ways. The first option would be to demonstrate to APHIS that it meets a series of conditions, discussed below under the heading ''Risk Class Criteria,'' regarding such factors as disease history, surveillance, geography, and infrastructure. Assessing disease risk based solely on such conditions is consistent with APHIS's current method of determining the risk that a particular disease exists in a country. It differs from our current approach in that it would be applicable to regions, rather than just to countries, and that it takes into account different levels of risk.

We recognize, however, that qualitative conditions can be used in developing a quantitative risk assessment (QRA) that estimates the probability of the existence of disease in numerical terms. We view such a QRA, conducted according to accepted scientific standards, as an alternative to assessing disease risk based solely on qualitative criteria, and have included such an option in § 92.3 of this proposed rule. Therefore, under this proposed rule, a region seeking a particular disease classification could do so either by meeting the qualitative criteria for that classification, or by conducting and submitting to APHIS a scientifically valid QRA determined by the Administrator to demonstrate that the probability of the existence in that region of a live animal infected with a particular disease does not exceed the risk limit we propose for that disease classification. The risk limit for each of the risk level classifications is discussed below.

Because determination of disease risk through a scientifically valid QRA would constitute a substantial departure from our current method of assessing the disease risk of an area, we encourage

comments from the public on whether such QRA's constitute a reasonable alternative to assessing risk solely based on qualitative criteria, and, if so, what methodologies would be acceptable in determining disease risk. We are proposing that a risk classification would be assigned by the Administrator based on a QRA only after the Administrator has reviewed the assessment and has determined that it was developed according to scientifically acceptable methods.

For each of the proposed risk classifications we discuss below, we set forth a risk limit we believe would be acceptable for that classification if a valid QRA were conducted. For instance, for a region to be classified as Risk Class RN (Negligible Risk), we propose that a QRA must conclude that fewer than 1 per 1 million (10^{-6}) live animals in that region would be expected to be infected with a restricted agent. We have proposed these numerical limits based on the level of risk we believe should reasonably be expected in a region considered to be of ''negligible,'' ''slight,'' ''low,'' ''moderate,'' ''high,'' or ''unknown'' risk, respectively. We recognize, however, that research and other data may be available from the public that will suggest that the numerical limits we are proposing be adjusted before this rule is made final. We encourage the submission of such information from the public.

A discussion of each of the risk class levels follows.

Risk Class RN Regions

Animals or animal products imported from a region classified as Risk Class RN would present a negligible risk of introducing or spreading a disease in the United States. The dictionary definition of ''negligible'' would apply,*i.e.*, ''so small or unimportant or of so little consequence as to warrant little or no attention'' (Webster's 3rd New International Dictionary, 1966, Rand McNally and Co. Chicago, Ill.).

To achieve Risk Class RN classification, the region would have to be one in which the restricted agent has not been diagnosed within the region during the lifetime of any currently living susceptible animals. The mere fact that the restricted agent has not been reported in a region would not be considered adequate evidence of absence of the disease, if it cannot be shown that surveillance in the region is in place to report, diagnose, and control any occurrences of the disease (passive surveillance). Occasional or periodic surveys for the restricted agent in the region (active surveillance) would be beneficial but not necessarily required in all cases. The requirement for surveys could depend upon the disease and type of infrastructure in the region. For instance, although it may be necessary, in order to determine the initial classification of a region, to have a survey conducted to establish that a disease does not appear to be present, there may be no need for subsequent surveys as long as passive surveillance exists. This determination would be made by the APHIS evaluation team that evaluates the application for recognition of a region. Not requiring active surveillance in all cases in an RN region would be parallel to the situation in the United States, where as a rule routine surveillance testing is not done for exotic diseases but passive surveillance is maintained.

Additionally, for a region to be classified as RN, the restricted agent could not be known to exist within any defined region adjacent to the RN region, and any adjacent R1 or R2 regions (described below) for the disease would need to be separated from the RN region by natural or man-made physical barriers or protected borders. All border access points from adjacent R1 or R2 regions for the disease would need to be controlled to prevent movement of susceptible animals or animal products from the adjacent regions, except under conditions that have been reviewed and approved by the Administrator of APHIS. Movement of animals and animal products into the RN region from R1, R2, R3, R4 or RU regions for the disease would need to be done only under conditions that have been determined by the Administrator to achieve the same level of biosecurity as required for importation from R1, R2, R3, R4, or RU regions into the United States.

Also, in general, vaccination of any potential carrier animals for restricted disease agents must have been prohibited within the RN region during the lifetime of any currently living susceptible animals. However, vaccinations could be allowed for certain diseases such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, when the Administrator determines that such vaccination would not increase the risk of importing restricted agents into the United States. Whether such vaccination would be allowed would depend on the disease in question, the type of vaccine used, and factors such as whether the vaccinated animals are immediately exported from the region.

In a region classified as Risk Class RN, there would need to be resources and commitment on the part of the animal health authorities governing the region and of the animal industry in question to respond to any occurrences of a restricted agent. We would interpret ''respond'' to mean taking action to rapidly control and eradicate any occurrences of the restricted agent that might occur.

If a QRA using scientifically accepted methods is done, the results for an RN region would need to show that fewer than 1 out of 1 million (1×10^{-6}) live animals would be expected to be affected with the restricted agent. Based on the standards of negligible risk employed by other Federal agencies, we believe that a region in which 10^{-6} live animals would be expected to be infected could reasonably be classified as a region of negligible risk.

A region previously classified as Risk Class RN in which a restricted agent is determined to exist could be reclassified as Risk Class RN 3 years after all known infected and exposed reservoirs of disease in the region have been eliminated.

Risk Class R1 Regions

Animals or animal products imported without restriction from a region classified as Risk Class R1 would present a slight risk of introducing or spreading a disease in the United States. Again, the dictionary definition of the term would apply. ''Slight'' is defined as ''small of its kind or in amount'' (Webster's 3rd New International Dictionary, 1966, Rand McNally and Co. Chicago, Ill.). We would consider a region that presents a slight risk (Risk Class R1) to be essentially the same as one that presents a negligible risk (Risk Class RN), except that regions classified as R1 that have been previously affected with a particular disease may not have been without the presence of the disease for as long a period of time as an RN region, and R1 regions may be regions that share borders with, or trade extensively with, regions where the disease is known to exist. The likelihood of residual infection in the R1 region would be considered to be negligible.

Vaccination requirements would be the same as for Risk Class RN regions, except that there could be animals within the region that were vaccinated prior to the region being classified as Risk Class R1, provided they are under provisional quarantine. In § 92.1 of the proposed regulations, *a provisional quarantine* would be defined as restrictions placed on movements of vaccinated livestock where the restricted agent in question is not known to exist in livestock, but where

the possibility of exposure exists. Under a provisional quarantine, vaccinated livestock not known to be affected with the disease could be moved to affected regions, i.e., to regions having animals affected with the disease, or to regions that do permit vaccination.

Under the proposed regulations, a region classified as R1 could be adjacent to regions that are affected with the disease in question, but would need to be separated from those regions by natural or man-made physical barriers, or by protected borders. If border controls were not in place, affected animals, animal products, or vectors could move or be moved readily across the border. However, to guard against such movement, all border access points from adjacent R2, R3, R4 or RU regions would need to be controlled to prevent movement of susceptible animals or animal products from the adjacent regions, except under conditions that have been reviewed and approved by the Administrator.

In an R1 region, there must be active surveillance for the restricted agent in the region. However, as a matter of policy, we would not require that the surveillance be continuous, because, in a region classified as Risk Class R1, the concern would not be primarily with residual infection in the region or with vaccine masking of infection. Any infection that might be found in the region should be an introduced infection. Because the population in an R1 region would be susceptible and the disease would be one not familiar to the region, passive surveillance would be effective in detecting any occurrence of the disease. The requirement regarding adequate response to disease introduction that is discussed above under RN criteria would also apply to R1 regions.

If a QRA is done using scientifically accepted methods, the results for an R1 region would need to show that fewer than 1 per 100,000 ($1x10^{-5}$) live animals would be expected to be infected with the restricted agent.

A region previously classified as Risk Class RN or R1 in which a restricted agent is determined to exist could be reclassified as Risk Class R1 2 years after all known infected and exposed reservoirs of disease in the region have been eliminated.

Risk Class R2 Regions

Animals or animal products imported without restriction from a Risk Class R2 region would present a low risk of introducing or spreading a disease in the United States. A Risk Class R2 region would be one that has been affected with a particular restricted agent in the past, but in which a sufficient period of time has passed (5 years for bovine spongiform encephalopathy and scrapie, 1 year for all other restricted diseases) with no reported cases of the disease to make it likely that active disease no longer exists in the region. In a Risk Class R2 region, the maximum annual herd incidence of the restricted agent over the past 5 years would need to be less than 0.1 percent, the likelihood of residual infection would be low and there would be a low risk of importation of affected animals, animal products or vectors from adjacent areas or trading partners.

Any adjacent R3, R4, or RU regions for the disease would need to be separated by natural or man-made physical barriers, or protected borders, and there would need to be suitable control of border access points from adjacent R3, R4, or RU regions for the disease to prevent movement of susceptible animals or animal products from the adjacent regions, except under conditions that have been reviewed and approved by the Administrator. Movement of animals and animal products into the R2 region from R3, R4, or RU regions for the disease could be done only under conditions that have been reviewed by the Administrator and that have been determined to achieve the same level of biosecurity as required for importation from R3, R4, or RU regions into the United States.

There would need to be a continuous active surveillance program in the region, as well as a passive surveillance system, and, as for an R1 region, there would need to be resources and commitment on the part of the animal health authorities governing the region and of the animal industry in question to respond to (i.e., rapidly control and eradicate) any occurrences of the restricted agent.

Vaccination may be allowed in the R2 region, under the same conditions as for an RN or R1 region, with additional vaccination allowed for those herds that are at greatest risk of exposure from animals from affected regions. Generally, however, as a matter of policy, vaccinated animals will not be allowed into the United States. Under our current regulations in parts 92 and 94, a country that permits vaccination would not normally be considered free of the disease in question.

If a QRA is done using scientifically accepted methods, the results for an R2 region would need to show that fewer than 1 per 10,000 ($1x10^{-4}$) live animals would be expected to be infected with the restricted agent.

Risk Class R3 Regions

Animals or animal products imported without restriction from a Risk Class R3 region would present a moderate risk of introducing or spreading a disease in the United States. Such a region would meet the definition of a ''low prevalence region'' under the GATT agreement. (GATT, Side Agreement on the Application of Sanitary and Phytosanitary Measures, Annex A, Item 7; also GATT Implementing Act, Dec. 1994, Sanitary and Phytosanitary Measures, Section 1, Paragraph f). In an R3 region, a restricted agent may have been diagnosed within the previous year, but the annual herd incidence of the disease over the previous 5 years may not have exceeded 0.1 percent.

Any adjacent R4 and RU regions for the disease would need to be separated by natural or man-made physical barriers or protected borders, and all border access points from adjacent R3, R4, or RU regions for the disease would have to be strictly controlled to prevent movement of susceptible animals or animal products from the adjacent regions, except under conditions that have been reviewed and approved by the Administrator. Movement of animals and animal products into the region would need to be carried out only under conditions that have been reviewed by the Administrator and that have been determined to achieve the same level of biosecurity as required for importation from R4 or RU regions into the United States.

Vaccination would be allowed under the same conditions as for an R2 region. Such a region would need to have an active control and surveillance program, with the goal of eradicating the disease in question.

The results of a QRA for an R3 region, if done, would need to show that fewer than 1 per 1,000 ($1x10^{-3}$) live animals would be expected to be infected with the restricted agent.

Risk Class R4 Regions

Animals or animal products imported without restriction from a Risk Class R4 region would present a high risk of introducing or spreading a disease in the United States. A ''high risk'' region would be one in which a control and surveillance program exists, but in which the prevalence of the restricted agent is excessively high or where the program does not have the goal of eradication. In an R4 region, a restricted agent has been diagnosed during the previous year, and the annual herd incidence of the disease over the past 5 years may have exceeded 0.1 percent in 1 or more years or may be unknown.

The R4 region would need to maintain a passive and active surveillance system for restricted disease agents, but the level of surveillance may not fully meet standards for an R3 region.

In an R4 region, vaccination for any restricted agent may vary from herd to herd within the region. If vaccination is used as the primary control procedure, at least 80 percent of the livestock in 80 percent of the herds must be vaccinated as often as recommended by the manufacturers of the vaccine. In an R4 region, movement of animals and animal products from R3, R4 and RU regions for the restricted agent may not be adequately controlled.

The results of a QRA for an R4 region, if done, would need to show that less than 1 per 100 ($1x10^{-2}$) live animals would be expected to be infected with the restricted agent.

Risk Class RU Regions

An additional risk category, Risk Class RU, will be defined as an unclassified or unknown risk. Such a region may not have any surveillance or control program. A region classified as RU may report no known occurrence of a restricted agent, but, because of lack of surveillance, cannot be expected to provide reliable data about the occurrence of the disease in the region. A region classified as RU may have the necessary data to qualify as a classified region, but if the officials in the region have not furnished the data, requested classification of the region, or allowed reasonable access as required in NAFTA, vol. I, part 2, chap. 7, section B, article 716 or GATT-AASPM, article 6, the region shall remain unclassified. The results of a QRA may not be possible from an RU region due to lack of information; or, if information is available, the results may exceed 1 per 100 ($1x10^{-2}$) live animals in the region expected to be infected.

In cases where a QRA is not done, the qualitative criteria for classification of an area, as set forth in proposed § 92.3, ''Criteria for risk classification,'' will be used to classify a region as a Risk Class RN (Negligible Risk), R1 (Slight Risk), R2 (Low Risk), R3 (Moderate Risk), or R4 (High Risk). Any region that does not meet the qualitative requirements of these risk classifications, or does not meet the minimally acceptable risk level expected of a QRA, will be classified as Risk Class RU (Unclassified or Unknown). When the results of a QRA are not available for calculating the risk of introduction of a restricted agent through a specific commodity, then the upper limits of the QRA for the risk class region will be used as the source or country factor (explained below) in calculating the final risk.

Calculating Risk

In determining whether a particular commodity (animal or animal product) should be imported into the United States, the ultimate concern is how much of a risk of disease introduction does that commodity present. For the purposes of this discussion, we refer to the ultimate risk of disease introduction as ''final risk.'' Before a commodity would be allowed to be imported under this proposed rule, the final risk would have to be negligible.

In arriving at final risk, several different types of risk need to be considered. These risks can be identified according to the source (country or region), to the commodity (live animals or animal products), and to the destination (importing country or region). All of these risks contribute to calculating the final risk of disease introduction into the importing country or region. Even commodities from regions with a relatively high source risk can present a negligible final risk if adequate mitigating measures are taken to reduce the commodity risk. Measures can also be taken at the destination (e.g., post-entry quarantine) to reduce the destination risk.

The risk classifications described in § 92.3 of this proposed rule establish the risk only for the source, with no consideration of what kind of product or commodity is being exported. These risk classifications are then used as a starting point from which to determine the necessary mitigating measures for each commodity, as set forth in §§ 93.415 and 93.515 of this proposed rule, for live ruminants and swine respectively, and as set forth in parts 94, 95, 96, and 98 for meat, germplasm, and other animal products.

The ''commodity risk'' is distinct from the source or destination risk. In calculating the commodity risk, the assumption is that the commodity begins as infected or contaminated. The commodity risk would be the likelihood that the commodity would still be infected after the storage, handling, processing, etc., it must undergo in reaching the final user. The commodity risk would be the same for like commodities, regardless of the source or destination risk. Theoretically, the final risk, i.e., the risk after mitigating measures are applied, would be the source risk times the commodity risk times the destination risk. However, in calculating the ''final risk'' for importations into the United States, we would multiply only the commodity risk times the source risk, and not factor in the destination risk. We are using this cautious approach to determine risk based on the premise that any importation of a restricted agent is undesirable.

However, we invite comments on whether ''destination risk'' should also be factored into ''final risk.'' We recognize that, in some cases, the restricted transportation in the United States and ultimate restricted use of a regulated product can reduce the risk that the product will endanger the livestock of the United States. For instance, § 94.12(b)(4) of the current regulations allows, in specific cases, for the importation of small amounts of pork or pork products whose importation is otherwise restricted due to the existence of swine vesicular disease in the country of origin, provided the pork or product is imported for examination, testing, or analysis, and provided the importation is approved by the Administrator.

We invite comment on whether factors such as destination or use should be generally considered in establishing ''final risk'' under the revised regulations. We particularly invite comment regarding the mitigating effects of the use of products and the destination of animals. For example, with regard to a vector-borne disease, should restrictions on the importation of an animal take into account whether the vector is not known to exist in the area of the animal's destination, or is not active at the time of year the animal is to be imported?

Proposed Risk Model

The formulae for calculating the risk of importing a restricted agent can be illustrated with the following model: Assuming that a commodity with a risk factor calculated to be 1 per million (1/1,000,000) is imported from a source region classified as R3 (risk factor 1 per thousand (1/1,000)) where a specific QRA has not been done, then the final risk per unit of the commodity would be 1/1,000,000 times 1/1,000 or 1/1,000,000,000 (1 per billion or .000,000,001). If 1 million animal units were going to be represented in the total commodity imported per year, then the likelihood of importing one or more infected units of the commodity would be as follows:

Given:

$P\{I=0\}$ = Probability of zero infected units in the shipment.

$P\{I>0\}$ = Probability of one or more infected units in the shipment.

p = Risk probability factor = 1 per billion or .000,000,001.

N = Number of animal units represented in the shipment.

Then: From the Binomial distribution function, the following formula is derived.

$P\{I=0\} = (1-p)^N$

Therefore:

$P\{I>0\} = 1-P\{I=0\} = 1-(1-p)^N$

$= 1-[1-(.000,000,001)]_{1,000,000} = .001$ (1 per 1,000)

or, to calculate the frequency that such an event would be expected to occur:

$1 \div .001 = 1,000$

Therefore, we could expect importation of 1 or more infected units of the commodity every 1,000 years, provided the same commodity from 1 million animal units were imported each year into perpetuity.

APHIS requests comments on whether, or to what extent, the binomial model proposed above is appropriate for estimating in the context of animal populations. Comments should suggest and describe alternative statistical models.

Listing of Risk Classifications for Individual Regions

Section 92.4 of this proposed rule contains listings of risk classifications for individual regions. This information is presented in two formats. Proposed § 92.4(a) is formatted so that each region listed is followed immediately by the risk classification assigned to that region for each restricted agent. For instance, a listing for all the regions in Africa is followed by the information that those regions are classified as Risk Class RN for Japanese encephalitis virus.

Proposed § 92.4(b) is formatted in such a way that all regions that fall under a particular risk classification for a particular disease are listed together. For instance, the listing for RN regions for Japanese encephalitis virus would include all regions in Africa and all other regions that are classified RN for Japanese encephalitis virus.

In the following paragraphs, we list the proposed classifications of the regions of the world, and set forth the rationale for such classifications. Because this initial proposed listing is based on disease statuses as set forth in the current regulations or, in cases where the disease is not specifically listed in the current regulations, on the published epidemiologic information about the disease distribution, it consists of national entities (countries). However, under this proposed rule, requests may be submitted to APHIS for recognition and classification of regions smaller or larger than individual countries. In all cases where neither regulatory precedent nor adequate published epidemiologic data existed to classify a country as either Risk Class RN, R1, R2, R3 or R4, we have proposed to classify the country as Risk Class RU for unknown risk or unclassified risk. Where a disease agent has not been reported from a country, and there is no evidence that the disease agent now exists or has ever existed in the country, we have proposed to classify the country as Risk Class RN. (Because this rationale for Risk Class RN classification is the same for most but not all countries, we have used a footnote to refer to this rationale where applicable.) The proposed classifications are based on the epidemiological, geographical, and infrastructure data currently available to us. We welcome information from the public, supported by specific scientific evidence or other data, concurring with or recommending changes to the classifications.

In many cases, the risk classification for a particular disease is the same for all the countries in a geographically or politically linked group of countries. Therefore, to avoid unnecessary repetition of individual countries, for the purposes of these regulations we have combined countries of the world into groupings. The following groupings are set forth in § 92.1, ''Definitions,'' of the proposed regulations.

Africa: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Djibouti, Egypt, Equatorial Guinea, Gabon, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Princip, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, The Gambia, Togo, Tunisia, Uganda, Western Sahara, Zaire, Zambia, Zimbabwe.

Asia: Afghanistan, Armenia, Azerbaijan, Bangladesh, Bhutan, Burma, Cambodia, China, Georgia, Hong Kong, India, Iran, Japan, Kazakhstan, Kygyzstan, Laos, Macau, Malaysia, Mongolia, Nepal, North Korea, Pakistan, Russia, Singapore, South Korea, Sri Lanka, Taiwan, Tajikistak, Thailand, Turkistan, Uzbekistan, Vietnam.

Atlantic: Bermuda, Cape Verde, Falkland Islands, South Georgia.

Australia: Australia.

Caribbean: Anguilla, Aruba, Barbados, British Virgin Islands, Cayman Islands, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Montserrat, Netherlands Antilles, Puerto Rico, Saint Lucia, Saint Vincent, The Bahamas, Trinidad and Tobago, Turks and Caicos, U.S. Virgin Islands.

Europe: Albania, Andorra, Austria, Belgium, Bosnia-Herzogovania, Bulgaria, Bylorus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Moldavia, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom (England, Scotland, Wales, Northern Ireland, Channel Islands, Isle of Man), Vatican City, Yugoslavia.

Middle America: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama.

Middle East: Bahrain, Cyprus, Iraq, Israel, Jordan, Kuwait, Lebanon, Malta, North Yemen, Oman, Palestine, Qatar, Saudi Arabia, South Yemen, Syria, Turkey, United Arab Emirates.

New Zealand: New Zealand.

North America: Canada, Mexico, United States.

Oceania: Brunei, Fiji, French Polynesia, Indonesia, Kiribati, Maldives, Mauritius, Nauru, New Caledonia, Papua New Guinea, Philippines, Seychelles, Solomon Islands, Tonga, Vanuatu, Western Samoa.

South America: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela.

Note: We use the term ''Middle America'' for the area sometimes referred to as ''Central America,'' in order to make clear that Panama is a part of the grouping in question. Historically, in some usages, Panama was not considered to be part of Central America.

Risk Classification by Region

African swine fever virus.

Risk Class RN. All regions of Asia, Atlantic, Australia, Middle America, Middle East, New Zealand, North America, and Oceania.[1]

Risk Class R1. All regions of Europe except Italy, Spain and Portugal; all regions of the Caribbean except Cuba and Haiti; and all regions of South America except Brazil.

African swine fever has been reported in parts of Italy, Spain and Portugal. The rest of Europe is tentatively classified as R1 because the regions there are adjacent to affected regions or conduct extensive trade with these regions. African swine fever has been reported in Cuba, Haiti, and Brazil, and the current

[1] The restricted agent in question has not been reported from these countries, nor is there any evidence that it now or has ever existed in these countries.

status of the disease in these countries is uncertain.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Aino virus.

Risk Class RN. All regions of Atlantic, Caribbean, Europe, Middle America, New Zealand, North America, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Akabane virus.

Risk Class RN. All regions of Atlantic, Caribbean, Europe, Middle America, New Zealand, North America, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Bluetongue virus (except serotypes 10, 11, 13 and 17).

Risk Class RN. Canada, New Zealand, Mexico, and all regions of Europe except Greece.

Bluetongue virus has not been reported in Europe, except recently in Greece. Bluetongue type 10 occurred in Spain and Portugal in the 1950's but never became established. New Zealand has never had Bluetongue of any type. Canada and Mexico are known only to be affected with the same types as the United States (10, 11, 13 and 17).

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Besnoitia besnoiti (globidiosis).

Risk Class RN. All regions of Atlantic, Australia, Caribbean, Middle America, New Zealand, North America, and Oceania.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Bovine ephemeral fever virus group (Kotonkan, Obodhiang).

Risk Class RN. All regions of Atlantic, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Bovine spongiform encephalopathy.

Risk Class RN. All regions of Africa, Asia, Atlantic, Australia, Caribbean, Middle America, New Zealand, Oceania, and South America; all regions of North America except Canada.[1]

Risk Class R1. All regions of the Middle East except Oman; All regions of Europe except Denmark, France, Great Britain, Northern Ireland, Republic of Ireland, and Switzerland.

Bovine spongiform encephalopathy has never been reported from the Middle East except for Oman. No country of Europe except those listed as exceptions to Risk Class R1 have ever reported the disease. They are listed as Risk Class R1 because of adjacency to affected countries and/or extensive trade with those countries.

Risk Class R2. Canada.

Canada had a single case of bovine spongiform encephalopathy in a bovine imported from the United Kingdom. The animal was destroyed and the United States has been kept well informed of the status of all contact animals.

There is no evidence of further cases in Canada.

Risk Class R3. None.

Risk Class R4. Denmark, France, United Kingdom, Republic of Ireland, Oman, and Switzerland.

These are all countries that have reported one or more cases of bovine spongiform encephalopathy. All of these countries have programs to control the disease. Some of these countries or regions within them may qualify as Risk Class R1, R2 or R3 regions but we do not have sufficient information at present to consider them for a higher class.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Bovine infectious petechial fever.

Risk Class RN. All regions of Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Brucella abortus.

Risk Class RN. Belize, Bulgaria, Channel Island (U.K), Cyprus, Denmark, Finland, French Polynesia, Hungary, Israel, Norway, Papua New Guinea, Romania, Sweden, and Switzerland.

All of these regions have reported eradication of *Brucella abortus* from their livestock populations over 15 years ago. (Crawford RP, Huber JD, Adams BS. Epidemiology and Surveillance. in *Animal Brucellosis* edited by Nielsen K, and Duncan JR. CRC Press, Boca Raton, Florida, 33431, 131–151, 1990.)

Risk Class R1. Australia, Canada, Czech Republic, Germany, Slovakia, United Kingdom except Channel Islands.

All of these regions have reported eradication of *Brucella abortus* from their livestock population more than 5 years ago. (Crawford RP, Huber JD, Adams BS. Epidemiology and Surveillance. in *Animal Brucellosis* edited by Nielsen K, and Duncan JR. CRC Press, Boca Raton, Florida, 33431, 131–151, 1990.)

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Brucella melitensis.

Risk Class RN. All regions of Oceania, Australia, Canada, Czech Republic, Denmark, Estonia, Finland, Greenland, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Slovakia, Sweden, United Kingdom, and Taiwan.

None of these regions has ever reported *Brucella melitensis* (Alton GG. *Brucella melitensis.* in *Animal Brucellosis* edited by Nielsen K, and Duncan JR. CRC Press, Boca Raton, Florida, 33431, 393–409, 1990.)

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Brucellosis due to Brucella suis except biovar 4.

Risk Class RN. Canada, Ireland, United Kingdom.

None of these regions has ever reported *Brucella suis* (Alton GG. *Brucella suis.* in *Animal Brucellosis* edited by Nielsen K, and Duncan JR. CRC Press, Boca Raton, Florida, 33431, 411–422, 1990.)

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Brucellosis due to Brucella suis biovar 4.

Risk Class RN. Africa, Asia except Russia, Atlantic, Australia, Caribbean, Europe, Mexico, Middle America, Middle East, New Zealand, Oceania, South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3, or R4.

Congo virus (Crimean Hemorrhagic Disease).

Risk Class RN. All regions of Atlantic, Caribbean, Middle America, New Zealand, North America, Oceania, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Contagious agalactia of sheep and goats due to Mycoplasma agalactiae.

Risk Class RN. All regions of Australia, Caribbean, Middle America, New Zealand, North America, South America.[1]

Risk Class R1. None

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Contagious bovine pleuropneumonia due to Mycoplasma mycoides var mycoides (CBPP).

Risk Class RN. All regions of Atlantic, Caribbean, Middle America, New Zealand, North America, and South America.

These regions have never reported the presence of this agent, or the agent has been eradicated for more than 15 years. (Brown C. Contagious Bovine Pleuropneumonia, in *Foreign Animal Diseases,* edited by Buisch WW, Hyde JL, Mebus CA. United States Animal Health Association, Richmond VA. 146–151, 1992.)

Risk Class R1. Australia, all regions of Europe except Portugal and Spain. Europe has been free of CBPP for over 15 years, except for recent outbreaks in Portugal and Spain. Australia eradicated the disease in 1975, but the status of neighboring areas in Oceania is more uncertain. Therefore, we have proposed to classify Australia and all regions of Europe as Risk Class R1 until further data can be reviewed. (Clay AL, Lloyd LC. The Eradication of Contagious Bovine Pleuropneumonia from Australia. Bull. Off. Inter. Epiz., 81(7/8):533–546, 1975.)

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Contagious caprine pleuropneumonia (Mycoplasma mycoides subsp. capri)

Risk Class RN. All regions of Atlantic, Caribbean, Middle America, New Zealand, North America, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Epizootic hemorrhagic disease virus of deer (Ibaraki) (except serotypes 1 and 2).

Risk Class RN. Canada, Europe, Mexico, New Zealand. Europe and New Zealand have never reported the presence of this agent and there is no evidence that it now exists or has ever existed in these regions. Canada and Mexico have been affected only by serotypes 1 and/or 2, which are endemic in the United States.

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Foot-and-mouth disease virus.

Risk Class RN. Australia; Barbados; Bermuda; all regions of North and Middle America except Panama; all regions of the Caribbean except The Bahamas; Greenland, Iceland, Territory of St. Pierre and Miquelon, Trust territory of the Pacific Islands.

These regions are listed in § 94.1(a)(2) of the current regulations as countries free of both rinderpest and foot-and-mouth disease. They are not listed in current § 94.11(a) as countries that, because of importations of meat from or proximity to rinderpest or FMD-affected countries, are subject to restrictions on importations of meat or meat products into the United States.

Risk Class R1. Austria, The Bahamas, Belgium, Chile, Denmark, Fiji, Finland, France, Germany, United Kingdom, Hungary, Japan, New Caledonia, The Netherlands, Norway, Papua New Guinea, Panama, Poland, Portugal, Republic of Ireland, Republic of Korea, Sweden, Spain, Switzerland, and Uruguay.

These regions are listed in § 94.11(a) as countries free of rinderpest and FMD that supplement their meat supply with imports from countries affected with rinderpest or FMD, or that have a contiguous border with countries affected with rinderpest or FMD. Because the current regulations do not distinguish between countries affected with rinderpest and those affected with FMD, at this time we cannot separate those that import from countries that are infected with rinderpest but not with FMD. We are proposing to include Fiji, New Caledonia and Panama as Risk Class R1 regions because they are adjacent to regions that are considered to be affected with FMD.

Risk Class R2. Argentina.

The effect of this classification would be to allow the importation into the United States from Argentina of ruminants and fresh, chilled, and frozen meat of ruminants. However, those importations would be subject to certain restrictions, as set forth in § 93.415 of this proposal. This classification would also relieve certain prohibitions and restrictions on the importation from Argentina of milk and milk products of ruminants.

We believe classifying Argentina as a Risk Class R2 region for FMD is appropriate. The last outbreak of FMD in Argentina occurred in 1994. However, vaccinations for FMD in Argentina still continue. Additionally, Argentina supplements its national meat supply by importing fresh, chilled and frozen meat of ruminants and swine from countries listed in this proposed rule as Risk Class R3, R4 or RU. Argentina also shares land borders with Brazil and Bolivia, which are both designated in this proposed rule as Risk Class RU regions.

In determining the proposed classification for Argentina, APHIS reviewed the documentation submitted by the government of Argentina in support of its request to be considered free of FMD, and a team of APHIS officials traveled to that country in 1994 to conduct an on-site evaluation of the country's animal health program. The evaluation consisted of a review of Argentina's veterinary services, diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of FMD into Argentina through the importation of animals, meat, or animal products. The APHIS officials conducting the on-site evaluation concluded that Argentina is a low risk region for FMD. (Details concerning the on-site evaluation are available from the person listed under FOR FURTHER INFORMATION CONTACT.'')

Based on our proposed risk classification of Argentina, meat and other animal products of ruminants or

swine, as well as the ship's stores, airplane meals, or baggage containing such meat or other animal products originating in Argentina would be subject to the restrictions specified in § 94.11 of these proposed regulations.

Risk Class R3. Greece and Italy.

Greece and Italy recently have had localized outbreaks of FMD, which have been controlled. Until more information is available, we are proposing to classify these countries as Risk Class R3 regions. However, it is possible this classifications could be limited to smaller areas of these countries when the situation is further reviewed under the procedures provided in § 92.5 of this proposal.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Getah virus.

Risk Class RN. All regions of Africa, Atlantic, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, and South America.1

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Heartwater due to rickettsia Cowdria ruminantium.

Risk Class RN. All regions of Asia, Atlantic, Australia, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Hog cholera (classical swine fever).

Risk Class RN. Australia, Canada, Dominican Republic, Fiji, United Kingdom, Iceland, New Zealand, Norway, the Republic of Ireland, Sweden, and Trust Territory of the Pacific Islands.

These regions are listed in §§ 94.9 and 94.10 of the current regulations as countries where hog cholera does not exist, and they neither are adjacent to nor trade extensively with regions where hog cholera is known to exist.

Risk Class R1. Denmark, Finland, Spain, and the State of Sonora in Mexico.

Denmark, Finland, and Spain are listed in §§ 94.9 and 94.10 of the current regulations as countries where hog cholera does not exist. However, because they are adjacent to or trade extensively with regions where hog cholera is known to exist, we propose that these regions be classified as Risk Class R1.

In June, 1994, the Department received a request from the Chief Animal Health Officials in the country of Mexico for recognition of the State of Sonora as a region free of hog cholera under the sanitary and phytosanitary provisions of the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT).

Under the current regulations, there is no provision for recognition of regions of a country as free of a disease if the entire country is not free of that disease. However, such recognition would be possible under this proposed rule. Therefore, as a result of the request from Mexico, a team of APHIS personnel reviewed the request in accordance with § 92.3 of this proposed rule. A site visit by personnel from APHIS was conducted on October 24–28, 1994, which confirmed the facts of the request from the Mexican government.[2]

Therefore, in this proposed rule, we are proposing that the State of Sonora in the country of Mexico be included as a Risk Class R1 region for hog cholera, because we believe the region meets some of the criteria for a Risk Class RN region for hog cholera, and some of the criteria for an R1 region according to § 92.3 of this proposed rule.

We believe this classification would be warranted due to the following facts:

1. Hog cholera virus has not been diagnosed in Sonora, Mexico for 10 years (since 1985). This would meet the requirements for a Risk Class RN (negligible risk) region for hog cholera according to § 92.3(a)(1) of this proposed rule.

2. Hog cholera virus is currently not known to exist in any of the States of Mexico or the United States that adjoin the State of Sonora, Mexico. This would meet the requirements of a Risk Class RN region for hog cholera according to § 92.3(a)(2) of this proposed rule.

3. Vaccination for hog cholera has been prohibited since 1989. This would meet the requirements for a Risk Class R1 (slight risk) region for hog cholera according to § 92.3(b)(4) of this proposed rule.

4. Adjacent States of Mexico are separated by natural physical barriers or manmade fences. The State of Sonora, Mexico is bordered by the United States on the north; the State of Baja California Norte, Mexico and the Gulf of California on the west; The State of Chihuahua, Mexico on the east; and the State of Sinaloa, Mexico on the south. The border between Sonora and Chihuahua is separated by the Sierra Madre mountains. There are few mountain passes crossing from Chihuahua to Sonora along this entire border, from the United States to Sinaloa, with only minor road crossings at Puerto San Luis and Maycoba. The southern border of the State of Sonora is separated for most of the eastern part of the border by the same mountains that separate it from Chihuahua. Major highway and rail crossings near Estacion Don are on the coastal plain within a few miles of the Gulf of California. This would meet the requirements for a Risk Class R1 region for hog cholera according to § 92.3(b)(5) of this proposed part.

5. All border access points from adjacent States of Mexico are controlled to prevent movement of swine or swine products into the State of Sonora. The only major ports with other States of Mexico are to Sinaloa on Mexico Federal Highway 15 near Estacion Don, Sonora, Mexico, and a rail crossing near the same town. Estacion Don has washing and disinfection facilities for livestock trucks entering Sonora, cattle corrals and dipping facilities for tick control, and an incinerator for confiscated meats. Swine are not allowed to enter through this port from other areas of Mexico. The disinfection of trucks that have carried swine is funded by the pork producers associations of Sonora. Other road and/or rail crossings are near San Luis, Sonora, Mexico, and Riito, Sonora, Mexico, where bridges cross the Colorado river from Sonora to Baja California Norte, Mexico, and to Puerto San Luis and Maycoba where minor roads cross from the State of Chihuahua, Mexico. Inspection procedures for trucks moving from Chihuahua are similar to those for trucks moving from Sinoloa at Estacion Don. Airports with commercial connections to other areas of Mexico include numerous local airports and 3 international airports located at Obregon, Hermosillo, and Guaymas. The principle seaport is located at Guaymas on the Gulf of California. This would meet the requirements for a Risk Class R1 region for hog cholera according to § 92.3(b)(6) of this proposed rule.

6. Movement of swine and swine products into the State of Sonora from other States of Mexico has been reviewed by the Administrator and appears to meet the same level of biosecurity as required in proposed

[2] Copies of the State of Sonora site visit report may be obtained from USDA, APHIS, National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20837–1231. Requests may be made by telephone to (301) 734–7511 or by FAX to (301) 734–6402.

§ 93.515(e)(1) of this chapter. This would meet the requirements for a Risk Class R1 region for hog cholera according to § 92.3(b)(7) of this proposed part.

7. The State of Sonora maintains a passive surveillance system that includes reporting all suspect cases in back yard herds and commercial herds. The state of Sonora also has active surveillance that consists of periodic surveys of swine on farms and at slaughter plants. In a serological survey, 50 percent of the commercial operations were sampled in 1991, and 25 percent of the commercial operations were sampled in 1993. No evidence of hog cholera was found in these surveys. These surveys did not include small backyard operations. Continuous monitoring of swine at slaughter plants is planned until the State of Sonora achieves recognition as a Risk Class RN region for hog cholera according to § 92.3(a) of this proposed part. Passive and active surveillance in the State of Sonora would meet the requirements for a Risk Class R1 region for hog cholera according to § 92.3(b)(8) of this proposed rule.

8. The laws, regulations, policies, and infrastructure in the State of Sonora and the country of Mexico have been reviewed by the Administrator and are believed to be adequate to maintain surveillance and control and to eradicate hog cholera rapidly in the event of any outbreaks in the State of Sonora, and to curtail and restrict movements of swine or swine products from any other regions of Mexico where hog cholera exists. This would appear to meet the requirements for a Risk Class R1 region for hog cholera according to § 92.3(b)(9) of this proposed rule.

Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Japanese encephalitis virus.
Risk Class RN. All regions of Africa, Atlantic, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Jembrana (Tabanan) virus.
Risk Class RN. All regions of Africa, Atlantic, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Lumpy skin disease (Neethling virus).
Risk Class RN. All regions of Asia, Atlantic, Australia, Caribbean, Europe, Middle America, New Zealand, North America, Oceania, and South America.
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Malignant catarrhal fever virus (wildebeest form).
Risk Class RN. All regions of Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Mycobacterium bovis.
Risk Class RN. Bermuda, The Bahamas, Falkland Islands, Luxembourg, Norway, Isle of Jersey (United Kingdom), Cyprus.

These regions have reported complete absence of bovine tuberculosis for over 15 years. (Regional and Country Status Reports, in ''*Mycobacterium bovis* Infection in Animals and Humans,'' Edited by Thoen, C.D. and Steele, J.H., pp. 169–345, Iowa State University Press, Ames Iowa, 1995).
Risk Class R1. None.
Risk Class R2. Canada.

All Provinces of Canada are either accredited-free or modified-accredited for bovine tuberculosis. Accredited-free provinces could be classified as Risk Class R1 regions, and modified-accredited as Risk Class R2 if at least 1 year has elapsed without the discovery of any infected herds. Canada follows a tuberculosis eradication program equivalent to that conducted in the United States. Other countries may be equivalent to Canada, but we currently cannot evaluate their status.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Near east encephalomyelitis virus.
Risk Class RN. All regions of Atlantic, Australia, Caribbean, Europe, Middle America, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Nairobi sheep disease (Ganjam, Dugbe) virus.
Risk Class RN. All regions of Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Parafilariosis due to Parafilaria bovicola.
Risk Class RN. All regions of North America, Middle America, South America and Caribbean.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Peste des petits ruminants (Kata) virus.
Risk Class RN. All regions of Atlantic, Europe, North America, South America, Australia, and Oceania.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Pseudomonas pseudomallei (melioidosis).
Risk Class RN. All regions of Europe, Canada, and Atlantic.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Pseudorabies (Aujesky's) virus.
Risk Class RN. None.
Risk Class R1. Canada.

Canada eradicated pseudorabies over 15 years ago. However, because it is adjacent to the United States, which is affected with pseudorabies, we are proposing to classify Canada as a Risk Class R1 region for this disease, which would be equivalent in status to pseudorabies-free States in the United States.

Risk Class R2. None.

Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Restricted ectoparasites.
Risk Class RN. Canada.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Rift Valley fever virus.
Risk Class RN. All regions of Asia, Atlantic, Australia, Caribbean, Europe, Middle America, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Rinderpest virus.
Risk Class RN. Australia; Bermuda; all regions of North America, Middle America, South America except Chile, and the Caribbean except The Bahamas; Greenland; Iceland; New Zealand; Territory of St. Pierre and Miquelon; and Trust Territory of the Pacific Islands.

These regions are currently listed in § 94.1(a)(2) as countries free of both rinderpest and FMD. They are not listed in current § 94.11(a) as countries that, because of importations of meat from or proximity to rinderpest or FMD-affected countries, are subject to restrictions on importations of meat or meat products into the United States. We are proposing to include South America and the Caribbean as Risk Class RN regions for rinderpest because they have never reported rinderpest and there is no reason to believe these regions are now or have ever been infected with rinderpest.

Risk Class R1. Austria, The Bahamas, Belgium, Channel Islands, Chile, Denmark, Finland, France, Germany, United Kingdom, Hungary, Japan, The Netherlands, Norway, Papua New Guinea, Poland, Republic of Ireland, Republic of Korea, Spain, Sweden, Fiji, New Caledonia.

These regions are listed in current § 94.11(a) as countries that are free of both rinderpest and FMD, but that supplement their meat supply with imports from areas affected with rinderpest or FMD, or that share borders with countries affected with rinderpest or FMD. Because the current regulations in § 94.11 do not distinguish whether a country's meat supply is being supplemented from a rinderpest or from an FMD-affected country, we cannot separate those that import from countries infected with foot-and-mouth disease but not rinderpest. Fiji and New Caledonia would be classified as Risk Class R1 for rinderpest because they are adjacent to regions that are considered to be infected with rinderpest.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Scrapie disease agent.
Risk Class RN. All regions of Australia and New Zealand.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. Canada.

Scrapie exists at a low prevalence in Canada, which has a program to eradicate this disease that is equivalent to the scrapie eradication program in the United States.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Sheep pox and/or goat pox virus.
Risk Class RN. All regions of Atlantic, Australia, Caribbean, Middle America, New Zealand, and North America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Swine vesicular disease.
Risk Class RN. Australia, all regions of North America, Middle America, Dominican Republic, Fiji, Finland, Greenland, Haiti, Iceland, New Zealand, Norway, Rumania, Sweden, and Trust Territory of the Pacific Islands.

These regions are listed in § 94.12 of the current regulations as countries where swine vesicular disease does not exist, and are not listed in current § 94.13 as countries that supplement their pork supply from countries affected with swine vesicular disease.

Risk Class R1. Austria, The Bahamas, Bosnia-Herzogovania, Bulgaria, Chile, Croatia, Denmark, Finland, Hungary, Luxembourg, Macedonia, Republic of Ireland, Slovenia, Switzerland, United Kingdom, and Yugoslavia.

These regions are listed in § 94.12 as countries free of swine vesicular disease, but are listed in § 94.13 as countries that supplement their national pork supply from countries that are affected with swine vesicular disease.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Taenia (Multiceps) multiceps (dog tapeworm) in livestock handling dogs.
Risk Class RN. All regions of North America, Middle America, and Caribbean.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Teschen disease virus.
Risk Class RN. All regions of Africa, Asia, Atlantic, Australia, Caribbean, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Theileriosis (east coast fever, corridor disease, Mediterranean fever).
Risk Class RN. All regions of Atlantic, Asia, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Tick-borne encephalitis (louping ill, Central European encephalitis) virus.
Risk Class RN. All regions of Africa, Atlantic, Australia, Caribbean, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.
Tick-borne fever due to Erlichia (Cytoecetes) phagocytophilia.
Risk Class RN. All regions of Atlantic, Australia, Caribbean, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]
Risk Class R1. None.
Risk Class R2. None.
Risk Class R3. None.
Risk Class R4. None.
Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

African (salivarian- or tsetse-transmitted) Trypanosoma spp. (T. brucei, T. congolense, T. evansi, T. suis, T. simiae, T. uniforme, T. vivax).

Risk Class RN. All regions of Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Trypanosoma spp. transmitted by vectors other than tsetse flies (NTT-Trypanosomas).

Risk Class RN. All regions of Asia, Atlantic, Australia, Europe, Middle America, Middle East, New Zealand, and North America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Vesicular stomatitis virus.

Risk Class RN. All regions of Africa, Asia, Atlantic, Australia, Caribbean, Europe, Middle East, New Zealand, North America except Mexico, and Oceania.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Wesselsbron virus.

Risk Class RN. All regions of Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.[1]

Risk Class R1. None.

Risk Class R2. None.

Risk Class R3. None.

Risk Class R4. None.

Risk Class RU. All regions of the world except those specifically listed as Risk Class RN, R1, R2, R3 or R4.

Application for Risk Class Recognition

Section 92.5 of this proposed rule contains procedures for applying for recognition of a risk class for a region, procedures that would be followed by APHIS in making a determination of a region's risk class, and provisions for the removal or change of status of a region due to a failure of the region to meet the criteria of its current risk class, or due to the discovery of a restricted agent in a Risk Class RN, R1, or R2 region.

Proposed Part 93

Current 9 CFR part 93 contains provisions governing the importation of elephants, hippopotami, rhinoceroses, and tapirs into the United States. As discussed above in this ''Supplementary Information'' under the heading ''Parts 92 and 93,'' we are proposing to keep these provisions in part 93, and are also proposing to add to part 93 the provisions regarding the importation of birds, poultry, horses, ruminants, swine, dogs, and hedgehogs and possums that are currently set forth in part 92. These provisions would be grouped according to the same subpart designations as in current part 92 (e.g., provisions regarding the importation of birds would continue to be subpart A, provisions for poultry would continue to be subpart B, etc.), and the current part 93 provisions for elephants, hippopotami, rhinoceroses, and tapirs would be designated as subpart H.

The only changes to the provisions for elephants, hippopotami, rhinoceroses, and tapirs would be to correct cross references and to amend the definitions and the introductory text to the definitions section to bring the language in line with that in the other subparts. Aside from being moved to part 93, the regulations regarding birds (subpart A), poultry (subpart B), horses (subpart C), dogs (subpart F), and hedgehogs and possums (subpart G) would be changed only to correct cross references. The only changes to those subparts would be to correct cross references.

However, in this proposal, we are proposing significant substantive changes to the provisions of subpart D (ruminants) and subpart E (swine) in current part 92. These changes would be in accordance with NAFTA and GATT provisions regarding the assessment of the risk of importing animals and animal products from foreign regions.

In subparts D and E of proposed part 93, we would set forth specific criteria for the importation of ruminants and swine from foreign regions, based on the risk classification of a region for a particular restricted agent, and on the type of animal intended for importation. (Unlike current part 92, no criteria for the importation of animal products would be included in proposed part 93. Those provisions that currently appear in part 92 regarding products would be incorporated into part 94, and would be revised as necessary to accommodate our proposed changes to regionalization and risk assessment. These revised criteria for the importation of animal products are discussed in this **SUPPLEMENTARY INFORMATION** in the discussion of changes to part 94.)

In setting forth specific importation criteria in proposed part 93, we would refer to the various risk classification levels set forth in proposed part 92, discussed above under the heading ''Criteria for Risk Classification.'' The discussion that follows in this **SUPPLEMENTARY INFORMATION** explains what would be required to import specific types of animals from each region based on the region's risk classification for the disease in question.

Removal of Country-By-Country Exemptions

Subparts D and E of part 92 of the current regulations restrict the importation of ruminants and swine from various countries, due to the existence of certain animal diseases in those countries. For the most part, the regulations are structured so that the restrictions are applied to a list of countries in which the diseases in question exist. However, because of individual circumstances particular to several individual countries, some of the provisions of the regulations refer only to those countries. These include provisions for the importation of ruminants and swine from Canada in current §§ 92.417, 92.418, 92.419, 92.420, 92.421, 92.516, 92.517, 92.518, and 92.519; from the Caribbean countries in §§ 92.422, 92.423, and 92.520; and from Mexico in §§ 92.424, 92.425, 92.426, 92.427, 92.428, 92.429, and 92.521. They also include provisions for the importation of cattle from the Republic of Ireland in § 92.432, and for sheep from New Zealand in §§ 92.433.

In this proposed rule, we do not include special provisions for specific countries, but rather we set forth requirements for importation that would apply to all countries or regions that meet the criteria for a particular risk classification for a specific restricted agent. In some cases, these criteria may, practically speaking, apply to only one or two countries—for instance, countries that import into the United States through land border ports (discussed below under the heading ''Exemption from Import Permit Requirements''). However, we believe it is appropriate not to refer to individual countries in this proposal, in light of the requirement in GATT that sanitary and phytosanitary measures must not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail (Agreement on the Application of Sanitary and Phytosanitary Measures, GATT, article 2, paragraph 3). In future rulemaking, we would adapt the regulations to recognize regions that do not meet any

of the risk categories we are proposing to establish in this document. In such future rulemaking, we would establish classifications appropriate to that risk posed by those regions. Any other region that meets the criteria established for a new risk classification would be assigned that same classification.

General Prohibitions; Inspection; Importation Ports

In the current regulations, §§ 92.401, 92.402, and 92.403 (ruminants), and §§ 92.501, 92.502, and 92.503 (swine) include, respectively, provisions regarding general import prohibitions, the inspection, unloading, and cleaning of means of conveyance; and ports for importation. In this proposal, these sections would be redesignated as being in part 93, but would remain substantively unchanged.

Import Permit Requirements

Under the current regulations, with certain exceptions, before ruminants and swine may be imported into the United States, the importer must first apply for and obtain from APHIS an import permit. The requirements for an application for the import permit are set forth in the current regulations in §§ 92.404 and 92.504 for ruminants and swine, respectively. On the application, the importer must include information regarding the type, number, and identification of the animals to be imported, and information on the origin, intended arrival, route, and destination of the animals. These requirements are the same in this proposal.

Under the current regulations, however, an import permit is not required, under certain conditions, for ruminants or swine from certain specified countries or areas of the world (e.g., Canada, Mexico, the West Indies, and Central America). In this proposed rule, we are not setting forth permit exemptions for specifically named countries or regions, because of the need for general applicability of requirements as discussed above. However, we continue to believe that certain importations from countries with land border ports to the United States can be carried out without the need for import permits, for the reasons discussed below.

In §§ 93.404 and 93.504 of this proposal, we are setting forth provisions that would exempt certain ruminants or swine presented at a land border port from the import permit requirements. To be eligible for this exemption, the animals would have to originate in regions that are not known to be affected with foot-and-mouth disease and rinderpest, and for swine, hog cholera, African swine fever, or swine vesicular disease. These provisions would apply only to animals being imported by land from either Canada or Mexico. We believe these exemptions are warranted, because, if the animals are found upon inspection at the port of entry to be affected with any communicable disease, the animals are not accepted into the United States, whereas animals transported to the United States by air or ship are difficult and costly to return to their origin, and holding them at the quarantine facility may create a space problem.

Import permits are used primarily as reservations for space in the quarantine stations. The need for permits for importation at facilities other than land border ports is to assure that the port facilities have sufficient space to handle animals as they are imported. At land border ports there may be a limited amount of space, but the animals can be unloaded on the Canadian or Mexican side of the border until space becomes available. It is not possible to hold animals for any length of time on planes or ships at other ports.

In the current regulations, § 92.404(a)(2) includes the statement that ''An application for permit to import will be denied for domestic ruminants from any country where it has been declared, under section 306 of the Act of June 17, 1930, that foot-and-mouth disease (FMD) or rinderpest has been determined to exist, except as provided in § 92.430.'' Section 92.504(a)(2) includes a like statement for swine. In §§ 93.404 and 93.504 of this proposal, we are not including this statement. While it is true that ruminants and swine may not be imported, without stringent restrictions, from countries at high risk for such animals being affected with FMD or rinderpest, we believe it is misleading to imply that such importations are prohibited except in rare cases. Under §§ 93.415 and 93.515 of this proposed rule, ruminants and swine imported from regions classified as R3, R4, or RU for FMD and rinderpest would be required to be quarantined at the Harry S Truman Animal Import Center (HSTAIC), just as is required under the current regulations for ruminants and swine from countries where FMD or rinderpest exists.

Certificate Requirements

In the current regulations, §§ 92.405 (ruminants) and 92.505 (swine) require that, with certain exceptions based on whether the animals come from specifically named countries of origin, ruminants and swine imported into the United States be accompanied by a certificate issued in the country of origin. This document must certify that the ruminants and swine have been in the country of origin for at least 60 days immediately preceding the date of intended exportation from that country, and must also certify that the country or district of origin has been free of certain specified diseases during that 60-day period. In addition, the certificate for sheep and goats must contain certain statements related to scrapie.

In this proposed rule, in §§ 93.405 (ruminants) and 93.505 (swine), we would require that all ruminants and swine imported, except for ruminants and swine imported for immediate slaughter from regions classified as RN for all restricted disease agents of ruminants and swine, respectively, must be accompanied by a certificate of export. This certificate of export, which would have to be issued and signed by an authorized veterinarian and endorsed by an official of the National Veterinary Services of the country of export, would need to certify that the ruminants or swine originate from premises that are not known to have been affected with any communicable disease or restricted ectoparasites of the type of animal in question for the previous 60 days. The certificate would also need to state that during transportation to the port of embarkation, there was no direct or indirect exposure to potential carrier animals from any region affected with restricted disease agents; that while en route to the port of entry, the animals were not trailed or driven through any Risk Class R3, R4, or RU region for (i.e., region affected by) any tick-borne restricted diseases; and that while en route to the port of entry, the animals were not trailed, driven, transported, or otherwise moved through any Risk Class R3, R4, or RU region for any restricted insect-transmitted diseases during a time of year when insect vectors are active. Finally, the certificate would need to certify that the animals either were inspected on the day of embarkation and were found to be free of restricted ectoparasites, or were treated for ectoparasites within 10 to 14 days of embarkation.

As noted above, only ruminants or swine that are from Risk Class RN (negligible risk) regions for all restricted disease agents of ruminants or swine, respectively, and that are imported for immediate slaughter would be exempted from the requirements for a certificate of export. Most ruminants or swine would still be required to have a certificate of export even though they may not be required to have an import permit under proposed §§ 92.404 and 92.504.

The value of the required certification would be dependent on the integrity and quality of inspections in the exporting country. The animal health infrastructure of a country is a factor in assigning a risk classification to a region. For regions with higher risk, quarantine or testing requirements validate the export certification.

Current §§ 92.407/92.506

In the current regulations, §§ 92.407 (ruminants) and 92.506 (swine) set forth provisions regarding the presentation of certificates, declarations, and affidavits required by the regulations. These provisions are set forth in §§ 93.406 and 93.506 of this proposal, and except for the addition of clarification as to which documents are being referred to, would remain unchanged.

Current §§ 92.408/92.507

The current regulations in §§ 92.408 (ruminants) and 92.507 (swine) contain requirements for the inspection, at the port of entry, of imported ruminants and swine. These requirements are set forth in §§ 93.407 and 93.507 of this proposed rule, and would be amended in one respect. The inspection requirements in current §§ 92.408 and 92.507 refer to certain exceptions for animals from specific countries—i.e., Canada, Mexico, and the British Virgin Islands when importing into the United States Virgin Islands. In accordance with GATT, these exceptions for specific countries would be removed.

Current §§ 92.409/92.508 and 92.410/92.509

The current regulations in §§ 92.409 (ruminants)/92.508 (swine) and §§ 92.410/92.509 set forth requirements regarding articles accompanying imported animals and regarding movement from conveyances to quarantine stations. These provisions are set forth in §§ 93.408 and 93.509 (ruminants) and §§ 93.508 and 93.509 of this proposal, and would remain unchanged.

Current §§ 92.411/92.510

The current regulations in §§ 92.411 (ruminants) and 92.410 (swine) include quarantine requirements for ruminants and swine, respectively, imported into the United States. The length of required quarantine for swine as set forth in current § 92.410 is the same (15 days) no matter what the origin of the swine. However, the length of required quarantine for ruminants varies according to which country the ruminants originated in.

Under this proposed rule, these provisions would be removed. Because §§ 93.415 and 93.515 of this proposed rule include quarantine requirements specific to the risk class of the region of origin and the disease in question, it would no longer be adequate or appropriate to have a uniform length of quarantine, as currently is the case with swine, or, alternatively, to refer to specific countries, as currently is the case with ruminants. The quarantine requirements for animals from any particular country or region would be governed by the risk class of the region of origin.

Current §§ 92.412/92.511 and 92.413/92.512

Under the current regulations, §§ 92.412 and 92.413 (ruminants) and §§ 92.511 and 92.512 (swine) include requirements regarding importation quarantine facilities. These provisions are set forth in §§ 93.411 and 93.412 (ruminants) and §§ 93.511 and 93.512 (swine) of this proposed rule and would remain unchanged.

Current §§ 92.414/92.513 and 92.415/92.514

Under the current regulations, §§ 92.414 and 92.415 (ruminants) and §§ 92.513 and 92.514 (swine) set forth, respectively, provisions regarding milk and manure from quarantined animals. These provisions are set forth in §§ 93.413 and 92.414 (ruminants) and §§ 92.513 and 92.514 (swine) of this proposed rule and would remain unchanged.

Appearance of Disease Among Ruminants in Quarantine

In the current regulations, §§ 92.416 (ruminants) and 92.515 (swine) provide that if any contagious disease appears among the animals in quarantine, special precautions must be taken to prevent the spread of the infection to other animals in the quarantine station or those outside the grounds. Under this provision, the Administrator may take action to deal with outbreaks of clinical disease while the animals are in quarantine. These provisions are in proposed §§ 93.414 (ruminants) and 93.514 (swine).

Additionally, the proposed rule would provide that, if there are test-positive animals during quarantine (in the absence of clinical signs of disease), the Administrator may require additional testing of both the test-positive and the test-negative animal(s). We believe that this provision is necessary because many diseases are not immediately manifested in a clinical form and depend upon serological or other tests for diagnosis in live animals.

Requirements for Importation Based on Disease Risk

As discussed above in this ''Supplementary Information'' under the heading ''Parts 92 and 93,'' the current regulations in part 92 include restrictions on the importation of certain ruminants and swine due to their risk of transmitting diseases to animals in the United States. Current part 92, in general, bases restrictions on importation on whether a disease in question is considered to exist or not exist in a particular country.

In this proposed rule, we are proposing to move from a country-by-country approach to one based on individual regions, and are also proposing to substitute a gradation of risk levels for an ''exist/does not exist'' consideration of disease risk.

Restrictions on the importation of ruminants and swine from regions, based on risk level, are set forth in this proposed rule in §§ 93.415 (ruminants) and 93.515 (swine). The requirements for a particular importation would depend on three factors: (1) The type of animal to be imported; (2) the disease in question; and (3) the risk classification level of the region from which the animals are to be imported. As the risk increases that unrestricted importations from a region will result in disease transmission, the need for greater import restrictions also increases. To mitigate disease risk, several broad risk management options, applied individually or in combination, are available. These options can be applied to either animals or their products. The risk management options available are:

1. Certification of origin of animals and animal products.
2. Tests and inspection of imported animals or products.
3. Tests and inspection of herds or premises of origin.
4. Treatment of animals or products.
5. Quarantine of imported animals.
6. Restricted use or movement of imported animals or products to reduce costs of failure.

In this proposed rule each of these management options is used for various disease agents. Not all of the options are appropriate for every disease agent, so different strategies will be necessary for different agents. Some of the variabilities of the disease agents include:

1. Incubation period.
2. Duration of carrier status in animals.
3. Number of potential host species that may be affected.
4. Survivability of agent outside the host animal.

5. Effectiveness of available test procedures to detect the disease agent.

6. Effectiveness of available treatment procedures to eliminate the disease agent.

7. Availability of technology to eradicate agent if it were introduced.

8. If agent were introduced, potential cost to eradicate, or potential costs into perpetuity if agent cannot be eradicated.

Rationale for Import Requirements for Ruminants and Swine from Differing Risk Class Levels

Although the import requirements in this proposal differ for different animals and diseases, a broad model of requirements based on risk class levels can be drawn, and we believe that certain generalizations can be made about the type of mitigation measures necessary for each risk class level. In general, the measures established for each level of risk are built upon the protections proposed for levels of lesser risk. For example, the requirements for importation from a region classified as R4 for foot-and-mouth disease would incorporate and add to the requirements for an R3 region. The requirements for an R3 region would incorporate and add to the requirements for an R2 region, and so on. The rationale for the broad requirements for each Risk Class level are as follows (specific requirements for specific diseases are discussed later in this Supplementary Information under the heading ''Risk Level Classifications other than Risk Level RN''):

Risk Class R1 Regions: From a Risk Class R1 region, there should be no concern about possible residual infection in the region. The principal concern is the possible deliberate introduction of animals into this region from regions with higher risk classifications in order to qualify them as animals from a Risk Class R1 region. Requiring a negative serological test for any animals imported from R1 regions would ensure that animals offered for importation are not vaccinated, and that animals from regions of higher risk are not being presented as being from the Risk Class R1 region. Requiring such tests would also provide some additional active surveillance for the exporting region.

Risk Class R2 Regions: There could possibly be residual infection in Risk Class R2 regions. Requiring a pre-embarkation quarantine for animals from such regions for importation into the United States would ensure that any imported animals are not incubating the disease when they are presented for export. As for Risk Class R1 regions, a negative serological test during the quarantine period for any animals from such regions would ensure that the animals intended for export are not vaccinated, and would ensure that animals from other higher risk regions are not presented as being from the Risk Class R2 regions. Again, such testing would provide some additional active surveillance for the exporting region.

Requiring a serological test at the U.S. post-importation quarantine facility would ensure that animals have not been exposed to a restricted disease agent during pre-embarkation quarantine, and that any incubating animals during the pre-embarkation quarantine period have had ample opportunity to develop antibodies to the disease.

Risk Class R3 Regions: Risk Class R3 regions would be low prevalence regions with a good history of disease surveillance and control. Herds would be identified that are free of the contagious disease of concern. Although the risk of importing a restricted disease agent from an established herd is small, the risk of disease exposure to such a herd while in transit or while being assembled is much higher. Due to the incubation period for many of the diseases of concern, the proposed requirements for Risk Class R3 regions would generally require a 30- to 60-day pre-embarkation quarantine period for animals assembled. We believe this would be necessary to detect any incubating animals, depending upon the disease. Although vaccination is often an important method of control of some contagious diseases, we would be concerned that vaccinated animals may mask a low prevalence of disease in the herd. Therefore, we would expect that animals being prepared for export would not be vaccinated and would serve as sentinels for possible residual infection in the source herd. Unvaccinated animals would therefore be more likely to develop disease during the pre-embarkation quarantine, but this would also serve to monitor the presence of any agent that may be introduced into the quarantine center. If there are any incubating animals in the group of animals intended for export, the exposed susceptible animals should develop clinical illness either during the pre-embarkation or, when required, during the post-importation quarantine. For this reason we do not believe that additional sentinel animals are necessary for the importation of animals from this Risk Class level where sentinel animals are generally specified.

Risk Class R4 and RU Regions: Risk Class R4 or RU regions would be higher prevalence regions, or regions that may have less than adequate control and surveillance programs. The health status of animals in source herds would be considered to be more uncertain, and more difficult for the veterinarians in the region of origin to certify. The likelihood of incubating animals, innately resistant animals, or animals that have been vaccinated and not identified as such would be greater than for Risk Class R3 regions. The pre-embarkation quarantine and testing would be generally the same as for R3 regions, but the post-importation quarantine may require using U.S.-source sentinel animals that would be highly susceptible to any foot-and-mouth disease, hog cholera, African swine fever, or swine vesicular disease virus that may be shed by infected animals in the shipment. A 30- to 60-day pre-embarkation and post-importation quarantine period would be necessary to detect these agents.

Solicitation of Information

The following proposed import requirements have been formulated based on current import requirements and the most recent epidemiological data available to us. We welcome information from the public, supported by scientific evidence or other data, regarding the proposed requirements.

Requirements for Importation From Risk Class RN Regions

Although, for the most part, the importation restrictions in proposed §§ 93.415 and 93.515 vary according to the restricted agent in question, the requirement for one risk class level, that of RN for negligible risk, would be the same for all diseases. This requirement, set forth in §§ 93.415(a) (ruminants) and 93.515(a) (swine), would be a certification that the animal in question have only been on premises in RN regions. A region that is classified as RN for all restricted disease agents would be able to import animals into the United States without any quarantine or testing requirements. Such animals would still need to be inspected at the U.S. port of entry for the general freedom from communicable diseases and, if found to be affected with a disease agent, would be quarantined either until they recovered from the disease, were destroyed, reexported or were returned to the region of origin. Animals imported through land border ports could be returned directly to the region of origin. At this time, based on the information available to us, there are no countries in the world that would qualify as Risk Class RN for all restricted disease agents of ruminants or swine, although individual regions in some countries may be able to meet such requirements.

At this time, there are many countries that may be classified as Risk Class RN for certain restricted disease agents. Therefore, specific testing and quarantine would not be required for those disease agents, even though testing or quarantine would be required for other agents. For example, Canada and Mexico would both be considered as Risk Class RN for foot-and-mouth disease virus and rinderpest virus in ruminants and swine. Canada would also be considered as Risk Class RN for hog cholera in swine, but because hog cholera does exist in parts of Mexico, those Mexican regions would be required to meet specific test and quarantine requirements to import swine into the United States. However, we would not have any greater requirements for Mexico for foot-and-mouth disease or rinderpest virus than we would have for Canada.

The criteria for a Risk Class RN region include the requirement that all susceptible animals present in the region were not living when the region was last infected. Arriving at an estimate for the specific time interval this requires will vary with the species involved. In the case of cattle, although the lifespan of a few cattle can exceed 20 years, for practical purposes most cattle in a domestic herd would be culled before 15 years. In swine, occasionally a sow or boar may live 15 years, but in practice, nearly all sows and boars in domestic farm operations are culled before 5 years of age, although there may be some marginal farm operations that keep a boar for up to 10 years. In determining the birthdates of ruminants and swine in a region for the purpose of classifying the region RN, we would use 15 years as the estimated life expectancy for cattle and 10 years for swine. These time spans reflect the pragmatic management of domestic livestock. Although other susceptible ruminants such as elk, camels, llamas, or bison may theoretically be kept longer than the 15 years we are considering as the maximum life span, we do not believe that in these species survival after 15 years would occur at a high frequency.

Risk Level Classifications Other Than Risk Class RN

Except for Risk Class RN, the requirements for the importation of animals from regions of each risk class level would be dependent on the disease in question, as well as the animal. As discussed above in this **SUPPLEMENTARY INFORMATION** under the heading ''Proposed Part 92,'' there are certain restricted diseases that are not specifically mentioned in the current regulations, because, practically speaking, animals that may have been affected with these diseases were prohibited or restricted importation due to the existence of other diseases in the country of origin. With the proposed establishment of risk class levels for regions, however, a region may be of low risk for a disease that is addressed in the current regulations, but of high risk for a disease not specifically addressed in the current regulation. Therefore, we believe it is necessary to establish distinct restrictions regarding all disease agents of concern, even those not addressed in the current regulations.

One broad category of diseases not addressed consistently in the current importation regulations is that of disease agents that are present in the United States, but that are subject to control or eradication programs. The requirements that do exist are specific to particular importing countries. For example, current § 92.418 includes testing requirements for tuberculosis and brucellosis for cattle from Canada. Current § 92.419 includes requirements for scrapie certification for sheep and goats from Canada. Current § 92.427 includes requirements for fever ticks, tuberculosis, and brucellosis for cattle from Mexico. Each of these requirements is particular to the country specified. In this proposal, we are setting forth requirements regarding the importation of ruminants and swine from countries affected with restricted disease agents subject to control or eradication programs in the United States, and we apply these requirements according to the Risk Class levels of foreign regions, rather than to specifically named countries.

Restricted Diseases That are Present in the United States But Are Subject to Control or Eradication Programs.

Mycobacterium Bovis

Proposed §§ 93.415(b) and 93.515(g) include requirements for the importation of ruminants and swine, respectively, from Risk Classes R1 through RU with regard to *Mycobacterium bovis* (*M. bovis*), the causative agent of bovine tuberculosis. *M. bovis* can affect a wide variety of animals, including most species of ruminants, swine and rodents. The United States has been working since 1917 to eradicate this disease agent. At present, there are a few cases of bovine tuberculosis in some States of the United States.

Bovine tuberculosis has a long incubation period, often measured in months or years. Affected animals may not show any external clinical evidence of the disease until the final terminal stages, but most will remain carriers for life. There is no cost effective treatment for bovine tuberculosis, even though treatments with various antibacterial chemicals are routinely done for humans affected with tuberculosis. The use of similar treatments in animals is not desirable because of the risk of developing resistant strains of the organism, and the prohibitive cost.

The only effective method of detecting infected carrier animals is by use of various tests. Intradermal tests have generally been applied. These tests require injection of tuberculin into the skin of the animal, and then observation of the reaction at a later time, usually 72 hours. Animals generally cannot be retested again for at least 60 days, because the test usually results in desensitization of the skin at the test site. The skin test is relatively insensitive and may miss many infected animals. It is generally more sensitive in detecting infected herds when applied to the entire herd of origin. Quarantine beyond the period of time necessary to conduct an intradermal test is not effective for bovine tuberculosis, except to prevent the quarantined animals from contacting infected animals.

The domestic regulations for bovine tuberculosis are set forth in 9 CFR part 77. Essentially, the program in the United States is based on domestic ''regionalization,'' through the classification of States based on their risk status. Each of the States in the United States qualifies as either *Accredited free* or *Modified accredited*, as defined in § 77.1. In order for a State to become accredited free, 5 years must pass without any known infection in the State.

If each State classified under the domestic bovine tuberculosis program were a foreign region, the State classifications would fall into regional risk classifications as follows:

Domestic classification	Conditions	Comparable risk class
''Modified Accredited''	Infected herds in State; more than 0.1% of herds infected. No States in the United States currently in this category.	R4

Domestic classification	Conditions	Comparable risk class
''Modified Accredited''	Infected herds in State; fewer than 0.1% of herds infected	R3
''Modified Accredited''	No known infected herds in State for at least 1 year	R2
''Accredited Free''	No known infected herds in State for at least 5 years	R1
''Accredited Free''	No known infected herds in State for at least 15 years ''Accredited Free'' at least 10 years.	RN

Currently, there are no States in the United States that are not at least ''Modified Accredited.'' If there were such areas, they would be equivalent to proposed Risk Class R4 if testing were being done to achieve a ''Modified Accredited'' status or as proposed Risk Class RU if such testing were not being done.

As indicated above, the risk classes we are proposing for foreign regions with regard to *M. bovis* are comparable to the domestic classifications of accredited free and modified accredited. The proposed requirements for importations from Risk Class R1 regions would be similar to interstate movement requirements in the United States from ''Accredited Free'' States. A certification of origin would be required for importation from both Risk Class RN and R1 regions to prevent presentation of ruminants or swine from higher risk regions as originating from Risk Class RN or R1 regions. Because of the prolonged incubation period for bovine tuberculosis, this requirement would be applicable during the lifetime of any ruminant or swine intended for importation from these regions. If animals that originated in a Risk Class R2, R3, R4 or RU region were presented for export from Risk Class RN or R1 regions, they would be required to meet the requirements for importation from the region of greater risk.

The proposed requirements for importation of ruminants or swine from regions classified as R2 and R3 for bovine tuberculosis would be similar to the requirements for interstate movement requirements in the United States from modified accredited States. Although the Federal regulations do not require a test for breeding cattle or swine moving interstate from modified accredited States, most States do have such a requirement for cattle and other ruminants entering their State from modified accredited States.

In the case of ruminants or swine intended for importation from regions classified as Risk Class R2 for *M. bovis,* only non-neutered ruminants or swine would be required to be tested, 60 to 90 days prior to export, with a retest at the port of entry. We believe these tests would be necessary, because these are the animals most likely to move into established breeding herds in the United States. Because neutered animals usually remain separate from other animals, and are slaughtered soon after reaching the United States, combined with the low risk of the source region and the low risk of transmission once in the United States, we believe neutered animals do not need to be tested.

For importation from a region classified as Risk Class R3 for *M. bovis,* the ruminants and swine must either originate from a herd that meets the criteria for ''accredited-free'' as defined in § 77.1, or the herd of origin must have had a negative test for bovine tuberculosis 4 to 12 months prior to export to the United States. We believe the minimum 4-month requirement is necessary to allow at least 60 days before the individual exported animals must be retested, because the intradermal tests for *M. bovis* must be at least 60 days apart.

For importation from a Risk Class R3 region, the certificate of export for swine must certify that the swine have never been on any premises while animals affected with *M. bovis* have been present on those premises. Both neutered and non-neutered ruminants and swine would need to be tested 60 to 90 days before export, and non-neutered animals would be required to be tested again at the port of entry. Because of the increased risk that neutered animals from Risk Class R3 regions might be infected, such animals would need to be identified with a permanent mark on the left hip, consisting of the letter ''M'' for males and ''Mx'' for neutered females. Traditionally most animals imported into the United States that would fit into this class have been from Mexico, so, currently, such an ''M'' has been interpreted to mean ''Mexican origin,'' but we propose the ''M'' be used to indicate high risk for ''Mycobacterium'' from any origin.

The proposed requirements for the importation of ruminants and swine from regions classified as R4 and RU regions for *M. bovis* would be similar to those for R3 regions. However, because the equivalent of accredited herds are not recognized in R4 or RU regions, all ruminants or swine would be required to originate from a herd that has had a negative test for bovine tuberculosis 4 to 12 months prior to export. The animals to be exported would be required to be quarantined for at least 60 days prior to export to prevent exposure to infection to other untested animals before export.

Brucella Abortus, B. Suis, and B. Melitensis

In § 93.415(c) of this proposal, we set forth the requirements for the importation of ruminants imported from Risk Class R1 through Risk Class RU for *Brucella abortus, B. suis biovar* 4, and *B. melitensis.* The United States currently has an eradication program for *B. abortus,* which exists at a low prevalence in a few States. *Brucella suis biovar* 4 does not occur in the United States except in caribou in the State of Alaska. *Brucella melitensis* has been eradicated from the United States.

The bovine brucellosis eradication program in the United States in effect regionalizes the United States according to the prevalence of brucellosis infected herds in the individual States. The regulations regarding brucellosis in the United States are set forth in 9 CFR part 78. In § 78.1, definitions for the disease risk status of individual States are set forth for *Class Free, Class A, Class B,* or *Class C* for bovine brucellosis.

It is possible to gauge where each of these classes would fall if the States to which they apply were foreign regions classified by Risk Class level. The following comparison could be made:

Domestic classification	Conditions	Comparable risk class
Class Free	Class Free for more than 15 years and vaccination not permitted except for export	RN
Class Free	Class Free for more than 4 years and vaccination not permitted except for export	R1
Class Free	No known infected herds for more than 1 year and/or vaccination permitted	R2

Domestic classification	Conditions	Comparable risk class
Class A	Less than 0.1% herd incidence rate	R3
Class A	More than 0.1% herd incidence rate	R4
Class B		
Class C		
Quarantined area	Does not meet minimum standards of eradication program	RU

Currently, all States in the United States are either Class Free or Class A. If the individual States were in a foreign country, all of the Class A States would be classified as Risk Class R3, because the herd infection rate is less than 0.1% (1 per 1000). Class A status allows for herd infection rates up to 0.25% (2.5 per 1000) so in theory it would be possible for a Class A State to be Risk Class R4. All of the Class Free States in the United States would be Risk Class R2 because they all permit, and some even encourage, calfhood vaccination. Some of these States could easily qualify as Risk Class RN or R1 if they were to prohibit calfhood vaccination except for animals that were to be exported to other States.

Because the only clinical evidence of brucellosis in animals is abortion, inspection of animals is not a reliable indicator of infection. Brucella affects only breeding animals, so there is no need to test neutered animals for brucellosis. The approved testing procedures for brucellosis are very sensitive, and most infected animals that have had a sufficient incubation period will be positive to the test. The incubation period for brucella infections can be quite variable, depending primarily on the stage of pregnancy in the infected animal. For this reason, under the restrictions for importation from Risk Class R3, R4, and RU regions, we would not allow animals to be imported from infected herds, even if the individual animals test negative.

There is no cost-effective treatment for brucella infections in animals. Since most animals will show some serological signs of brucellosis after 30 days, quarantines of 30 to 60 days are an effective method of preventing introduction of exposed animals.

To qualify for importation from a region classified as either Risk Class RN or R1 for brucellosis, non-neutered ruminants over 6 months of age would need to be accompanied to the United States with a certification of origin and certification that the ruminants were not vaccinated with any live brucella vaccine. However, if ruminants to be imported originate from a Risk Class R1 region and had been vaccinated with *Brucella abortus* Strain 19 vaccine before the region became a Risk Class R1 region, they would be subject to the requirements for importation from Risk Class R2 regions.

To qualify for importation from a region classified as either Risk Class R2 or (if a certified brucellosis-free herd) as Risk Class R3, these proposed rules would require a certification of origin for the ruminants to be imported from either a Class RN, R1, R2, or (if a certified brucellosis-free herd) R3 region, negative results to a brucellosis test of the animals to be imported conducted 30 to 60 days before being presented for export, and a retest with negative results at the port of entry. The ruminants may have been vaccinated only with *B. abortus Strain 19* in accordance with the procedures in 9 CFR part 78.

For non-neutered ruminants from herds not certified as brucellosis-free in Risk Class R3 regions, or for non-neutered ruminants from Risk Class R4 and Risk Class RU regions, the herd of origin must have been tested and found negative for brucellosis within 6 to 12 months prior to export of the ruminants. If any test-positive animals were found during the test, they must have been removed from the herd and all remaining animals must be retested with negative results not less than 6 months after any test-positive animals were removed. Additionally, individual ruminants to be imported must have undergone a minimum of 30 days pre-embarkation quarantine prior to export, must have had a negative result to an approved test for *B. abortus, B. suis* biovar 4, and/or *B. melitensis* within the 30 days prior to export, must be quarantined for at least 15 days at a post-importation quarantine designated and approved by the Administrator, and must have a negative result to approved tests for *B. abortus, B. suis biovar* 4, and/or *B. melitensis* during the post-importation quarantine period.

Brucella Suis

Proposed § 93.515(b) specifies requirements for swine intended for export from regions classified from Risk Class R1 through RU for *Brucella suis.* Just as comparisons can be made between domestic State Risk Class status and foreign Risk Class status for bovine brucellosis, similar comparisons can be made with regard to swine brucellosis, as follows:

Swine brucellosis classification	Conditions	Comparable risk class
Validated Brucellosis-Free.	Validated Free for more than 10 years. No adjacent States risk class R3, R4 or RU.	RN
Validated Brucellosis-Free Stage II.	No known infected domesticated herds for more than 5 years, Validated Free for more than 3 years.	R1
Validated Brucellosis-Free Stage III.	No known infected domestic herds for more than 1 year and/or infected feral swine in region. May include some Stage II areas qualifying for Stage III.	R2
Non-validated Stage II.	Less than 0.1% herd incidence rate.	R3
Non-validated Stage I.	More than 0.1% herd incidence rate.	R4
Non-validated	Does not meet minimum standards of eradication program.	RU

Currently all States in the United States are either validated brucellosis-free or, if non-validated, have less than 0.1% herd incidence rates. If the States in this country were foreign regions, all of the validated brucellosis-free States would be Risk Class RN, R1, or R2, and the non-validated States would be Risk Class R3.

Vaccination is not permitted or recommended in swine herds. Some States have known infection in feral swine located in the State. These States, if foreign regions, would fall into the Risk Class R2 classification, provided there has been no transmission of *B. suis* to domesticated swine herds within the previous year. States in which transmission to domestic swine herds has occurred would, if foreign regions, be Risk Class R3.

Under proposed § 93.515(b) regarding *B. suis*, swine from any regions classified as Risk Class R1 or R2 for the disease, or from an R3 region if from a validated brucellosis-free herd, would be allowed to move for slaughter to any approved slaughter plant in the United States, provided they move in vehicles closed with official seals of the United States government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

For swine to be otherwise imported from regions classified as Risk Class R1, these proposed rules would require that the swine be accompanied by a certification that they originated in a Risk Class RN or R1 region, and that the animals were not vaccinated with any live brucella vaccine.

For swine to be imported from regions classified as Risk Class R2, or for swine from validated brucellosis-free herds in Risk Class R3 regions, a certification of origin in a Risk Class RN, R1, or R2 region, or from a validated brucellosis-free herd would be required, along with a negative test of the imported animals for *B. suis* 30 to 60 days before being presented for export. A negative retest at the port of entry would also be required.

For the importation of non-neutered swine over 6 months of age from herds not validated brucellosis-free in Risk Class R3 regions, and for non-neutered swine over 6 months of age from Risk Class R4 or RU regions, all swine over 6 months of age in the herd of origin would need to have had negative results to a test for *B. suis* within 6 months prior to the date the swine to be imported are removed from the herd. If any swine were found to be positive on a herd test, the herd would need to have undergone a herd cleanup plan equivalent to the plan required in 9 CFR part 78. The complete herd test, and clean-up of each infected herd, would essentially qualify the herd as a validated brucellosis-free herd. Therefore, individual swine subsequently intended for importation from R3 regions would be subject to the same requirements as swine from R3 regions intended for importation from validated brucellosis-free herds.

No swine from any risk category would be eligible for importation if they have been vaccinated with a live Brucella vaccine. Vaccination of swine for brucellosis has not been found to be efficacious in the United States. Some areas of the world use a live attenuated *B. suis* biovar 2 vaccine. *Brucella suis* biovar 2 is not known to exist in the United States, so this vaccine, even though attenuated, would be considered an exotic disease agent in the United States.

Pseudorabies

In this proposed rule, § 93.515(c) sets forth import requirements for swine intended for importation from regions classified from Risk Class R1 through RU for pseudorabies virus (PRV). Pseudorabies affects all classes of swine and can occasionally affect other animals, such as sheep or cattle, which are dead-end hosts. The primary reservoir is in swine. On breeding swine farms, reproductive disorders and nervous disorders in baby pigs are the most frequently seen clinical signs of PRV. The incubation period of PRV in susceptible swine is usually variable, ranging from 36 to 48 hours in newborn pigs, and 3 to 5 days in older swine.

Most infected swine excrete virus only for 14 to 28 days following infection, but some do become persistent carriers of the virus for long periods of time. Recrudescence with virus excretion can occur following stress or other stimuli, such as parturition. Any seropositive animal should be considered a potential virus carrier. Carrier swine would not be expected to have any clinical signs of the infection.

Current tests for PRV are very sensitive, and infected swine will be expected to have detectable antibody as early as 6–7 days after exposure, with peak antibody titers about 5 weeks after exposure. Antibodies in recovered or carrier swine may persist for years. Vaccinated swine may be protected from clinical disease, but the virulent virus may still replicate and become established in a carrier state.

Pseudorabies virus is relatively stable at mild acidic or alkaline conditions, although strong acids and strong alkalis readily kill the virus. The virus can survive for long periods in the environment if the pH and humidity remain within an optimal range of ph 6–8, and the temperature remains between −8° C to 25° C. The virus generally dies out rapidly when frozen at −13° C to −20° C. However, although freezing in most cases rapidly kills the virus, it can be preserved for years frozen at −90° C. Direct sunlight rapidly destroys the virus. Although the virus can survive for relatively long periods of time in meat, usually little virus is found in the muscle of naturally infected swine. The virus exists primarily in the lymphoid and nerve tissue. There are no known treatment procedures that will clear infected carrier swine of the infection.

Currently, a cooperative Federal/State eradication program for PRV is conducted in all States of the United States. The PRV eradication program in the United States in effect regionalizes the country by State, according to the prevalence of PRV infected herds and the progress in the eradication program in each State. The State classifications are Stage I (Preparation), Stage II (Control), Stage III (Mandatory herd cleanup), Stage IV (Surveillance), and Stage V (Free). If the States of the United States were foreign regions, they would be classified according to Risk Class as follows:

Pseudorabies classification	Conditions	Comparable risk class
Stage V (Free)	Stage V for more than 10 years and vaccination not permitted except for export	RN
Stage V (Free)	Stage V (Free) for more than 3 years and vaccination not permitted except for export	R1
Stage V (Free)	Stage V (Free) after 2 years. No known infected herds for more than 2 years	R2
Stage IV (Surveillance)	Stage IV (Surveillance) for at least 1 year. No known infected herds for at least 1 year. Vaccination permitted.	R2
Stage IV (Surveillance)	Stage IV for less than 1 year	R3
Stage III	Less than 0.1% herd incidence rate	
Stage III	More than 0.1% herd incidence rate	R4
Stage II		
Stage I	Does not meet minimum standards of eradication program	RU

Currently all States in the United States are in stages II through V of the PRV program. Under proposed § 93.515(c), swine from any region with regard to pseudorabies would be allowed movement to slaughter under the same conditions as those described above for direct movement to slaughter with regard to *B. suis.* There is no known evidence that PRV is transmitted to swine from meat or infected meat scraps fed in garbage.

Under this proposal, to be imported from a Risk Class R1 region, swine would need to be accompanied only with certification that the swine originated in a Risk Class RN or R1 region, and that the animals were not vaccinated with any PRV vaccine.

To be imported from either a Risk Class R2 region or from a qualified pseudorabies-negative (QPN) herd in a Risk Class R3 region, swine would need to be accompanied by certification that they originated in a Risk Class RN, R1 or R2 region, or in an R3 region if from a qualified pseudorabies-negative herd that has been qualified according to procedures equivalent to those set forth in part 85 of this chapter, and by certification that the swine tested negative for PRV within 30 days before being presented for export. The purpose of the test is to prevent importation of any residual infection that may occur in the region. We believe the testing is necessary to detect animals that may be vaccinated but not recorded as vaccinated animals.

For swine to be imported from herds not QPN in Risk Class R3 regions, and from Risk Class R4 and Risk Class RU regions, the swine intended for export must have had a negative test within 30 days prior to export and must have been quarantined separate from all swine not in the shipment, for 30 days prior to export. The imported swine would be subjected to a post-importation quarantine for at least 15 days, during which time they must have a negative test for PRV. Certain vaccines are permitted in the United States under part 85 of this chapter. Because tests are available that will distinguish between the vaccine strains and virulent PRV, the vaccinated swine should create no problem in the testing procedure. We believe the 30 day pre-embarkation quarantine would be adequate to detect any swine that were incubating PRV infection when they entered the farm. The additional 15 days post-importation quarantine would be to assure that there was no transmission from possible silent carrier swine or from environmental contamination while in pre-embarkation quarantine.

Scrapie

In this proposed rule, § 93.415(h) sets forth requirements for sheep and goats imported from regions classified as Risk Class R1 through Risk Class RU for scrapie. Scrapie disease of sheep and goats exists in the United States at a low prevalence. The United States has attempted to eradicate scrapie disease since the 1950's, when it was first imported in sheep. The nature of the causative agent for scrapie is somewhat controversial, as it is not a true virus, although there are many attributes of the infection that resemble a virus infection. Sheep and goats are usually infected at a young age, but the disease does not appear until several years later as an encephalopathy. The incubation period for scrapie can last up to 5 years. Currently, the only certain method of diagnosing scrapie is by microscopic examination of the brain tissue of infected animals. Reliable serologic tests are generally not available. The only practical method of certifying sheep or goats for movement is by flock or herd history of the flock of origin, or regional history of scrapie.

Only a few countries of the world are considered to be free of scrapie. Others have eradication programs similar to the United States, but are low prevalence infected areas. According to the risk class criteria proposed in § 92.2 of this proposal, the United States, if a foreign region, would be classified as a Risk Class R3 region.

Under this proposal, for sheep and goats to be imported from regions classified as risk class RN, R1 or R2 for scrapie, the sheep and goats would need to be accompanied by certification that they have been only in one of those regions during their entire life, and have only been on premises where no cases of scrapie have been diagnosed during the 5 years immediately preceding the date of intended exportation.

The requirements for the importation of sheep and goats from regions classified as risk class R3 for scrapie would be similar to the current scrapie importation requirements for sheep and goats from Canada, set forth in § 92.419 of the current regulations. The proposed regulation equivalent to requirement ''(5)'' below, regarding the Canadian scrapie eradication program, would be the requirement that the region in question conduct a scrapie eradication program equivalent to that conducted in the United States. The provisions in current § 92.419 require a certificate stating:

(1) That the sheep and goats have been inspected on the premises of origin and found free of evidence of scrapie, and of any other communicable disease;

(2) That, as far as it has been possible to determine, such animals have not been exposed to any such disease during the preceding 60 days;

(3) That, as far as can be determined, scrapie has not existed on any premises on which such sheep or goats were located during the 42 months immediately prior to shipment to the United States;

(4) That each of such animals is not the progeny of a sire or dam that has been affected with scrapie; and

(5) That, as far as it has been possible to determine, each of such animals is not a sheep or goat that would have been slaughtered under the current Canadian scrapie eradication program had that program been in effect since April 1957.

Sheep and goats would be prohibited importation from regions classified as Risk Class R4 and RU for scrapie, because we believe that the requirements for Risk Class R3 regions are necessary to guard against the importation of scrapie-affected animals, and we do not believe that the certifications of Risk Class R3 regions can be made in Risk Class R4 or RU regions.

Contagious Diseases Exotic to the United States

In this proposal, § 93.415(d) sets forth requirements for ruminants imported from regions classified as Risk Class R1 through RU for foot-and-mouth disease (FMD) virus in ruminants, and § 93.515(e) sets forth requirements for swine moving from regions classified as Risk Class R1 through RU for FMD, rinderpest (RP), African swine fever (ASF), hog cholera (HC), and swine vesicular disease (SVD). The requirements governing these diseases are set forth in the same paragraph of this proposal, because the importation requirements for each of the diseases are similar for each of the risk classes. These diseases are grouped also because the epidemiology is similar and all of these diseases can be transmitted to new animals in meat and other animal products.

The incubation periods for FMD, RP, ASF, HC, and SVD are all relatively short, and all of these diseases are highly contagious, with spread by contact, aerosol, and feed or water being the most common methods of spread. Vector transmission of ASF by Ornithodoros ticks has been shown to occur and mechanical vector transmission of HC has also been demonstrated. Mechanical transmission

of each of these disease agents by ticks and insects is possible.

Foot-and-Mouth Disease

Foot-and-mouth disease affects all members of the family artiodactyla, as well as some rodents such as the hedgehog. Cattle are readily infected and may be carriers of the virus for long periods of time through localization of the virus in the pharyngeal lymphoid (tonsil) tissue. Vaccinated cattle may become infected and either not show any clinical signs or have a mild atypical disease. Carrier cattle do not readily transmit the virus to other animals, but are a constant threat to do so. Swine produce and disseminate large quantities of virus when infected, but do not remain carriers for long periods of time. Foot-and-mouth disease virus is relatively resistant outside the host animal, provided the pH remains near neutral. Acidic or alkaline conditions readily kill the virus.

African Swine Fever, Hog Cholera, and Swine Vesicular Disease

Only swine are affected with ASF, HC and SVD viruses. These viruses are primarily transmitted directly between swine, but ASF particularly can be transmitted by Ornithodoros ticks. Infected swine that recover may remain carriers of these agents for long periods of time. The viruses of ASF and SVD are quite resistent to heat, putrefaction, and acidic and alkaline conditions. Wild swine such as the wart hog, bush pig and giant forest pig in Africa are the primary reservoir of ASF. Infected pork and pork products can readily carry HC, ASF and SVD. Sheep and calves can be infected with SVD but do not develop a clinical illness and are not likely to spread the virus unless meat from affected animals is fed to swine. Only swine are susceptible to HC virus, in which acute, subacute and chronic disease occurs. Congenital infection of pigs helps maintain the disease in a herd, but movement of carrier swine or feeding of meat scraps to swine is the primary method of transmission between herds. Acidic and alkaline conditions readily destroy HC virus but the virus is very stable in refrigerated and frozen meat.

Viral infections with FMD, ASF, HC, and SVD are readily detected with modern serological tests. Testing the herd of origin as well as any exported pigs from areas known to be affected will significantly reduce the risk of introducing any of these viruses. Quarantines are necessary to detect any animals that may be incubating the virus or be inapparent carriers upon entry into the quarantine. There are no effective treatments for any of these viruses, and any recovered animals would be likely to be carriers. Therefore, if there is evidence of infection in a quarantine facility, none of the exposed animals would be allowed to enter the United States.

FMD Requirements for Ruminants and Swine, and RP, ASF, HC, and SVD Requirements for Swine

Under this proposal, we would prohibit the importation of any ruminants and swine that have been vaccinated for FMD, RP, ASF, HC, or SVD. Ruminants and swine to be imported from regions classified as R1 for FMD, RP, ASF, HC, or SVD would be required to be accompanied by a certification that the ruminants or swine were born and resided only in regions classified as Risk Class RN or R1 for the disease in question, and have had a negative test for the disease in question within 30 days prior to the date of export.

The only ruminants and swine from R1 regions excepted from the testing requirements, and also from the quarantine requirements for R2 regions discussed below, would be ruminants and swine imported for immediate slaughter that were born and raised in regions classified as Risk Class R1 or R2 for the diseases in question. Such animals would be required to be consigned from the port of entry to a recognized slaughtering establishment, and there slaughtered within 2 weeks of the date of entry. The ruminants would need to be moved from the port of entry in conveyances closed with official seals of the United States government applied and removed by an APHIS representative, or by an individual authorized for this purpose by an APHIS representative.

For ruminants and swine to be imported from regions classified as Risk Class R2 for FMD, and for swine to be imported from regions classified as Risk Class R2 for RP, ASF, HC, or SVD, the animals would need to be accompanied by a certificate that certifies that they were born and resided only in regions classified as Risk Class RN, R1, or R2 for the diseases in question. The ruminants and swine would also be required to meet the testing requirements required for animals from R1 regions, and, additionally, would need to undergo a 30-day pre-embarkation quarantine (for swine from regions classified as Risk Class R2 for ASF, the pre-embarkation quarantine must be conducted in a vector-proof facility approved by the Administrator), and a 15-day post-importation quarantine. During the post-importation quarantine, the ruminants and swine would need to test negative to an approved serological test for FMD, RP, ASF, HC, and/or SVD.

For ruminants and swine to be imported from regions classified as Risk Class R3 for FMD, and for swine to be imported from regions classified as Risk Class R3 for RP, ASF, HC, or SVD, the animals would need to be accompanied by certification that they (1) were born and resided only in regions listed as Risk Class RN, R1, R2, or R3 for FMD; (2) have not been on any premises affected with FMD virus during the 12 months prior to export; (3) have not been on any premises located within 25 miles (40 km) of any premises affected with FMD virus in the 90 days prior to export; (4) have undergone pre-embarkation quarantine for at least 60 days prior to export, under USDA supervision in a facility approved by the Administrator; and (5) have had, during the pre-embarkation quarantine, negative results to two tests conducted for FMD, using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples would be taken for further testing. Additionally, the ruminants and swine would have to be quarantined for at least 60 days without sentinel animals at the Harry S Truman Animal Import Center, during which time they would be tested for the disease in question at least once.

The requirements for ruminants and swine to be imported from regions classified as R4 or RU for FMD, and for swine to be imported from regions classified as R4 or RU for RP, ASF, HC, or SVD, would be the same as those for ruminants and swine imported from R3 regions, except for the certification of residency, and except that ruminants and swine from R4 regions would need to be quarantined at HSTAIC for at least 90 days with sentinel animals from the United States.

Rinderpest and Peste de Petits Ruminants

In § 93.415(e) of this proposal, we set forth requirements for ruminants to be imported from regions classified as Risk Class R1 through RU for rinderpest and *peste de petits ruminants* (PPR). Rinderpest virus primarily affects cattle and buffalo but a wide variety of cloven hoofed animals are susceptible. European swine do become infected, but the disease is primarily inapparent. The incubation period ranges from 3 to 15 days, and affected animals have a high mortality rate. Recovered animals do not remain carriers. Subacute infections may occur in regions where the disease is endemic or in breeds of animals or species that have an innate resistance. Rinderpest virus is not very stable

outside the host, and is readily destroyed by acidic or alkaline conditions, and by direct sunlight. The virus of PPR is closely related to rinderpest virus but primarily affects sheep and goats.

Viral infections with rinderpest and PPR are readily detected with modern serological tests. Testing the herd of origin, as well as any exported animals from areas known to be affected, will significantly reduce the risk of introducing any of these viruses. Quarantines are necessary to detect any animals that may be incubating the virus or be inapparent carriers upon entry into the quarantine. There are no known effective treatments for these viruses. Although any recovered animals do not remain as carriers, as a matter of precaution, animals with a known history of infection or exposure, including those exposed to infection in a quarantine center, should be prohibited entry into the United States. As with rinderpest, any animal vaccinated for PPR would be prohibited importation into the United States.

Ruminants intended for importation from regions classified as R1 or R2 for RP and PPR would be required to meet the same requirements as ruminants from regions classified as R1 and R2 for FMD. The requirements for ruminants from R3 regions for RP and PPR would be the same as for R3 for FMD, except that, in the case of RP and PPR, the ruminants would be required to undergo pre-embarkation quarantine for at least 30 days, would have to test negative to two tests conducted not less than 15 days apart (if indicated, nasal swabs or other tissues or samples would be taken for further testing), and would be required to be quarantined at HSTAIC for at least 30 days without sentinel animals. The requirements for ruminants from regions classified as R4 or RU for RP and PPR would be the same as those for R3 regions, except that, for animals from R4 regions, the quarantine at HSTAIC would have to be conducted with sentinel animals.

Bovine Spongiform Encephalopathy

Section 93.415(g) of this proposal specifies requirements for the importation of cattle from regions classified as Risk Class R1 through RU for bovine spongiform encephalopathy (BSE). BSE is a scrapie-like disease of cattle that has appeared in the past decade in Europe, particularly in Britain. It is thought to have been introduced into cattle from scrapie-infected sheep brains that were included in rendered protein meal added to cattle feed. The disease has an incubation period of from 5 to 7 years. Although BSE is not known to affect humans, the fear of the disease generated in the United Kingdom has caused severe economic hardship to the cattle industry in the British Isles. Because of the long incubation period and the lack of a suitable diagnostic test, the only way of preventing introduction of the disease is by certification of herd and regional history of the disease, along with the presence of a strong regional animal health infrastructure capable of recognizing and diagnosing the disease if it should occur.

Under this proposal, cattle imported from regions classified as Risk Class R1 or R2 for BSE would need to be accompanied by certification that the cattle were born and resided only in R1 or R2 regions, and that the cattle have only been on premises where no cases of BSE have been diagnosed during the 10 years immediately preceding the date of exportation.

Cattle from regions classified as Risk Class R3, R4, or RU for BSE would be prohibited importation into the United States.

Contagious Agalactia due to Mycoplasma agalactia, Sheep Pox Virus, Goat Pox Virus, and Contagious Caprine Pleuropneumonia due to Mycoplasma Mycoides Subsp. Capri

Section 93.415(i) of this proposal sets forth requirements for sheep and goats intended for importation from regions classified as R1 through RU for Contagious agalactia due to *Mycoplasma agalactiae* (CA), Sheep pox (SP), goat pox (GP), and contagious caprine pleuropneumonia (CCPP due to *Mycoplasma mycoides* subsp. *capri*). These diseases are grouped together because they affect only sheep and goats and the epidemiology is similar. Both CA and CCPP are chronic diseases with long incubation periods. Antibodies generally are found in infected animals long before the appearance of clinical signs. Both SP and GP are acute viral diseases in which the virus can remain in the recovered host or host materials for long periods after recovery. Serological tests for these disease agents are adequate to detect either recovered carriers in the case of SP or GP, or prodromal carriers in the case of CA or CCPP. Although each of these diseases could probably be easily eradicated if detected in the United States, they could become widespread before they were detected and therefore would be costly to eradicate.

All sheep or goats that have been vaccinated for CA, SP, GP, or CCPP would be prohibited importation into the United States. To be imported from regions classified as Risk Class R1 for CA, SP, GP, or CCPP, sheep and goats would need to be accompanied by certification that they were born and resided only in regions classified as Risk Class RN or R1, and that they have had a negative test for the disease in question within 30 days prior to export.

Sheep and goats to be imported from regions classified as Risk Class R2 for CA, SP, GP, or CCPP would be required to be accompanied by certification that they were born and resided only in regions classified as Risk Class RN, R1, or R2, and that they have had a negative result to an approved serological test for the disease in question 30 to 60 days prior to exportation to the United States. Additionally, the sheep and goats would have to be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator, and would have to test negative to an approved serological test for the disease in question during the post-importation quarantine.

In addition to residency certification, sheep and goats to be imported from regions classified as Risk Class R3 for CA, SP, GP, or CCPP would have to meet one of the following requirements: Either (1) test negative to an approved serological test for the disease in question 30–60 days prior to exportation to the United States; or (2) originate from a herd or flock in which all sheep and goats over 6 months of age have had a negative result to an approved serological test within 12 months prior to the time of export. Additionally, the sheep and goats would have to be quarantined and isolated for at least 30 days prior to export from all animals not part of the shipment, in facilities approved by the Administrator. The sheep and goats would also have to undergo at least a 15-day post-importation quarantine, and have a negative result to an approved serological test during that quarantine.

To be imported from regions classified as R4 or RU for CA, SP, GP, or CCP, sheep and goats would have to be certified as having undergone at least a 60-day pre-embarkation quarantine, and as testing negative to two approved tests for the disease in question, at least 30 days apart, with the second test during the pre-embarkation period and not more than 30 days before export. Additionally, the sheep and goats would have to be quarantined for at least 30 days post-importation, and be tested negative there to an approved serological test for the disease in question.

Malignant Catarrhal Fever

In this proposal, § 93.415(j) sets forth requirements for the importation of

ruminants from regions classified as Risk Class R1 through RU for malignant catarrhal fever—African or Wildebeest Type (MCF–A). This disease is transmitted from infected wildebeest and other wild reservoirs in Africa to cattle. There is little evidence of transmission from cattle to cattle. The causative agent for this disease has been identified as a herpesvirus. The causative agent for the sheep-associated type of malignant catarrhal fever (MCF–S) has not been positively identified, although several candidate viruses have been recovered. MCF–S is transmitted from sheep to cattle and is found world-wide, including in the United States. Therefore, it would not be considered a restricted type of the disease agent in this proposed rule.

(Although we refer simply to ''MCF'' when discussing malignant catarrhal fever in § 93.415(j) of the proposed rule, because the MCF–A type would be the only type considered a restricted disease agent, in this Supplementary Information we specify ''MCF–A'' when referring to the African or wildebeest type, to differentiate it from the MCF–S type.)

The principal concern with the importation of MCF–A would be the importation of infected wildebeest or other African wildlife that may carry the virus, rather than introduction in domestic livestock. However, although the research done indicates that MCF–A is not transmitted from cattle to cattle, we believe there is sufficient doubt to warrant requiring that any ruminant at least test serologically negative before importation. MCF–A virus has been isolated from antelope and deer in two zoos and a wild animal park in the United States. Serologic tests for MCF–A are sufficiently sensitive to detect possible carrier animals from affected regions. Because, as with most herpesvirus infections, an infected animal probably remains infected for life, any animal with a serologic titer should be excluded from importation.

Any ruminant that has been vaccinated for MCF–A would be prohibited importation into the United States. Ruminants intended for importation from regions classified as Risk Class R1 for MCF–A would be required to be accompanied by certification that they were born and resided only in regions classified as Risk Class RN or R1 for MCF–A, and that they have had a negative result to an approved serological test for MCF–A within 30 days prior to the date of export.

Ruminants intended for importation from regions classified as Risk Class R2 for MCF–A would be required to be accompanied by certification that they were born and resided only in regions classified as Risk Class RN, R1, or R2 for MCF–A, and have had a negative result to an approved serological test for MCF 30–60 days prior to the date of export. The ruminants would also be required to be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator, and would need to have a negative result to an approved serological test for MCF–A during the post-importation period.

Ruminants intended for importation from regions classified as Risk Class R3 for MCF–A would be required to be accompanied by certification that they were born and resided only in regions classified as Risk Class RN, R1, R2, or R3 for MCF–A, that they have been in a pre-embarkation quarantine facility, approved by the Administrator, for a minimum of 30 days prior to export, and that they either (1) have had a negative result to an approved serological test for MCF–A 30 to 60 days prior to the date of export, or (2) originate from a herd in which all ruminants in the herd over 6 months of age have had a negative result to an approved test for MCF–A within the previous 12 months. Additionally, the ruminants would need to be quarantined for at least 15 days at a post-importation facility designated and approved by the Administrator, and would need to have a negative result to an approved serological test for MCF–A during the post-importation quarantine period.

Ruminants intended for importation from regions classified as R4 or RU for MCF–A would be required to be accompanied by certification that they originate from herds that have not been affected with MCF–A during the previous 12 months, that they have undergone a minimum of 60 days pre-embarkation quarantine, and that, during the pre-embarkation quarantine, they have had negative results to two tests conducted not less than 15 days apart with an approved serological test for MCF–A. Additionally, the ruminants would be required to undergo post-importation quarantine for at least 15 days at a facility designated and approved by the Administrator, and would need to test negative to an approved serological test for MCF–A during the post-importation quarantine period.

Contagious Bovine Pleuropneumonia

In this proposal, § 93.415(k) sets forth requirements for the importation of ruminants from regions classified as Risk Class R1 through RU for contagious bovine pleuropneumonia (CBPP) in cattle due to *Mycoplasma mycoides* subsp. *mycoides*. This disease was eradicated from the United States in the 19th century. The disease has a long incubation, and infected cattle may not demonstrate clinical signs until the late stages of infection. Serologic tests have sufficient sensitivity to detect incubating animals long before any other clinical evidence is apparent. Any serologically positive animal would be excluded from import.

Any ruminant vaccinated for CBPP would be prohibited importation into the United States. Cattle intended for importation from regions classified as Risk Class R1 for CBPP would be required to be accompanied by certification that the cattle were born and resided only in regions classified as Risk Class RN or R1 for CBPP, that they have undergone a minimum 30-day pre-embarkation quarantine, and that they have had a negative result to an approved serological test for CBPP within 30 days prior to export.

Cattle intended for importation from regions classified as Risk Class R2 for CBPP would be required to be accompanied by certification that they were born and resided only in regions classified as Risk Class RN, R1, or R2 for CBPP and that they have had a negative result to an approved serological test for CBPP 30 to 60 days prior to the date of export. The cattle would also be required to be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator, and would need to test negative to an approved serological test for CBPP during the post-importation quarantine period.

The requirements for importation from regions classified as Risk Class R3 for CBPP would be similar to those for importation from regions classified as Risk Class R3 for MCF–A, discussed above.

The requirements for importation from regions classified as Risk Class R4 and RU for CBPP would be similar to those for importation from regions classified as Risk Class R4 or RU for MCF–A, discussed above, except that the interval between pre-embarkation negative tests would have to be at least 30 days for CBPP, as compared to 15 days for MCF–A, and the post-importation quarantine for CBPP would be at least 30 days for CBPP, rather than 15 days as for MCF–A.

Teschen Disease Virus

In this proposal, § 93.515(h) sets forth requirements for the importation of swine from regions classifies as Risk Class R1 through RU for Teschen

disease (TDV, also known as polioencephalomyelitis). TDV causes an encephalomyelitis in swine, due to an enterovirus similar to poliovirus in humans. Teschen disease virus is due to porcine enterovirus type 1. Other porcine enterovirus types are found throughout the world, including in the United States. Except for TDV, the porcine enteroviruses generally produce a mild inapparent infection in swine. Enteroviruses are very resistent to inactivation and may remain in the environment for long periods. Recovered swine usually do not shed the virus for long periods after appearance of antibody. Animals with stabilized or declining antibody levels would not be expected to be carriers, but generally any animal with antibody to TDV antigen would be avoided if from a TDV-affected region. Cross reactions with other enterovirus types may produce some confusion if swine from areas not affected with TDV are tested.

Any swine that has been vaccinated with any live TDV is prohibited importation into the United States. Swine intended for importation from regions classified as Risk Class R1 or R2 for TDV would be required to be accompanied by certification that the swine were born and resided only in regions classified as Risk Class RN, R1, or R2 for TDV, and that the swine have had a negative result to an approved test for Teschen disease within 30 days of the date of exportation.

Swine intended for importation from regions classified as Risk Class R3 for TDV would be required to be accompanied by certification that the swine were born and resided only in regions classified as Risk Class RN, R1, R2, or R3 for TDV, that the swine meet one of the following requirements: Either (1) they have had a negative result to an approved test for TDV 30 to 60 days before exportation; or (2) they originate from herds in which the entire herd over 6 months of age has had negative results to an approved test for TDV within 12 months prior to the date of exportation. Unless swine meet the latter of the above two options, they would also be required to be quarantined for at least 30 days prior to export. Additionally, the swine would be required to be quarantined for at least 15 days at a post-importation quarantine station approved by the Administrator, and would need to test negative to an approved serological test for TDV during that quarantine period.

Swine intended for importation from regions classified as R4 and RU for TDV would be required to be accompanied by certification that the swine originate from herds in which the entire herd over 6 months of age has had a negative result to an approved test for Teschen disease within 60 to 180 days prior to the date of exportation; that the swine were quarantined for at least 60 days prior to export, and that during the pre-embarkation quarantine period, the swine have had negative results to an approved test for TDV 30 to 60 days prior to the date of export. Additionally, the swine would be required to be quarantined at a post-importation quarantine facility for at least 30 days, and, during this quarantine period, have two negative results, not less than 30 days apart, to an approved test for Teschen disease.

Ectoparasites

In this proposal, §§ 93.415(f) and 93.515(d) set forth requirements for ruminants and swine intended for importation from regions classified as Risk Class R1 through RU for restricted ectoparasites. Based on the information currently available to us, every region of the world except Canada has one or more restricted ectoparasites. Therefore, except for Canada, there are currently no regions that would qualify as Risk class RN, R1 or R2. Although such regions may exist, at the present time we do not have information that would allow us to make such classifications.

Control of ectoparasites is important, not only because of the damage that can be done by the ectoparasite itself, but also because certain restricted diseases are known to be transmitted or carried only by certain ectoparasites. By preventing or intercepting the ectoparasite, we effectively prevent transmission of the restricted agent, even if it were to be brought into the United States in infected animals. An example of this situations is bovine piroplasmosis due to *Babesia bigemina*, which is transmitted solely by the ticks *Boophilus annulatus* or *B. microplus*. This disease has been eliminated from the United States by eliminating the tick, rather than addressing the infection status of the animals.

Under this proposal, for ruminants and swine to be imported from regions classified as Risk Class R1 or R2 regions for ectoparasites, the animals would be required to be inspected for restricted ectoparasites at the port of entry. If restricted ectoparasites are found, the animals may not enter until they have been treated again in 10 to 14 days. This time period is necessary because the treatment will not kill the eggs of the parasites, and if any eggs have hatched they must be destroyed by a second dipping.

For ruminants and swine to be imported from regions classified as Risk Class R3, R4 and RU for ectoparasites, the animals offered for export would be required to be treated 10 to 14 days before export, and to be inspected prior to export to be certain they have been cleared of any ectoparasites. Except for animals imported for immediate slaughter, ruminants and swine would also have to be inspected at the port of entry and retreated for ectoparasites. If animals are found to be infested with ectoparasites at the port of entry, they would be returned to the country of origin after treatment if offered for entry at a land border port, or would be quarantined for at least 15 days if at other ports.

The purpose of port of entry inspection is to discover any ectoparasites that may have survived the previous treatment in the region of origin. Any ectoparasites found would indicate that the animals had not been adequately treated or had become reinfected after treatment in the region of origin. At least 10 days must pass after treatment to allow the treatment to have full effect because some treatments do not immediately kill the ectoparasites.

Vector-Borne Diseases That Are Exotic to the United States

Aino and Akabane Virus

In this proposal, § 93.415(l) sets forth requirements for ruminants offered for importation from regions classified as Risk Class R1 through RU for Aino and Akabane virus. The incubation periods for Aino and Akabane virus are short, and mature ruminants do not remain carriers of the virus for more than 7 to 14 days, or for 4 to 6 days after appearance of antibody. Both these viruses cause fetal deformities, and the carrier status of affected fetuses is more uncertain. Serologically positive pregnant cattle would not be imported. After a 30-day period with no evidence of increasing serological titer, even serologically positive animals are of negligible risk for introducing infection. The disease is seasonal and, even from high risk regions, there is no need to have insect-secure quarantine facilities during times of the year when insect vectors are not active. During seasons when insect vectors are active or from areas where insect vectors are always active, insect-secure quarantine facilities would be required to be provided to prevent infection of the animals to be exported during the pre-embarkation quarantine period. Non-pregnant animals with stabilized or declining serological titers are a

negligible risk source of infection in the United States.

Any ruminant that has been vaccinated for aino or akabane virus would be prohibited importation into the United States. Ruminants offered for importation from regions classified as Risk Class R1 or R2 for aino or akabane virus would be required to be accompanied by certification that, for at least 60 days preceding importation, the ruminants have been only on premises in regions classified as Risk Class RN, R1, or R2. The certification would also need to state that the ruminants have had a negative result to an approved serological test for aino and/or akabane virus within 30 days prior to the date of export. If, upon being tested, any of the ruminants in the shipment had a positive result to the test, for any of the remaining ruminants to be imported, all positive pregnant female ruminants would need to be removed from the shipment, and all remaining ruminants (both positive and negative) would need to be retested with either negative, decreasing, or stabilized test results at least 30 days following the first test.

For ruminants to be imported from regions classified as Risk Class R3, R4, or RU for aino or akabane, the ruminants would be required to be accompanied by certification that they did not originate from a herd that has been known to be infected with aino and/or akabane within 12 months of the date of export. Additionally, if the ruminants are offered for export during a time of the year when vectors are active, the certification would need to state that the ruminants were quarantined for at least 60 days prior to export in a vector-proof facility approved by the Administrator and by the national veterinary services in the country of origin. If the ruminants are offered for export during a time of the year when insect vectors are not active, the certification would need to state that at least 60 days has passed since the first killing frost of the season. The certification would also need to state that the ruminants were tested twice with negative results to approved serological tests for aino and/or akabane virus, at least 30 days apart, with the second test conducted within 30 days prior to export. If any of the ruminants in the shipment tested positive, then the same procedure as for R1 and R2 regions regarding retesting after removal of pregnant positives would be followed. The ruminants would need to be quarantined for at least 15 days at a post-importation quarantine facility, during which time the ruminants must have negative, decreasing, or stabilized test results to an approved serological test for aino and/or akabane virus.

Bluetongue, Epizootic Hemorrhagic Disease, Bovine Ephemeral Fever, Rift Valley Fever, and Wesselbron

In this proposal, § 93.415(m) sets forth importation requirements for ruminants from regions classified as Risk Class R1 through RU for Bluetongue virus (BTV), other than serotypes 10, 11, 13, and 17 which are already endemic in parts of the United States; Epizootic hemorrhagic disease virus (EHDV), except serotypes 1 and 2 which are already endemic in parts of the United States; bovine ephemeral fever (BEF, also known as Kotankan or Obodhiang) virus; Rift valley fever (RVF) virus, and Wesselsbron (WB) virus.

There are at least 20 serotypes of BTV and 6 serotypes of EHDV that have been identified in the world that are not known to be present in the United States. Each of these could possibly become established, and would be as difficult to eliminate as the types already present in the United States. Bovine ephemeral fever, RVF and WB are viruses that could also find ready vectors in the United States because they are transmitted by Culicoides or mosquitoes. The incubation periods for these viruses is much longer than for Akabane and Aino. In each case, the virus either produces prolonged viremias even after the appearance of antibody, or there is insufficient history about the duration of the viremia. Any animal with specific antibody with any of these agents from affected regions would be avoided, because they present a moderate, high or unknown risk of introducing virus into the United States. Serologically positive animals with stable titers may be introduced safely if they are negative to virus isolation tests.

To be imported from regions classified as Risk Class R1 or R2 for BT, EHD, BEF, RVF, and WB, ruminants would be required to be accompanied by certification that they have resided for at least 60 days prior to export only on premises located in regions classified as Risk Class RN, R1, or R2, and also that they have had a negative result to an approved serological test for BT, EHD, BEF, RVF, and/or WB virus. If any of the ruminants in the group test positive, then the remaining ruminants could be imported only if they qualify as being from a Risk Class R3, R4, or RU region.

To be imported from regions classified as Risk Class R3, R4, or RU for BT, EHD, BEF, RVF, and WB, ruminants that are offered for export during a season of the year when insect vectors are active, or less than 60 days after the first killing frost in the fall of the year, would be required to be accompanied by certification that they were quarantined and isolated from all animals not part of the shipment for at least 60 days prior to embarkation in a vector-proof facility approved by the Administrator. If the ruminants are offered for export during a season of the year when insect vectors are not active, the certification must state that the ruminants have remained on premises in areas where the first killing frost in the fall occurred at least 60 days prior to the date of embarkation.

In either case, the certification would also need to state that the ruminants have had negative results to an approved serological test 30 to 60 days prior to the embarkation. If any of the ruminants tested positive to this test, for the remaining ruminants to be imported, the positive animals would need to be removed from the shipment, and the remaining ruminants would have to test negative to an approved serological test. If any of the ruminants has a positive test result to this second test, and it is a season of the year in the exported region when insect vectors are active, then the remaining animals may not be imported during the insect vector season. If it is a season of the year when insect vectors are not active, then the ruminants testing positive may be removed and the remaining animals may be imported if they all test negative to a retest at least 30 days following the previous test.

The imported ruminants would need to be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator if imported during a season of the year in the United States when insect vectors are not active, and must be quarantined for 60 days if imported during a season of the year when insect vectors are active in the United States. During this quarantine period, the ruminants would need to test negative to an approved serological test for BT, EHD, BEF, RVF, and or WB virus.

Nairobi Sheep Disease

In this proposal, § 93.415(n) sets forth requirements for the importation of ruminants from regions classified as Risk Class R1 through RU for Nairobi sheep disease (NSD, also known as Dugbe or Ganjam) virus. This is a tick-borne virus disease that has a relatively long incubation period and convalescent carrier status. Animals without antibody titers from affected regions would be difficult to find in the population, because the infection rate in affected regions is often quite high.

Serologically positive animals with stabilized titers may be safely imported if they are negative upon virus isolation.

Any ruminant vaccinated for NSD virus would be prohibited importation into the United States. Ruminants intended for importation from regions classified as Risk Class R1 or R2 for NSD would be required to be accompanied by certification that the ruminants have resided for at least 60 days in RN, R1, or R2 regions, and that the ruminants have tested negative to an approved serological test for NSD virus within 30 days prior to export to the United States. If any of the ruminants test positive, then the remainder of the animals would have to meet the requirements for ruminants from Risk Class R3, R4, or RU regions.

Ruminants intended for importation from regions classified as Risk Class R3, R4, or RU for NSD would have to be accompanied by certification that the ruminants were quarantined, for at least 60 days prior to export, in a vector-proof facility approved by the Administrator and by the national veterinary services of the country of origin, and that, during this quarantine period, the ruminants tested negative twice, within 60 days prior to export and at least 30 days apart, using an approved serological test for NSD virus. If any ruminants in the shipment tested positive to the first serological test, then all ruminants (positive and negative) would need to be retested at least 30 days following the previous test, with negative, decreasing, or stabilized test results. Only those animals that were negative to both tests, or that were negative on virus isolation procedures could be imported into the United States.

Additionally, the ruminants from the R3, R4, and RU regions would need to be quarantined for at least 15 days at a post-importation quarantine facility approved by the Administrator, and would need to test negative to an approved serological test during that quarantine.

Cowdria ruminantium, Tick-Borne Encephalitis, and Louping Ill

In this proposal, § 93.416(o) sets forth importation requirements for ruminants intended for importation from regions classified as Risk Class R1 through RU for heartwater due to *Cowdria ruminantium,* tick-borne encephalitis, and Louping Ill, which is a form of tick-borne encephalitis. These diseases are tick-borne infections that have long carrier periods and that may be able to be transmitted by ticks already present in the United States.

Any ruminant that has been vaccinated for *Cowdria ruminantium,* tick-borne encephalitis, or Louping Ill is prohibited importation into the United States. Ruminants intended for importation from regions classified as Risk Class R1 or R2 for *Cowdria ruminantium,* tick-borne encephalitis, or Louping Ill would be required to be accompanied by certification that the ruminants have resided on premises located in RN, R1, or R2 regions for at least 60 days immediately prior to export and have had a negative result to an approved serological test for *Cowdria ruminantium,* tick-borne encephalitis, and/or Louping Ill within 30 days prior to export.

Ruminants intended for importation from regions classified as Risk Class R3, R4, or RU for *Cowdria ruminantium,* tick-borne encephalitis, or Louping Ill would be required to be accompanied by certification that the ruminants were quarantined for at least 60 days immediately prior to export in a vector-proof facility approved by the Administrator and the National Veterinary Services in the country of export, and that during the quarantine period the ruminants were tested negative twice, within 60 days prior to export and at least 30 days apart, using an approved serological test for *Cowdria ruminantium,* tick-borne encephalitis, and/or Louping Ill. Additionally, the ruminants must be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator, during which time the ruminants must be tested negative at least once using an approved serological test.

Theileria

In this proposal, § 93.415(p) sets forth requirements for the importation of ruminants from regions classified as Risk Class R1 through RU for *Theileria* spp. Of particular concern for cattle are *T. parva,* the cause of east coast fever; *T. lawrencei,* the cause of Corridor disease; and *T. annulata,* the cause of Mediterranean fever; and, for sheep and goats, *T. hirci,* the cause of malignant bovine or caprine theileriosis. Theileria are transmitted by ticks, and are rather host specific both for the primary hosts and for the vector. The specific Theileria species are usually not found outside the range of their secondary host tick. The primary control mechanism is to keep the transmitting tick out of the United States, but there is also some concern with Theileria-infected animals, because there may be native ticks in the United States that could transmit one or more of these agents. *T. mutans* is a species that is found throughout the world, and although apparently not associated with any disease, does find a number of vectors. Once an animal becomes infected with these agents it probably remains infected for life.

Any ruminant that has been vaccinated for Theileria is prohibited importation into the United States. Ruminants intended for importation from regions classified as Risk Class R1 or R2 for Theileria would be required to be accompanied by certification that the ruminants, for at least 1 year immediately prior to export, have resided only on premises located in RN, R1, or R2 regions, and have had a negative result to an approved serological test for Theileria within 30 days prior to export.

Ruminants intended for importation from regions classified as Risk Class R3, R4, or RU for Theileria would be required to be quarantined for at least 60 days prior to export in a vector-proof facility approved by the Administrator and the National Veterinary Services of the country of export, and that, during this quarantine period, the ruminants tested negative twice, at least 30 days apart, to an approved serological test for Theileria. Additionally, the ruminants would need to be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator, and, during this period, would need to test negative at least once using an approved serological test for Theileria.

Besnoitia Besnoiti, Vesicular Stomatitis, Lumpy Skin Disease, and Parafilaria Bovicola

In this proposal, § 93.415(r) sets forth requirements for the importation of ruminants from regions classified as Risk Class R1 through RU for globidiosis due to *Besnoitia besnoiti,* lumpy skin disease (LSD) virus, and parafilariosis caused by *Parafilaria bovicola* in ruminants.

Any animal that has been vaccinated for *Besnoitia besnoiti,* LSD, or *Parafilaria bovicola* is prohibited importation into the United States. Ruminants offered for importation from regions classified as R1 or R2 for *Besnoitia besnoiti,* LSD, or *Parafilaria bovicola,* would be required to be accompanied by certification that, for at least 60 days prior to export, the animals have resided only on premises located in Risk Class RN, R1, or R2 regions, and have had a negative result to an approved serological test for the disease in question within 30 days prior to export to the United States.

Ruminants offered for importation from regions classified as R3, R4, or RU for *Besnoitia besnoiti,* LSD, or *Parafilaria bovicola,* must be

accompanied by certification that the animals were quarantined and isolated, for at least 60 days prior to export, from all animals not part of the shipment, in a vector-proof facility approved by the Administrator. During this quarantine, the animals would need to be tested negative twice, at least 30 days apart, using an approved serological test for *Besnoitia besnoiti,* LSD, and/or *Parafilaria bovicola.* Additionally, the animals would need to be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator, and, during this quarantine, would need to be tested negative at least once using approved serological tests.

Trypanasomes Transmitted by Tsetse Flies

In this proposal, §§ 93.415(q) and 93.515(i) specify importation requirements for ruminants and swine, respectively, from regions classified as Risk Class R1 through RU for tsetse fly transmitted *Trypanosoma* spp. including *T. brucei, T. congolense, T. evansi, T. simiae, T. suis, T. uniforme,* and *T. vivax.* The tsetse fly does not occur outside of Africa, but some of the trypanosomes that are found to be transmitted by the tsetse fly have been able to be transmitted by Tabanids and other biting flies, which allows them to become established outside the areas of tsetse fly presence. *Trypanosoma vivax* has become established throughout South and Central America, where it is transmitted by species other than the tsetse fly, and *T. evansi* is primarily transmitted by biting flies other than the tsetse fly. It is possible that some native North American biting flies could become adapted to transmit one or more of the Trypanosomes, so care must be taken to assure that animals infected with the parasites are not imported. Once an animal is infected, it probably remains infected for life.

Any ruminant or swine that has been vaccinated for trypanosomes may not be imported into the United States. Ruminants and swine to be imported from regions classified as R1 or R2 for African trypanosomes and tsetse flies would be required to be accompanied by certification that the ruminants have resided only on premises located in Risk Class RN, R1, or R2 regions for trypanosomes and tsetse flies for their entire life, and have had a negative result to an approved serological test for African trypanosomes within 30 days prior to export to the United States.

Ruminants and swine to be imported from regions classified as Risk Class R3, R4, and RU for African trypanosomes and tsetse flies would be required to be accompanied by certification that the animals originated from premises that have not had trypanosomiasis diagnosed during the previous 24 months, that they were quarantined and isolated for at least 60 days prior to export in a vector-proof facility approved by the Administrator, and that during the pre-embarkation quarantine period, they had negative results to an approved serological test for trypanosomes. Additionally, the ruminants and swine would need to be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator, and, during this quarantine period, would need to be tested negative at least once for trypanosomes using an approved serological test.

Trypanosomes Transmitted Other Than by Tsetse Flies

In this proposal, § 93.415(s) sets forth importation requirements for ruminants from regions classified as Risk Class R1 through RU for *Trypanosoma* spp. that affect ruminants and that are transmitted by species other than tsetse flies (Glossina spp.) (NTT-Trypanosomas), tick-borne fever due to Erlichia (Cytoecetes) phagocytophilia, or bovine petechial fever due to Erlichia (Cytoecetes) ondiri. The NTT-Trypanosomas include *T. brucei, T. evansi,* and *T. vivax,* which may also be transmitted by biting flies other than tsetse. *Trypanosoma evansi* causes a disease called surra that affects primarily equines, camels, goats, and carnivores, but cattle may be asymptomatic carriers of the parasite.

Any ruminant that has been vaccinated for NTT-Trypanosomes, TBF, or BPF is prohibited importation into the United States. Ruminants offered for importation from regions classified as Risk Class R1 or R2 for NTT-Trypanosomes, TBF, and/or BPF would be required to be accompanied by certification that the ruminants have resided for their entire life only on premises located in regions classified as Risk Class RN, R1, or R2, and have had a negative result to an approved serological test for NTT-Trypanosomas, TBF, and/or BPF within 30 days prior to export.

Ruminants offered for importation from regions classified as Risk Class R3, R4, or RU for NTT-Trypanosomas, TBF, or BPF would be required to be accompanied by certification that the ruminants were quarantined for at least 60 days prior to export, in a vector-proof facility approved by the Administrator and the National Veterinary Services of the country of origin, and that, during the quarantine, the ruminants tested negative twice, at least 30 days apart, to an approved serological test for NTT-Trypanosomes, TBF, and/or BPF.

If the ruminants are imported during a season of the year when vectors are not active in the United States, they would be required to be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator. The post-importation quarantine period would need to be at least 60 days if the ruminants are imported during a season of the year when vectors are active in the United States. In either case, during the post-importation quarantine period, the ruminants would need to test negative to an approved serological test for NTT-Trypanosomes, TBF, and/or BPF.

Vesicular Stomatitis Virus

In this proposal §§ 93.415(t) and 93.515(j) set forth importation requirements for ruminants and swine, respectively, from regions classified as Risk Class R1 through RU for vesicular stomatitis virus (VSV).

Ruminants and swine intended for importation from regions that are classified as Risk Class R1 for VSV would be required to be accompanied by certification that the ruminants and swine have resided for at least 60 days prior to export only on premises located in Risk Class RN or R1 regions for VSV, and have not been vaccinated for VSV.

Ruminants and swine intended for importation from regions that are classified as Risk Class R2 for VSV would be required to be accompanied by certification that the ruminants and swine have resided for a minimum period of time (60 days for ruminants; 30 days for swine) prior to export only on premises located in Risk Class RN, R1 or R2 regions for VSV, that the animals have not been vaccinated with any live attenuated vaccines for VSV, and that the animals have not been vaccinated with inactivated vaccines for VSV within 60 days prior to export.

Ruminants and swine intended for importation from regions that are classified as Risk Class R3, R4, or RU for VSV would be required to be accompanied by certification that the ruminants and swine have not been vaccinated with any live attenuated vaccines for VSV, have not been vaccinated with inactivated vaccines for VSV within 60 days prior to export, and have not been located on any premise where VSV has occurred within 60 days prior to export. Additionally, if the animals are exported during a season of the year when insect vectors were active, the certification must state that the animals were quarantined and

isolated from all other animals not part of the shipment for at least 30 days prior to export in a vector-proof facility approved by the Administrator, and, during the pre-embarkation quarantine period, had negative results to an approved serological test for VSV within 14 days prior to export. If the ruminants and swine are imported during a season of the year when insect vectors are active within the United States, the animals must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator, and, during the post-importation quarantine period, the animals must have negative results to an approved serological test for VSV.

Japanese Encephalitis and Getah

In this proposal, § 93.515(f) sets forth importation requirements for swine from regions classified as Risk Class R1 through RU for Japanese encephalitis virus (JEV) and Getah virus in swine.

Japanese encephalitis virus (JEV) is a flavivirus transmitted by various species primarily of the genus Culex found throughout eastern Asia. The disease primarily affects horses and humans, but swine and birds are the primary reservoir and amplifying host for the virus. The disease is primarily inapparent in swine, except in pregnant sows, in which stillborn and weak pigs may be born. The disease can also cause infertility in breeding boars.

The viremia in swine may persist throughout the vector season and provide a constant source of virus for mosquitoes. Although the introduction of this virus into North America is a constant threat, it is not known whether the virus could be established if introduced. Infected swine would be the most likely means of introducing the infection, as infected horses and humans usually have a very short, low-level, viremia that cannot infect mosquitoes.

Getah virus is an alphavirus with roughly the same distribution and vectors as JEV. It causes similar problems in swine as does JEV virus. Swine and horses are the primary amplifying hosts for this virus, and affected horses may develop a febrile illness characterized by skin lesions and edema. Pregnant sows may have reproductive failure due to Getah virus infection.

Swine intended for importation from regions classified as Risk Class R1 for JEV or Getah Virus would be required to be accompanied by certification that the swine have resided for at least 60 days immediately prior to export only on premises located in regions classified as Risk Class RN or R1 for JEV or Getah Virus, and have had a negative result to an approved serological test for JEV and/or Getah within 30 days prior to export.

Swine intended for importation from regions classified as Risk Class R2 for JEV or Getah Virus would be required to be accompanied by certification that the swine have resided for at least 60 days only on premises located in Risk Class RN, R1, or R2 regions. The certification would also need to state that the swine have undergone a 30-day pre-embarkation quarantine, which, if conducted during a time of year when insect vectors are active, would need to be in a vector-proof facility approved by the Administrator. Additionally, the certification would need to state that the swine have tested negative to an approved serological test for JEV and/or Getah within 30 days prior to export. The swine would also need to undergo a post-importation quarantine of at least 15 days at a facility designated and approved by the Administrator.

Swine intended for importation from regions classified as Risk Class R3, R4, or RU for JEV or Getah Virus would be required to be accompanied by certification that they have undergone pre-embarkation quarantine for at least 60 days immediately prior to export. If the quarantine is conducted during a time of the year when insect vectors are active, it would have to be carried out in a vector-proof facility approved by the Administrator.

While in pre-embarkation quarantine, the swine would also need to test negative twice, within 60 days prior to export and at least 30 days apart, to an approved serological test for Japanese encephalitis and/or Getah.

If the swine are imported during a time of the year when vectors are active in the United States, the swine would need to be quarantined for at least 60 days at a post-importation quarantine facility designated and approved by the Administrator. Otherwise, the post-importation quarantine would need to be at least 15 days. In either case, during the post-importation quarantine, the swine would need to test negative to JEV and/or Getah virus, using approved serological tests.

Definitions

In §§ 93.400 (ruminants) and 93.500 (swine) of this proposed rule, we have added definitions to those already included in current §§ 92.400 and 92.500. The definitions that would be added in both §§ 93.400 and 93.500 are: *Adjacent regions, affected animals, affected premises or regions, approved brucellosis test*, approved tests for restricted diseases or agents, authorized veterinarian, case, contagious disease, driven, ectoparasites, equivalent test, exposed, identification, import (imported, importation) into the United States, livestock, official seal, operator, permitted treatment, post-importation quarantine, pre-embarkation quarantine, quarantine, region, restricted agents, risk class regions, susceptible animals, trail, transported, vector-borne disease, and *Veterinarian in Charge*. Additionally, in proposed § 93.400 we would add a definition of approved bovine tuberculosis test, and in proposed § 93.500 we would add a definition of *approved pseudorabies test*.

Part 94

The regulations in current 9 CFR part 94 govern the importation into the United States of specified animals and animal products, in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Part 94 also restricts the movement of certain garbage, and the importation of carcasses, products, and eggs of poultry, game birds, and other birds.

Under the regulations in current part 94, countries are identified in which rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and/or bovine spongiform encephalopathy are considered to exist. Also under part 94, swine and/or ruminants from these countries are prohibited or restricted importation into the United States. Certain of the conditions governing restricted importation are set forth in current part 94. The remainder of the conditions are set forth in current part 92, in either subpart D (ruminants) or subpart E (swine).

In this proposed rule, we are proposing to remove from part 94 all provisions regarding the existence of diseases affecting ruminants or swine in specific countries, and all provisions regarding the importation of live animals.

The provisions in current part 94 that list countries in which specific diseases affecting ruminants and swine are considered to exist would not be necessary, because they would be replaced by the criteria for risk class levels we are proposing to set forth in revised part 92, discussed above. (However, until there is future rulemaking on the provisions in current

§ 94.6 regarding the importation of eggs, carcasses, and other products from poultry or birds, those provisions would remain the same and continue to be based on specified countries where exotic Newcastle disease or S. enteritidis is considered to exist.)

All requirements for the importation of live animals would be incorporated into the importation requirements in proposed part 93, discussed above. So that, as revised, part 94 would include only restrictions and requirements for the importation of meat and other animal products, and for the movement of regulated garbage into the United States.

Section 94.1(a) of the current regulations sets forth a list of countries considered to be free of both rinderpest and foot-and-mouth disease. All countries not on this list are considered to be those in which rinderpest or foot-and-mouth disease exists. A similar list for countries considered free of hog cholera is set forth in § 94.9. Section 94.8 of the current regulations sets forth a list of countries in which African swine fever is considered to exist, and §§ 94.12(a) and 94.18(a) set forth such lists for swine vesicular disease and bovine spongiform encephalopathy, respectively. As noted above, these lists would not be necessary under the regionalized approach to risk class levels set forth in this proposed rule. Therefore, we are proposing to remove them from the regulations. Additionally, current § 94.1a, which sets forth criteria for determining the separate status of a territory or possession as to rinderpest and foot-and-mouth disease, would be removed.

In the current regulations, each of the paragraphs listing those countries in which specified disease exists, except for those in § 94.1 for rinderpest and foot-and-mouth disease, are followed by provisions for the restricted importation of meat and meat products from those countries. Similar provisions for meat from rinderpest and foot-and-mouth disease-affected countries are set forth in current § 94.4.

Additionally, current § 94.11 includes requirements for the importation of meat and other animal products from countries that are free of rinderpest and foot-and-mouth disease, but that present some disease risk due to their importation policies or their proximity to a country in which the diseases exist. Similar provisions regarding swine vesicular disease are set forth in current § 94.13.

In all of the sections described in the above two paragraphs, the requirements for the importation of meat and meat products from countries affected with the disease in question require, among other requirements, cooking or curing of the meat or meat products. In this proposed rule, except as discussed in this ''Supplementary Information'' under the heading ''Proposed § 94.5,'' we are proposing essentially to retain the cooking and curing requirements in the current regulations for meat and meat products intended for importation from countries where rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, African swine fever, hog cholera, or swine vesicular disease exists. The requirements for all cooked or cured meat products, other than those that are dry-cured, would be set forth in new § 94.5. The requirements for dry-cured products that are set forth in § 94.17 of the current regulations are set forth in § 94.11 of this proposal.

The current regulations in part 94, in most cases, do not set forth requirements for the importation of fresh, chilled, or frozen meat from foreign countries. This is because, under the current regulations, in most cases, either a country is considered to be one in which a particular disease exists, or it is considered free of the disease. If the disease exists in the country, meat from that country must be cooked or cured before importation. If the country is considered free of the diseases, meat and meat products may be imported from that country with relatively few restrictions. The only exceptions to this ''free/not free'' approach in part 94 are the provisions in §§ 94.11 and 94.13, which list countries in which rinderpest/foot-and-mouth disease or swine vesicular disease, respectively, are not considered to exist, but that are considered to present some risk of disease introduction due to their importation policies or proximity to countries in which the disease exists. Meat to be imported from countries listed in §§ 94.11 or 94.13 must either be cooked (in the case of swine vesicular disease) or must be accompanied to the United States with certification that the facility where the animals were slaughtered follows preparation and processing practices to ensure it does not handle contaminated meat, and also that the animals to be slaughtered have never been in a country affected with the disease in question.

Under the risk class levels that would be established by this proposal, the number of disease-risk categories a country could fall into would be expanded from ''free,'' ''not free,'' or ''free with some risk,'' to any one of six different risk classes.

Regions classified as RN for a particular disease would, under the current regulations, be considered to be a country free of a particular disease, and meat and meat products could be imported from those countries with little restriction.

Under this proposal, regions classified as Risk Class R1 would be similar to those countries listed in current §§ 94.11 and 94.13, that are considered to be free of a disease, but that present some increased risk due to importation practices or proximity to countries affected with a disease. Meat and meat products from Risk Class R1 countries could be imported only if certain specified requirements, discussed below are met.

Proposed Risk Class R2 would be a risk class that essentially straddles our current designations of ''free'' and ''not-free.'' As defined in this proposal, a Risk Class R2 region would be one in which a particular disease is not known to exist, but in which vaccination of animals for the disease is carried out or the disease has recently been known to exist. Under our current policy, such a country would not be considered free of a disease, for reasons discussed above in this **SUPPLEMENTARY INFORMATION**, under the heading ''Risk Class R3 Regions.'' Under this proposal, however, an R2 region would be one that does not present as much risk as a region in which the disease exists (R3, R4, RU), but that presents a greater risk than a region in which vaccination is not carried out (RN, R1).

Regions in the proposed Risk Class R3, R4, and RU levels would, under the current regulations, be considered countries in which a particular disease is considered to exist. Under this proposal, meat and meat products from these regions, with the exceptions discussed below, would be prohibited importation, just as they are under the current regulations. The requirements for importation of meat and meat products from the different risk class levels are discussed below.

Prohibitions

The importation of fresh, chilled or frozen meat from swine in regions classified as Risk Class R3, R4, or RU for hog cholera, African swine fever, or swine vesicular disease would be prohibited (proposed § 94.1(b)). The destruction of virus in fresh meat by methods generally employed to process fresh meat are not sufficient to remove hog cholera, African swine fever, or swine vesicular disease from swine meat, or bovine spongiform encephalopathy from bovine meat.

This proposal would, in § 94.1(a), prohibit the importation of fresh, chilled, or frozen meat of ruminants or swine from regions classified as Risk

Class R4 or RU for rinderpest or foot-and-mouth disease, and, in § 94.1(c), would prohibit the importation of fresh, chilled, or frozen meat of ruminants from Risk Class R4 or RU levels for bovine spongiform encephalopathy.

We believe that fresh, chilled, or frozen meat can be imported from regions classified as R3 for rinderpest or foot-and-mouth disease, because an R3 region is by definition regarded as a region of low disease prevalence. The GATT sanitary and phytosanitary provisions allow imports from low prevalence regions for FMD and rinderpest, and the virus in FMD and rinderpest carrier animals is largely eliminated by deboning and standard curing of the meat, by which the meat is hung for 36 hours to increase its tenderness. Quantitative risk assessments done for meat estimate that meat from fewer than 7 per billion FMD-infected animals would still be infective after the standard curing and deboning process.

Importation Requirements for Fresh, Chilled, or Frozen Meat of Ruminants and Swine

Under § 94.1(d) of this proposed rule, fresh, chilled, or frozen meat from ruminants and swine raised and slaughtered in regions classified as Risk Class RN or R1 for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, African swine fever, hog cholera, and/or swine vesicular disease could be imported into the United States provided the authorized official of the exporting country certifies on the required foreign meat inspection certificate that the shipment originated in regions that are classified as Risk Class RN or R1 for the disease in question, and that the meat has not been in contact with meat from regions that are classified as Risk Class R2, R3, R4, or RU regions for the disease in question.

Under proposed § 94.1(e), fresh, chilled, or frozen meat from ruminants or swine raised and slaughtered in regions that are classified as Risk Class R2 for foot-and-mouth disease or rinderpest could be imported into the United States provided that the authorized official of the exporting country certifies the following: (1) The shipment originated in a region classified as Risk Class RN, R1, or R2 for foot-and-mouth disease or rinderpest in ruminants or swine; (2) the meat has not been in contact with meat from Risk Class R3, R4 or RU regions; (3) the meat originated from premises where foot-and-mouth disease or rinderpest has not been present during the lifetime of any ruminants or swine slaughtered for export; (4) the meat originated from premises located in regions where foot-and-mouth disease or rinderpest has not been diagnosed within the previous 12 months; (5) the meat originated from premises on which ruminants and swine have not been vaccinated with modified or attenuated live viruses for foot-and-mouth disease at any time during the lifetime of any of the ruminants or swine slaughtered for export; (6) the meat originated from ruminants or swine that have not been vaccinated for rinderpest, African swine fever, hog cholera or swine vesicular disease at any time during the lifetime of any of the ruminants or swine slaughtered for export; (7) all bone, blood clots, and lymphoid tissue have been removed from the meat; and (8) the meat comes from carcasses that have been allowed to maturate at 40° to 50°F (4° to 10°C) for a minimum of 36 hours after slaughter and have reached a maximum pH of 6.0 in the loin muscle at the end of the maturation period. As proposed, any carcass in which the pH does not reach a maximum of 6.0 may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still does not reach a maximum pH of 6.0 after 60 hours, the meat from the carcass may not be imported into the United States.

The rationale for proposed requirements ''(5)'' through ''(8),'' above, is as follows: Vaccination with modified or attenuated live viruses for foot-and-mouth disease could create the risk of the live virus being present in meat imported into the United States. Because any vaccine that currently exists for rinderpest, African swine fever, hog cholera, or swine vesicular disease contains a live virus, all vaccination for those diseases would be prohibited. The proposed requirement that certain parts of the animal product be removed is necessary because those locations on the carcass can be reservoirs of the disease agent. The requirement that a maximum pH of 6.0 be reached would be necessary to ensure any foot-and-mouth disease agent has been destroyed.

Under § 94.1(f) of this proposal, fresh, chilled, or frozen meat from swine raised and slaughtered in regions that are classified as Risk Class R2 for African swine fever, hog cholera, and/or swine vesicular disease could be imported into the United States provided that the authorized official of the exporting country certifies the following: (1) The shipment originated from regions that are classified as Risk Class RN, R1, or R2 for African swine fever, hog cholera, and/or swine vesicular disease in swine; (2) the meat has not been in contact with meat from regions that are classified as Risk Class R3, R4 or RU for African swine fever, hog cholera, and/or swine vesicular disease; (3) the meat originated from premises where African swine fever, hog cholera, and/or swine vesicular disease has not been present during the lifetime of swine slaughtered for export; (4) the meat originated from premises located in regions where African swine fever, hog cholera, and/or swine vesicular disease has not been diagnosed within the previous 12 months; (5) the meat originated from premises on which ruminants and swine have not been vaccinated with modified or attenuated live viruses for foot-and-mouth disease at any time during the lifetime of any of the swine slaughtered for export; (6) the meat originated from swine that have not been vaccinated for rinderpest, African swine fever, hog cholera or swine vesicular disease at any time during the lifetime of any of the swine slaughtered for export; and (7) all bone, blood clots, and lymphoid tissue have been removed from the meat.

Our primary concern regarding meat from regions classified as Risk Class R2 for African swine fever, hog cholera, and/or SVD would be possible residual virus infection on previously infected premises in the region, and also some risk of recent introductions from adjacent affected areas. The certification of the premises of origin as being free of the disease would be the principal method of risk mitigation in these regions. We believe this would create little hardship in these areas, because fewer than 0.1% of the farms would be expected to have a recent history of one of these diseases. Because the only proven method of eliminating the diseases is complete herd depopulation of the affected premises and restocking with fresh swine after a suitable fallow period, such a restocked herd would qualify for export, since none of the restocked swine would have been present when the restricted disease agent was present.

Under § 94.1(g) of this proposal, fresh, chilled, or frozen meat from ruminants or swine raised and slaughtered in regions that are classified as Risk Class R3 for foot-and-mouth disease and/or rinderpest could be imported into the United States, provided the authorized official of the exporting country certifies the following: (1) The shipment originated from a region that is classified as Risk Class RN, R1, R2 or R3 for foot-and-mouth disease and/or rinderpest; (2) the meat has not been in contact with meat from regions that are classified as Risk Class R4 or RU for

foot-and-mouth disease and/or rinderpest; (3) the meat originated from premises where foot-and-mouth disease and rinderpest have not been present during the lifetime of any ruminants or swine slaughtered for export; (4) the meat originated from premises where foot-and-mouth disease and/or rinderpest has not been diagnosed within 15 statute miles (25 kilometers) within the previous 12 months; (5) the meat originated from premises on which ruminants and swine have not been vaccinated with modified or attenuated live viruses for foot-and-mouth disease at any time during the lifetime of any of the ruminants or swine slaughtered for export; (6) the meat originated from ruminants or swine that have not been vaccinated for rinderpest, African swine fever, hog cholera or swine vesicular disease at any time during the lifetime of any of the ruminants or swine slaughtered for export; (7) the meat has all bone, blood clots, and lymphoid tissue removed; (8) the meat comes from carcasses that have been allowed to maturate at 40° to 50°F (4° to 10°C) for a minimum of 36 hours after slaughter and that have reached a maximum pH of 6.0 in the loin muscle at the end of the maturation period (any carcasses in which the pH did not reach a maximum of 6.0 may be allowed to maturate an additional 24 hours and be retested, and if the carcass still does not reach a maximum pH of 6.0 after 60 hours, the meat from the carcass may not be exported to the United States); and (9) the meat was held at no more than 40°F (4°C) for a minimum of 14 days before export, during which time the premises of origin of all animals in the shipment remained free of foot-and-mouth disease, rinderpest, African swine fever, hog cholera, and swine vesicular disease. This 14-day period would be sufficient to ensure that the incubation period for the disease agent in question has elapsed.

Under § 94.1(h) of this proposal, fresh, chilled, or frozen meat from cattle from regions that are classified as Risk Class R2 or R3 for bovine spongiform encephalopathy could be imported into the United States provided the authorized official of the exporting country certifies the following: (1) The shipment originated from a region that is classified as Risk Class RN, R1, R2, or R3 for bovine spongiform encephalopathy; (2) the meat has not been in contact with meat from regions that are classified as Risk Class R4 or RU for bovine spongiform encephalopathy; (3) the meat originated from premises where, for at least 10 years, bovine spongiform encephalopathy has not been known to be present; (4) the meat originated from premises where protein of ruminant origin has not been fed to ruminants during the lifetime of any animals currently living on the premises; (5) the meat is from cattle that have not been in any region classified as Risk Class R3, R4 or RU for bovine spongiform encephalopathy during any period when the region permitted the use of ruminant protein in ruminant feed; and (6) the cattle were examined prior to slaughter by a veterinarian employed by the national government of the country in which the ruminants were slaughtered, and were found not to display any signs indicative of a neurological disorder. We believe requirements ''(4)'' and ''(5),'' above, regarding ruminant feed, are necessary because the bovine spongiform encephalopathy agent can exist in, and be transmitted by, feed processed from ruminants infected with the disease. Because the symptoms of bovine spongiform encephalopathy include neurological disorder, cattle exhibiting such a disorder must be presumed to be affected with the disease.

Under § 94.1(i) of this proposal, fresh, chilled or frozen meat derived from animals in the family Cervidae from regions that are classified as Risk Class R2, R3, or R4 for bovine spongiform encephalopathy could be imported into the United States, provided the authorized official of the exporting country certifies the following: (1) The meat was derived either from wild cervidae, or from farm-raised cervidae that have never been fed ruminant protein; (2) all bones and visually identifiable lymphatic tissue and nerve tissue have been removed from the meat; (3) the meat is from cervidae that have not been in any region classified as Risk Class R3, R4, or RU for bovine encephalopathy during a period of time when the region permitted the use of ruminant protein in ruminant feed; and (4) the cervidae were examined prior to slaughter by a veterinarian employed by the national government of the country in which the ruminants were slaughtered, and were found not to display any signs indicative of a neurological disorder.

We believe it is warranted to provide different requirements for the importation of cervidae from Risk Class R3 regions for BSE than for cattle, because, as a general practice, cervidae feed by grazing and are less likely than cattle to have been fed ruminant protein and to have been in contact with ruminants infected with the disease. Except in zoos, there have been no reports of BSE in cervidae.

Proposed § 94.3

Section 94.2(a) of the current regulations prohibits the importation of fresh, chilled, or frozen products (other than meat, and milk and milk products) derived from ruminants or swine originating in, shipped from, or transiting any country designated as one in which rinderpest or foot-and-mouth disease exists. An exception to this prohibition is made in current § 94.3 for organs, glands, extracts, or secretions of ruminants and swine that are imported for pharmaceutical or biological purposes, and in current parts 95 and 96 for other specified animal products, such as casings, glue stock, etc., processed under certain conditions.

In this proposed rule, we would redesignate § 94.2(a) as § 94.3(a) and apply its prohibitions to regions classified as Risk Class R3, R4, or RU for rinderpest, foot-and-mouth disease. Under this proposal, regions classified as Risk Class R3, R4, or RU are considered those in which the disease in question exists.

Current § 94.2(b) prohibits the importation of milk and milk products from countries in which FMD or rinderpest exists. This paragraph would be redesignated as § 94.3(b). In addition to prohibitions because of FMD and rinderpest, we are proposing to also prohibit the importation of milk and milk products of ruminants and swine originating in, shipped from, or transiting any region that is classified as Risk Class R3, R4, or RU for *Brucella melitensis.* Under this proposal, such regions are those in which the disease is considered to exist. We are proposing to add *Brucella melitensis* to this list because it is exotic to the United States and is a hazard to both animals and humans that may be exposed to fresh milk from infected animals. The primary concern with milk is the possible feeding of raw milk or milk products to young ruminants or swine.

Proposed § 94.5

As stated above, the cooking and processing requirements for meat imported from countries in which diseases of concern exist, that are set forth in current §§ 94.4, 94.8, 94.9, 94.11, 94.12, 94.13, and 94.18, would be consolidated in proposed § 94.5. Also, as noted above, the references to countries in which a disease is considered to exist would be replaced by references to regions classified as Risk Class R3, R4, or RU. All of the current regulations for such cooking and processing would be included in this proposed rule.

Current § 94.5 includes provisions restricting the movement and handling of certain international garbage. These provisions would remain unchanged by this proposal, but would be redesignated as § 94.6.

Current § 94.6 includes provisions regarding the importation of carcasses, or parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from countries where exotic Newcastle disease or S. enteriditis is considered to exist. These provisions would remain unchanged by this proposal, but would be redesignated as 94.7.

Current § 94.7 includes provisions for the disposal of animals, meats, and other articles ineligible for importation under the regulations regarding rinderpest and foot-and-mouth disease in current § 94.1. In this proposal, we would redesignate current § 94.7 as § 94.8 and amend it by removing all references to animals and by expanding the regulations so that they refer to African swine fever, hog cholera, swine vesicular disease, and bovine spongiform encephalopathy, as well as to rinderpest and foot-and-mouth disease. Provisions regarding the disposal of animals are set forth in §§ 93.407 and 93.507 of this proposed rule, for ruminants and swine, respectively.

Current § 94.15(a) includes requirements for products that would be eligible for entry into the United States and that transit the United States for export. These provisions would be set forth in § 94.9(a) of this proposed rule, but would not otherwise be changed.

Current § 94.15(b) includes provisions that allow pork and pork products from Chihuahua and Sonora, Mexico that are not otherwise eligible for entry into the United States to transit the United States for immediate export under specified conditions. These conditions include the obtaining of an APHIS permit, movement from the region of origin in a leakproof container with serially-numbered seals approved by APHIS, submission of information to APHIS concerning the route and seal numbers of the shipment, and exportation from the United States within a time limit specified on the permit. We do not believe that it is necessary to limit the opportunity for transiting to pork and pork products from Chihuahua and Sonora, and believe that the provisions currently in place for pork and pork products from Chihuahua and Sonora would be adequate to guard against disease risk from any meat or meat product imported through a land border port for transiting and immediate export. Therefore, we are proposing to extend the provisions accordingly, and include them in proposed § 94.9(b).

Sections 94.11 and 94.13 of the current regulations set forth requirements for the importation of meat and meat products from countries in which rinderpest, foot-and-mouth disease, and swine vesicular disease are not known to exist, but that pose an increased disease risk due to importation policies or proximity to affected countries. One of the requirements for such importation is that the meat or meat product be prepared in inspected establishments that are eligible to have their products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) Current § 94.15(c) allows meat and other animal products from countries listed in §§ 94.11 or 94.13, that were not prepared in eligible establishments, to be imported for transit through the United States for immediate export. Under this proposal, countries that are listed under §§ 94.11 and 94.13 would be classified as Risk Class R1 or R2 regions. We are proposing to provide in § 94.9(c) of this proposal that meat and other animal products from R1 or R2 regions that are not otherwise eligible for importation may transit the United States for immediate export, provided the requirements of § 94.8(a) regarding notification and movement in a sealed leakproof container are met.

In § 94.9(d) of this proposal, we are also proposing to add provisions to the regulations that would allow the limited transiting in the United States of meat and other animal products not otherwise eligible for entry into the United States. This transiting would be limited to movement at the port of arrival. Under the current regulations, if a ship or aircraft that arrives in the United States is carrying meat or other animal products that are prohibited entry into the United States, the containers in which the meat or other animal products are contained may not be offloaded from the means of conveyance to another means of conveyance, even if the second means of conveyance is scheduled for immediate departure from the United States. When such offloading does occur, it is a violation of the regulations and the carrier is fined. This restriction has reduced the number of transport routes available to producers and shippers of meat and meat products.

We believe that the current regulations are unnecessarily restrictive. As long as meat and other animal products are securely contained aboard the carrier while in the port or while being offloaded, and as long as their overland movement in the United States is confined to the port of arrival, we do not believe that such meat or other animal products pose a risk to livestock in this country. Therefore, we are proposing in proposed § 94.9(d) to allow such movement. To qualify for such transiting, notification of the transiting would have to be made by the importer to the Plant Protection and Quarantine Officer at the port of arrival prior to the transiting. The animal products and materials would have to be contained in a sealed, leakproof carrier or container or other means of conveyance, or, if the container or carrier in which the animal product or material is transported were offloaded in the United States for reshipment, it would have to remain sealed at all times. The animal product or material could be held or stored for no more than 24 hours at the port of arrival.

Current § 94.16 includes importation requirements for specified milk and milk products. In this proposal, these provisions are set forth in § 94.9. The references in current § 94.16 to countries in which rinderpest or foot-and-mouth disease exists have been changed to references to regions classified as Risk Class R3, R4, or RU for rinderpest or foot-and-mouth disease. References to countries free of rinderpest and foot-and-mouth disease have been changed to references to regions classified as RN, R1, or R2 for the restricted diseases. Except for these and one other change, the provisions in current § 94.16 would remain unchanged. In proposed § 94.10(b)(2), we are proposing to remove the requirement in current § 94.16(b)(2) that dry milk products intended for importation must be processed for human food. We believe that as long as they are processed in a manner determined by the Administrator to be adequate to prevent the introduction of livestock diseases into the United States, their use does not need to be restricted to human food.

We are also proposing to add a new § 94.10(f) that would provide that milk or milk products from regions that are classified as Risk Class R3, R4, or RU for *Brucella melitensis* may enter the United States only under the following conditions: (1) The milk is pasteurized according to Food and Drug Administration (FDA) requirements; (2) milk and milk products, including cheese, meet FDA requirements for imported milk; (3) milk products, including cheese, are prepared from milk treated according to current requirements for milk from rinderpest and foot-and-mouth disease countries,

in facilities that process only milk and milk products according to FDA requirements.

In this proposal, we are also proposing to add provisions at new § 94.13 that meat or meat products consigned from the port of arrival to an approved establishment must be moved under Customs or APHIS seal, and must be otherwise handled as the Administrator may direct in order to guard against the introduction and dissemination of contagious diseases of livestock. The required seals would not be permitted to be broken except by persons authorized by the Administrator to do so.

Section 94.15 of this proposal includes provisions for the cancellation of compliance agreements, and provisions for the appeal of such a cancellation.

We are also proposing to amend current § 94.0, ''Definitions,'' to include definitions currently set forth in § 94.4(h), and are proposing to add to part 94, in § 94.0, definitions of *cervid, contact, pink juice test, region, restricted agents, risk class regions, ruminants,* and *veterinarian in charge.*

The proposed definitions of *region, restricted agents,* and *risk class regions* are the same as those in §§ 93.400 and 93.500 of this proposed rule. The proposed definition of *veterinarian in charge* is the same as that used elsewhere (e.g., § 78.1) in the current regulations. A definition of cervid would be included to make clear that the term applies to all species of deer, elk, and moose.

The proposed definition of *contact* reads as follows: ''Known or potential commingling of products of animals during processing or storage, or while being transported from any point to any other point. Contact includes simultaneous processing in the same facility, or storage or shipment in the same room, locker, or container. but not necessarily the same storage facility or conveyance, as long as security measures provided are determined to be adequate by an authorized APHIS representative.'' The purpose of this definition is to set forth the various ways disease agents can be transmitted among animal products.

In § 94.0 of the current regulations, the definition of *Indicator piece* refers to meat to be used for the ''pink juice test.'' This test is a visual method of determining whether meat has been sufficiently heated to destroy the foot-and-mouth disease virus. However, the current regulations do not define ''pink juice test.'' Therefore, to clarify the meaning of this term, we are proposing to add a definition of *pink juice test* to mean ''determination of whether meat has been thoroughly cooked by observation of whether the flesh and juices have lost all red and pink color.''

9 CFR Part 95

The regulations in 9 CFR part 95 contain restrictions on the importation of certain animal products and hay and straw in order to prevent the introduction of certain animal diseases.

In this proposal, we are proposing to make three types of substantive changes to part 95. First, in each section where the current regulations refer to ''country'' of origin, we would replace the word ''country'' with the word ''region.'' Second, in each case where reference is made to a country in which a particular disease is not considered to exist, we would refer instead to a region classified as Risk Class RN, R1, or R2 for the disease in question. Third, in each case where reference is made to a country in which a particular disease is considered to exist, we would refer instead to a region classified as Risk Class R3, R4, or RU for the disease in question.

The sections in part 95 in which we would make the changes described above are §§ 95.2, 95.4, 95.5, 95.7, 95.9, 95.14, 95.15, 95.17, 95.21, and 95.23. Additionally, in § 95.28, which deals with hay, straw, grass, and similar material, we would replace the reference to ''tick-infested pastures, ranges, and premises'' with a reference to ''regions classified as R3, R4, or RU for restricted ticks.''

Additionally, we would add definitions of *region* and *risk class regions* to the definitions in § 95.1, and would make several non-substantive wording changes in part 95 for clarity and to clarify internal APHIS management procedures.

9 CFR Part 96

The regulations in 9 CFR part 96 govern the importation of animal casings into the United States to prevent the introduction of contagious livestock diseases.

We are proposing to replace references to ''country'' in §§ 96.2 and 96.3 with references to ''region,'' are proposing to replace the reference in § 96.3 to countries free of African swine fever to regions classified as Risk Class RN, R1, or R2 for African swine fever, and are proposing to replace the references to countries in which specified diseases exist with references to regions classified as Risk Class R3, R4, or RU for those diseases.

Additionally, in § 96.10, we would remove the references to specific cities in which casings that arrive in the United States without certification may be disinfected, and would state instead that such casings may be forwarded to a USDA-approved facility for disinfection. We are proposing to make this change because the facilities in the cities specified are no longer in operation, and such disinfection, if it were necessary, could be done at any facility approved by APHIS.

Finally, we are proposing to remove § 96.15, ''Common carriers; marking papers,'' and § 96.16, ''Form for reporting release,'' because they specify administrative procedures that have been discontinued for a number of years.

9 CFR Part 98

The regulations in 9 CFR part 98 govern the importation of animal germ plasm so as to prevent the introduction of contagious diseases of livestock or poultry into the United States.

In this proposal, we are proposing to replace references to ''country'' with references to ''region'' in the headings for subparts A and B, and in §§ 98.3, 98.4, 98.7, 98.12, 98.13, 98.14, 98.15, 98.16, 98.17, and 98.34. Also, we would replace references to countries free of rinderpest and foot-and-mouth disease with references to regions classified as Risk Class RN, R1, or R2 in the heading for subpart A and in § 98.3, and would replace references to countries in which rinderpest or foot-and-mouth disease exists with references to regions classified as Risk Class R3, R4, or RU in the heading to subpart B, and in §§ 98.12, 98.13, 98.14, 98.15, 98.16, and 98.34.

Pending Proposed Rules

On May 11, 1995 (60 FR 25151–25162, Docket No. 94–085–2), APHIS published in the Federal Register a proposed rule regarding the importation of sheep and goats and sheep and goat germ plasm. That document proposed to amend provisions concerning who may issue health certificates for ruminants offered for importation into the United States, and proposed to significantly revise the conditions for importing sheep and goats and sheep and goat germ plasm. The proposal also contained provisions concerning privately operated quarantine facilities for goats. Because no final rule has been issued, those provisions are not reflected in this proposed rule. However, the provisions of Docket No. 94–085–2 that are made final, and any future rulemaking affecting this proposal (Docket No. 94–106–1), will be reflected in the final rule to this proposal (Docket No. 94–106–1).

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant and was reviewed by the Office of Management and Budget.

This proposed rule has been determined not to be major as provided by Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. This law requires that certain economically significant USDA rules published in the Federal Register include an analysis of the risks, costs, and benefits of the action, and that this analysis be reviewed by the USDA Office of Risk Assessment and Cost Benefit Analysis. However, P.L. 103–54 applies this requirement only to rules the primary purpose of which is to regulate issues of human health, human safety, or the environment. This proposed rule does not fall under these criteria, and consequently has not been reviewed by the Office of Risk Assessment and Cost Benefit Analysis.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. This proposed action may have a significant economic impact on a substantial number of small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of products, countries, and small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any contagious, infectious, or communicable disease of animals from a foreign country into the United States. This proposed rule would establish criteria for foreign ''regions'' based on risk class levels. In this proposed rule, we define the term *region* to mean ''any defined geographic land region identifiable by geological, political, or surveyed boundaries.'' Under this definition, a region may be a national entity, part of a national entity, combined parts of several national entities, or a group of several national entities combined into a single trading block. The criteria for classified regions would be used to establish importation requirements for particular animals and animal products from those regions. We are also proposing to allow, under certain conditions, the unloading and reloading at the port of arrival of meat and other animal products otherwise prohibited entry into the United States.

This proposed rule, if adopted, would revise the process for establishing United States importation policies regarding live ruminants and swine, and the meat and products of such animals. Under this proposal, the United States would in some cases look at the disease risk in defined production regions, rather than entire countries, and would assess the risk of specific disease introduction according to risk class levels, rather than only by determination of whether a region is or is not free of a particular disease.

This proposed rule is a departure from the current regulations in that a region would not be classified simply as one in which a specific disease is or is not known to exist. Rather, a region in which we have determined that a certain disease does not exist would be classified as one of three different risk class levels, depending on the length of time the region has been free of the disease, and the risk that the disease might be introduced into the region. Likewise, under this approach, two separate risk classifications for regions in which a disease is known to exist would be established, as well as one additional risk class category for countries or regions that do not yet have specific classification as another risk class level. Therefore, under this proposed rule, regions would fall into one of six risk class levels or categories.

Under this proposal, biosecurity measures for the importation of animals and animal products become more stringent as the risk class number increases, in order to protect domestic agriculture from exotic animal diseases. The six risk categories in the proposed rule are described qualitatively and quantitatively in terms of the expected range of results from quantitative risk assessments using scientifically accepted methods. Decisions whether an animal or animal product may be imported depend on the risk classification of the source region and whether there exist biosecurity measures to mitigate the risk to a negligible level. Thus, within the proposed rule, the standard for imported animals and products after mitigation is one of negligible risk. Economic theory would call for this standard to be discovered by an explicit comparison of marginal benefits and marginal costs at different risk levels. However, data limitations, analytical complexity, and the inherent imprecision in calculating biological risks and quantitative economic effects make such comparisons impractical.

The changes being proposed in this regulation are intended to comply with U.S. obligations under provisions concerning sanitary and phytosanitary (SPS) regulation in both the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures under the General Agreement on Tariffs and Trade (GATT) Uruguay Round agreements.

Although the two agreements differ in a few respects, both NAFTA–SPS and WTO–SPS provide that:

A member Country shall recognize the concepts of regions of low pest or disease prevalence, and shall ensure that its sanitary and phytosanitary measures are adapted to take into account the characteristics of regions from which products originate and to which products are destined. In doing so, the Member should take into account relevant geography, ecology, methods of surveillance and effectiveness of control systems. [NAFTA–SPS, Article 716; WTO–SPS, Articles 6.1–6.2]

At the same time, the agreements explicitly recognize the right of governments to take measures to protect human, animal, and plant health, as long as these are based on science, are necessary for the protection of health, and do not unjustifiably discriminate among foreign sources of supply. In considering this proposed rulemaking, APHIS identified and considered four options, keeping in mind the two goals of compliance with the international agreements and protection of domestic animal health.

The first option was to retain the current regulatory system that bases animal and animal product import requirements on whether a disease is considered to exist or not exist anywhere in a country. APHIS believes this alternative would not be in compliance with NAFTA–SPS or WTO–SPS, cited in the preceding paragraph. This alternative would likely lead to a negative economic impact on the United States, as U.S. policies would be challenged under NAFTA and GATT, with reciprocal measures likely being taken by foreign countries.

Further, we believe that the current regulatory policy unnecessarily prohibits or restricts the importation of animals and animal products in many situations where such importation can be carried out with insignificant risk of

introducing disease agents into the United States. For example, under the current regulations, a country in which cattle are vaccinated for FMD is not considered to be a country in which FMD does not exist, even if there have been no recently reported cases of the disease in the country. This situation exists because vaccinated cattle could potentially become infected with the FMD virus and not show any clinical signs. However, animals from countries in which the disease has not been reported, but in which vaccination is carried out, do not present the same risk as animals from countries in which the disease is considered to exist. We believe that the risk from countries which carry out vaccination can be reduced to a negligible level through mitigating measures. Under the current regulations, however, the two types of countries are subject to the same prohibitions.

A second alternative considered by APHIS was to establish levels of risk, with accompanying mitigating measures, but to establish a fewer number of such levels than the six set forth in this proposed rule. While this option would be less restrictive than the ''free/not-free'' approach, we believe that it would unnecessarily group countries and regions that have distinct levels of risk. For example, if the regulations were to establish the risk categories of ''low risk,'' ''moderate risk,'' and ''high risk'' for FMD, both Canada and Uruguay would be categorized as low risk, because the disease does not exist in either country. This would make both countries subject to the same requirements for the importation of ruminants and swine and their products into the United States. However, we believe that these countries present different levels of risk. A longer period of time has elapsed since the last reported case of FMD in Canada than in Uruguay. Vaccination for FMD was conducted in Uruguay until relatively recently, whereas vaccination has not been carried out in Canada because the last reported outbreak there was in the 1950s. Additionally, Uruguay shares borders, albeit protected ones, with countries where FMD exists, whereas Canada does not. Under this proposal, therefore, Canada is considered a region of negligible risk for FMD and Uruguay is considered a region of slight risk.

Another alternative APHIS considered was to establish more than six risk class levels. However, the distinctions among an increased number of risk classes would be extremely difficult to identify consistently based on current research, and would be unwieldy on a working level to administer.

By making distinctions that can be practicably made between different risk class levels, we believe that it is appropriate to establish more than three risk categories. APHIS believes that six risk class levels are scientifically defensible for imports from other countries. Also, similar categorizations could in the future justifiably be considered by other countries regarding exports from the United States.

In this proposed rule, we propose classifications of ''regions'' of the world which consist almost exclusively of national entities (countries), to develop a baseline similar to the disease statuses as set forth in the current regulations. In cases where a disease is not specifically listed in the current regulations, the baseline is based on the published epidemiologic information about the disease distribution. In all cases where neither regulatory precedent nor adequate published epidemiologic data existed to classify a country as either Risk Class RN (negligible risk), R1, R2, R3, or R4, we have proposed to classify the country as Risk Class RU for unknown or unclassified risk. Where a disease agent has not been reported from a country, and there is no evidence that the disease agent now exists or has ever existed in the country, we have proposed to classify the country as Risk Class RN. It is important to note, however, that the classifications set forth in this proposed rule are subject to change based on information supplied to APHIS by members of the public, or by countries or other regions, that indicates that the region size or risk class should be changed.

This proposed rule sets forth procedures for requesting recognition of an area as a region and for establishment of risk class designations that differ from those set forth in this proposal. These procedures are set forth in § 92.5 of this proposed rule. In general, they provide that the official of the national government of any country, who has the authority in that country to request such a change, may request at any time that all or part of the country be classified or reclassified as a Risk Class RN, R1, R2, R3, or R4 region, or be included within an adjacent previously classified region. After receiving a formal questionnaire from APHIS, the Chief Veterinary Officer of the region must return the completed questionnaire to APHIS, along with a copy of the region's applicable agricultural laws and regulations. This information will be evaluated by a committee formed by the Administrator of APHIS, which will either deny the request or indicate further information is needed, or will recommend to the Administrator that the request be approved. If the recommendation is to approve the request, a notice of proposed rulemaking will be published in the Federal Register, proposing the status of the region for the restricted agent in question, evaluating the relative risks, and analyzing the impacts of the classification. Public comment will be solicited on the proposed risk class designation. If, after reviewing public comment, APHIS continues to believe the proposed risk class should be made final, a final rule will be published, along with an updated evaluation of the risks and an updated impact analysis.

The long-range impact of this rule will depend on trade decisions made by foreign importers and foreign governments, and on market considerations. This concept is perhaps the most significant policy and regulatory issue facing APHIS and our trade partners. It is expected to create new opportunities for the United States, as well as for other countries, to export not only from areas that are demonstrated to be free of particular diseases, but also from areas of low disease or pest prevalence under mitigated circumstances.

As discussed above, the risk class designations in this proposed rule are largely based on the country classifications set forth in the current regulations. However, based on epidemiological evidence and other data available to us, and site (country) visits to review animal health programs, we are proposing to use the proposed process to implement risk classification for two countries differently than would be the case solely based on the current regulations. The rationale for these designations is set forth in the supplementary information of this document under the heading ''Listing of Risk Classifications for Individual Regions.'' We are proposing that Argentina be designated Risk Class R2 (low risk) for FMD, and the State of Sonora in Mexico be designated as Risk Class R1 for hog cholera. In the current regulations, Argentina is listed as a country in which FMD is considered to exist, and Mexico is listed as a country in which hog cholera is considered to exist. As such, the current regulations prohibit or restrict certain animal and product imports from these countries.

At this time, we have conducted an analysis for two countries, Argentina and Mexico, that could be affected in the short term by the regulation change. Although Argentina and Mexico would initially be the most likely countries to be affected by this rule as proposed, we

are moving in the direction of multilateral regionalization with much broader effects than implied by this partial analysis. A more complete analysis is not possible now, but over time the United States will have additional export opportunities as well as import competition.

Imports From Argentina

Argentina is currently considered a country in which foot-and-mouth disease (FMD) exists. With such a designation, the importation of fresh meat and meat products of ruminants and swine from Argentina is prohibited. Under this rule, however, fresh meat from ruminants and swine could be imported from Argentina, because it would be classified as Risk Class R2 (low risk) for FMD, because it has a maximum herd incidence of a restricted disease at less than 0.1 percent and has effective border control between other countries. If this rule is adopted, we expect Argentina to export up to 20,000 metric tons of fresh meat to the United States.

The changes in the regulations would be expected to mainly affect bovine meat and meat products (beef). Other livestock sectors that would be expected to be marginally affected are: swine, dairy, and the mutton/lamb/goat complex.

Analysis

Beef: The proposed regulation changes would relax the FMD- and rinderpest-related restrictions imposed on the importation of live cattle, bovine meat and prepared products from Argentina. This rule change would be expected to substantially alter beef imports from Argentina, since the United States has had restrictions on uncooked beef imports from Argentina since the 1930 Tariff Act. However, this analysis assumes that Argentine uncooked beef exports to the U.S. would not exceed their 20,000 MT tariff-rate quota limit. Future economic impact on U.S. beef producers would depend on demand-side factors, such as consumer acceptance of Argentine product, but also on whether the uncooked beef imports consist mainly of grass-fed beef as expected, and whether Argentina reaches or exceeds 20,000 MT's of uncooked beef shipments to the U.S. Recent speculation is that Argentina would most likely start with grass-fed beef product and attempt, over time, to produce product that would be suitable for the U.S. grain-fed beef market.

Argentine beef production is made up of mostly grass fed product. These animals take longer to reach slaughter weights and are lighter at slaughter than cattle fed on grain. Most of the grass-fed meat production is suitable for low-quality uses in the United States. Selected cuts from grass-fed cattle could possibly classify as grain-fed beef.

With large present and potential beef production, Argentina is likely to increase its beef exports. With comparable or higher returns from chilled product (as compared with prepared product), trade sources suggest that sufficient economic incentive and product exists to encourage Argentina to fill (and possibly exceed) its 20,000 MT tariff-rate uncooked beef quota with the U.S. through increased production and/or diversion of current exports.

Impact on U.S. Consumers: Assuming Argentina fills its 20,000 MT beef tariff-rate quota limit in the U.S.'s uncooked beef market with grass-fed beef, consumer welfare gains of $90 million annually are possible. Grass-fed beef is used mainly in ''non-table-cut'' beef applications, such as in hamburger meat patties, sausages, and other prepared meals and foods. This analysis assumes that 22 percent of U.S. beef consumption goes into such non-table-cut applications while 78 percent goes into consumer applications, such as table cut use at home and away-from-home eating that utilizes beef made from grain-fed beef. Grain-fed beef production dominates U.S. domestic beef production (87 percent). Thus, imports consisting of grass-fed beef affect consumer prices more than domestic producer prices because of grass-fed beef's higher quantity weight in consumption compared to production. When imports are assumed to consist mainly of grass-fed beef, consumers stand to gain almost $90 million as average retail beef prices drop by $8.27 per MT carcass weight equivalent (CWE).

Impact on U.S. Livestock Sector: Primary producers of livestock and beef products would be detrimentally affected by increased beef imports. The magnitude and the type of beef imported would determine the size and distribution of domestic producer welfare loss across the farm and secondary production levels. When imports are assumed to consist mainly of grass-fed beef, domestic producer welfare throughout the system is lowered by an estimated $41 million ($3.84/MT CWE).

Imports of Argentine, uncooked, grass-fed beef would be expected to dampen demand for low-quality beef (made from both culled beef and dairy cows), and force some of the domestic producer losses to be shared by both the U.S. dairy and beef sectors.

Although the aggregate domestic producer welfare losses would appear to be significant, total industry sales and the large number of operations make the per farm producer losses relatively small. Beef and dairy farms with annual sales of less than $0.5 million are considered small according to Small Business Administration (SBA) size criteria. Recent Census data show that about 99.8 percent of operations with beef cows have herds with fewer than 1,000 head.[3] On average, these 801,940 operations had sales of under $0.5 million while maintaining 92.9 percent of beef cow inventories. Farms with less than $0.5 million of cattle and calves sales averaged sales of $20,976 in 1992, as opposed to average sales of $1.3 million on larger farms. Similarly for dairy operations, most producers fall in the ''small'' business category. Recent USDA data show that 95.6 percent of operations with milk cows have fewer than 200 head in their herds. Census data is available on farms with dairy product sales, but not by herd size. These data show that 95.2 percent of these farms have sales of less than $0.5 million. Assuming that both data are tracking roughly the same dairy operations, we can deduce that 68.2 percent of milk cow inventories are on the 152,500 operations with sales of less than $0.5 million and average dairy product sales of less than $93,800 per farm in 1992. Besides the sale of dairy products, the sale of cull dairy cattle and young stock (not selected to be retained for milking or breeding purposes) contribute to farm income. USDA budget data for 1992 indicated that, on an average U.S. dairy operation, the sale of culled cattle contributed $1.27 (around 8 percent) for every $15.85 of receipts. Census data indicate that cattle sales contribute about $8,000 toward gross farm sales on a small dairy farm (total sales average about $102,000), also about 8 percent of total gross farm income.

Maximum per farm drops in producer gross sales would be expected to range from $15 to $35 for cow-calf beef operators. In either case, gross farm income would drop less than one-sixth of one percent. Expected maximum per farm percentage drops in dairy producer gross sales would be even lower than those for cow-calf beef operators.

Impact on Feedlot Operators: No quantity effect would be registered if imports consist of grass-fed beef. With increased imports of grass-fed beef, the increased market beef supplies would be expected to displace low-quality

[3] Source: 1992 US Census, Beef Cow Herd Size by Inventory and Sales: 1992, Table 28, pg. 30.

beef, mainly affecting dairy and beef cow-calf operations and indirectly affecting feedlots by reducing the number of cattle available to be placed on feed. This increased culling of dairy and beef cows would reduce the supply of beef calves and raise the prices for both yearlings and grain-fed cattle. Gains from output price increases (on grain-fed cattle) would be offset by losses incurred by price increases on purchased calves.[4] The net per head loss would be $0.24. Such small losses would not be expected to substantially change production. The potential aggregate domestic feedlot operators' producer welfare loss is estimated at $5.4 million with increased imports of grass-fed beef. This aggregate loss is expected to translate into less than a $30 per year drop in gross sales on an average ''small'' feedlot (about a 0.03 percent drop).

Impact on Live Cattle Dealers/ Transporters: Close estimation of the impact on this sub-sector is not possible given the available data. Because census data on transporters is in a general category with other agricultural product shipments, it is unclear how important cattle transportation is to a particular ''small'' firm's business. Additional data are also needed on average miles traveled and net returns per trip. However, it appears that there would be a negligible reduction in transporter trips needed due to this proposed rule—ranging from negligible if potential imports are assumed to be grass-fed beef, to less than 1,500 if potential imports are assumed to be grain-fed beef. A negligible increase in transport of imported meat and meat products from ports of arrival would be expected.

Impact on Cattle Slaughterers/ Primary Processors: As in the case with cattle dealers/transporters, the reduction in cattle marketings would be expected to be very small in relation to current marketings. With increased beef imports consisting of grass-fed beef, slaughterers would receive virtually the same number of marketings, but enjoy lower priced culled beef and dairy cows while facing lower wholesale prices for their output. On average, the losses from lower retail grass-fed beef prices would be expected to almost equal the gains from price drops on purchased culled cows.

Swine: No significant impacts because of Argentine swine production and trade would be expected as a result of this proposed rule. Argentine swine production has declined considerably since the early 1990s. Pork imports into Argentina during this period rose from 1,363 MT to 25,392 MT, while exports declined from 2,755 MT to 67 MT.

Dairy: With regards to the sale of dairy products, we do not anticipate a major increase in exports of milk and milk products from Argentina into the United States as a result of this proposed rule. Only about 5 percent of Argentina's cow herd is made up of dairy cows, and it is expected that the increase in beef cattle returns will not significantly alter this situation. In addition, all dairy products imported into the United States are restricted by quotas except for casein, caseinate, and other casein derivatives (hereafter referred to as casein), which are dry milk products. The United States does not produce casein. Argentina has not exported casein to the United States in recent years, and this proposed rule would be expected to have minimal if any effect on the amount of casein imported into the United States.

Miscellaneous. The United States has not imported any mutton, lamb, or goat meat from Argentina in the past 2 years. This situation would not be expected to change as a result of this proposed rule. Miscellaneous animal products from Argentina, including embryos, semen, breeding animals, and other products, are already allowed importation into the United States under certain restrictions. This proposed rule would lessen the restrictions on the importation of these products. We welcome information from the public regarding any potential impact this lessening of restrictions might have.

Imports From Mexico

It appears that the State of Sonora, Mexico would meet all the criteria in proposed § 92.3 to be classified as a Risk Class R1 region for hog cholera. The changes in the regulations would be expected to primarily affect feeder pigs, slaughter hogs, and pork products. No other livestock sectors are expected to be affected by the proposed classification of Sonora.

Analysis

The regulation changes would relax the hog cholera-related restrictions imposed on the importation of live swine and prepared pork products from Sonora, Mexico. This rule change could significantly alter current swine imports from Mexico. Based on various assumptions, some combination of Mexican live swine and/pork exports to the U.S. would be expected to take place.

Important assumptions are:

1. The production of live hogs in Sonora would be maintained at the current 1.5 million head level;
2. Twenty percent of total production would continue to be shipped out of the region live for slaughter and processing (currently most of these shipments go to Mexico City, some 1,500 miles away). The Los Angeles, California area is only 500 miles away and is currently receiving live slaughter hogs from other parts of the U.S., including the U.S. Midwest, making it a potentially attractive demand site for live slaughter hog shipments from Sonora;
3. The remaining 80 percent of production would be processed in Sonora with about 15 percent going as specialized pork cuts to Japan; the remaining 85 percent would be available for use in Mexico or shipment to the U.S.;
4. Current hog feeders in Mexico would be able to hedge on currency and commodity markets, so as to minimize short-run financial risk of exchange rate and feed price fluctuations. These instruments are not capable of shielding long-lasting currency devaluations, such as what has recently occurred in Mexico. Operations which require large amounts of imported feeds, such as hog feeding operations that rely on U.S. feedstuffs—bought with Mexican currency—are probably experiencing considerable financial difficulties. Such pressure, in the short term, may lead to cutbacks in Mexican production and/or trade from Mexico to the U.S. However, such devaluations would assist in the export of finished products from Mexico, such as live swine and processed pork products. Also, in the longer run, some appreciation of the Mexican peso is expected. Uncertainty as to when and what extent such appreciation will occur leads to the following assumption: The influence on Mexican production and trade due to exchange rate fluctuation is assumed to be neutral in this analysis;
5. 1994 US marketings of 95.697 million head of slaughter hogs at the average price of $40.03 per CWT liveweight are used as the U.S. base year;
6. A low-impact scenario is constructed consisting of 75,000 live hogs and 18.6 million pounds carcass weight equivalent (CWE) of pork products. This assumes that one-quarter of current live slaughter hog shipments out of Sonora is diverted to the Southwest (mostly to Los Angeles), as well as about 10 percent of the processed pork production of Sonora. Imported swine and pork are assumed to substitute perfectly for U.S. product and displace it;

[4] Yearling prices go up more per head ($0.64 per head) than for fed cattle ($0.40 per head).

7. A high-impact scenario is constructed consisting of 300,000 live hogs and 92.9 million pounds carcass weight equivalent (CWE) of pork products. This assumes that all of current live hog shipments out of Sonora is diverted to the Southwest as well as about 50 percent of the processed pork production of Sonora. Again, imported swine and pork are assumed to perfectly substitute for U.S. product and displace it.

Future economic impact on U.S. swine producers will depend on demand-side factors, such as consumer acceptance of Mexican product, but probably most heavily on two supply-side factors—increases in total Mexican production and the composition of product shipped from Mexico. This supply effect will be heavily affected by the long-term exchange rate between the U.S. and Mexico. Composition of product will affect producer and consumer effects as follows:

1. If the weight of increased imports are in the form of feeder pigs, adverse economic impacts would be localized on feeder pig producers, not feed grain producers or slaughters/processors. Increased feed pig shipments could be particularly important in times of high feed costs in Mexico, such as occurs at times in the U.S. Southeast.

2. Live slaughter hog imports would be expected to directly displace U.S. produced hogs. For every four hogs or hog equivalents imported, one U.S. hog would be expected to be displaced and its economic contribution to slaughter and processing lost. Feed grain producers would experience some loss if Mexican producers do not rely on U.S. grain. However, it is possible that a greater amount of U.S. feed would be used if some amount of Mexican pork/swine is imported, given that Mexican hog producers use U.S. feedgrains. Activity at the slaughter/processor level would be increased with Mexican live hog slaughter imports.

3. The impact of pork product imports is difficult to forecast because of the uncertainty as to how they would substitute for foreign and/or domestic product. For example, certain Mexican pork imports might not affect U.S. producers at all. These imports might not substitute for a U.S.-produced pork product, or they might completely substitute for and displace a similar pork product currently imported from another country. In those cases where Mexican pork products would displace U.S. product, U.S. prices would decrease, U.S. production would decrease, and activity at the slaughter/processor level would drop.

Impact on U.S. Consumers: Assuming Mexico swine producers find it in their interest to ship swine and/or pork products to the U.S., consumer welfare gains of $28 million (low-impact scenario) to $150 million (high-impact scenario) annually would be possible depending on the volume and composition of imports from Mexico.

Impact on U.S. Livestock Sector: Primary producers of livestock and swine products would be detrimentally affected whether live slaughter hogs or pork product imports increase. When imports are assumed to be in the low-impact range, producer welfare throughout the system would be lowered by an estimated $28 million ($0.13/CWT CWE) as opposed to $149 million ($0.66/CWT CWE) when imports are assumed to be in the high-impact scenario. A further break-down of the potential impact on the U.S. livestock sector follows:

Impact on Farrow-to-Finish Swine Operators: Imports in the low-impact scenario are assumed to represent about 178,200 hogs per year in a combination of live slaughter hogs and pork product imports. Barrow and gilt slaughter hog prices would decrease by about 15 cents per CWT. This lower price would elicit a cut in total U.S. hog production of about 45,000 hogs per year. The lower production level at a slightly lower price would reduce producer receipts by about $28 million per year.

When imports are assumed to fall in the high impact scenario, increased imports would be expected to represent up to 816,000 hogs per year in a combination of live slaughter hog and pork product imports. Barrow and gilt slaughter hog prices would be expected to decrease by about 66 cents per CWT. This lower price would elicit a cut in total US hog production of about 200,000 hogs per year. This lower production level, along with a lower price, would reduce producer receipts by about $149 million per year.

Although the aggregate potential producer welfare losses appear significant, total industry sales and the large number of operations would make the per-farm producer losses relatively small. In 1992, there were about 191,347 hog and pig farms in the United States, of which it is estimated that about 96.4 percent would be considered ''small'' entities (annual sales of less than $0.5 million, according to Small Business Administration (SBA) size criteria). Total value of hog inventories on December 1992 exceeded $4,146.6 million, producing $9.9 billion in sales. The small hog and pig entities maintain over 70 percent of these hog and pig inventories. Historical U.S. data show declining farm numbers (but almost stable production) and persistent competitive pressure on producers to adopt least-cost production methods to the extent available. Dividing the adjusted aggregate economic impact generated under the two scenarios listed above (low- and high-impact scenarios) by the number of small swine operations results in a potential loss in net annual farm income of almost $154 and $808, respectively.

Impact on Live Hog Dealers/Transporters: Reductions in the number of hogs produced in the United States as a result of imports under either the low- or high-impact scenario would be expected to be minimal—225 and 1,035 less trips, respectively. The impact of the worst case scenario represents less than .2 percent of total hauls of US hog shipments in 1994.

Most firms in this industry are considered ''small'' according to SBA guidelines (i.e., sales of less than $12.5 million and fewer than 500 employees). Firms in this industry are assumed to be classified in the general Census category, motor freight transportation and warehousing (SIC 4212 and SIC 4213) with over 10,600 firms in 1992. SIC 4212 pt. (other local trucking, without storage, of agricultural products) contained 6,203 establishments with $2.197 billion in revenue in 1992 and employed 26,897 employees. The average firm revenue was $354,183, with employment of 4 to 5 workers. Thus, the average firm in the industry would fall under the SBA category of ''small'' with sales of less than $12.5 million and less than 500 employees. SIC 4213 pt. (trucking, except local, of agricultural products) contained 4,483 establishments with $3.3 billion in revenue in 1992 and employed 30,518 employees. The average firm revenue was $736,114, with employment of 6 to 7 workers. Thus, the average firm in the industry would fall under the SBA category of ''small,'' with sales of less than $12.5 million and less than 500 employees. More detailed data on the actual distribution of firms by size are not available at this time.

Estimation of the potential impact on this sub-sector is not possible given the available data. Census data on transporters is in a general category with other agricultural product shipments, thus it is unclear how important livestock transportation is to a particular ''small'' firm's business. Additional data are also needed concerning average miles traveled and net returns per trip. The relatively small reductions in trips needed suggest that the economic impact on this sub-sector would

probably be very small. Further, if we assume that these reductions would be expected to fall evenly across all firms, this reduced level of economic activity is not expected to drive any small livestock dealers/transporters out of business. Some increase in transport of swine or pork products from ports of arrival would be expected.

Impact on Swine Slaughterers/ Primary Processors: As was the case with livestock dealers/transporters, the reduction in swine marketings would be very small in relation to current marketings. However, it should be kept in mind that hog slaughterers and processors would benefit if imports consist of higher proportions of live hogs relative to processed pork. Under the two scenarios considered, increased slaughter (brought about by increased slaughter hog imports) would more than offset production losses from processed pork product imports. In the low-impact scenario, processors would realize a net increase of 30,000 slaughter hogs. Under the high-impact scenario, an increase of 93,000 slaughter hogs appears possible.

The size distribution of firms in this sub-sector makes it difficult to allocate the small benefits estimated above across large and small firms. In the past, the desire to reduce transportation costs of cattle and product, to gain economies of scale in plant operations, and to shift to newer plants (without existing labor contracts) has lead to increased industry concentration in this U.S. sub-sector. The exit of many older, smaller plants and companies have also contributed to increased market concentration. Most firms have multi-million dollar operations made up of new, large, state-of-the-art slaughter and packing plants. In 1992, there were 1,385 meat packing establishments in the U.S. down from 1,434 such establishments in 1987.[5] The 1987 data indicate that 88 pork-slaughter companies had more than 20 employees. These companies had a total of 34,300 employees, with a payroll of $713.8 million and shipments of pork valued at $11.6 billion.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

[5] Source: 1992 Census of Manufacturers, MC92–SUM–1(P), Preliminary Report, Summary Series, pg. 9.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 94–106–1. Please send a copy of your comments to: (1) Docket No. 94–106–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118. Riverdale, MD 20737–1228, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of the proposed rule.

This proposed rule contains paperwork and recordkeeping requirements. Under this proposed rule, officials in foreign countries that wish to have a region recognized and classified by APHIS would be required to submit an application, along with data supporting their request for a specific classification. This rule would necessitate the introduction of various information collection requirements to enable us to monitor accurately the health status of regions and the movement of animals and animal products from those regions into the United States. We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us accomplish the following:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 7 hours and 4.5 minutes per response for animal importations and 27 minutes per response for animal product importations.

Respondents: Importers and veterinarians.

Estimated number of respondents (for animal importations): 208,065 total (*30,030* of which would be new respondents as a result of our rulemaking).

Estimated number of respondents (for animal product importations): 8,955 total (*1,829* of which would be new respondents as a result of our rulemaking).

Estimated number of responses per respondent (for animal importations): 8.158.

Estimated number of responses per respondent (for animal product importations): 11.64.

Estimated total annual burden on respondents (for animal importations): 241,067 hours (*178,684* of which would be new hours due to our rulemaking).

Estimated total annual burden on respondents (for animal product importations): 47,080 hours (*15,926* of which would be new hours due to our rulemaking).

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

National Environmental Policy Act

This proposed rule raises some issues that could include potential environmental impacts. Such issues are being examined by APHIS in the context of an environmental assessment (EA). We invite comments from the public on this proposed rule, including those regarding potential environmental impacts. Prior to, or in conjunction with, a final rule, APHIS will issue an EA addressing such issues in accordance with: (1) The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under section 202 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures to State local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, under the authority provided in 7 U.S.C. 147a, 150ee, 161, 162, 450, 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332, we propose to amend 9 CFR chapter I, subchapter D, as follows:

PARTS 92 AND 93—[AMENDED]

§§ 93.1–93.8 [Redesignated as §§ 92.800–92.807]

1. Part 93 would be amended by removing the heading and the authority citation and by redesignating §§ 93.1 through 93.8 as §§ 92.800 through 92.807, and adding a subpart heading before these sections to read: ''Subpart H—Elephants, Hippopotami, Rhinoceroses, and Tapirs''.

PART 92—[REDESIGNATED AS PART 93]

2. Part 92 would be redesignated as part 93.

3. A new part 92 would be added to read as follows:

PART 92—RESTRICTED AGENTS AND VECTORS, AND CRITERIA FOR REGIONAL RISK CLASSIFICATION

Sec.
92.1 Definitions.
92.2 Restricted agents and vectors.
92.3 Criteria for risk classification.
92.4 Risk classification by region and restricted disease agent.
92.5 Application for recognition of Risk Class RN, R1, R2, R3, or R4.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.1 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Active surveillance. Sample collection using a systematic or statistically designed survey methodology to actively seek out and find cases of animals with a disease agent, or to determine the prevalence of the disease agent in the population.

Adjacent region. Any defined geographic land area identifiable by geological, political or surveyed boundaries that shares common boundaries with, or is proximate to any region of a different risk class, as determined by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Affected animals. Animals currently infected or infested with, or exposed to, a communicable disease agent, or that are not known to be infected, infested, or exposed but that because of, proximity, location, season, or lack of surveillance data could reasonably be expected to be infected, infested, or exposed to a communicable disease agent.

Affected premises or region. A premises or region where a communicable disease agent is known to exist; that is adjacent to or proximate to any known infected or infested premises or region so that airborne, vector, or mechanical transmission of the disease agent could occur; or that, because of lack of surveillance data, could reasonably be expected to be infected, infested, or exposed to a communicable disease agent.

Africa. The continent of Africa including the countries of: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cent. African Rep., Chad, Comoros, Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Princip, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, The Gambia, Togo, Tunisia, Uganda, Western Sahara, Zaire, Zambia, Zimbabwe.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animals. All species of the animal kingdom including: Cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, and poultry that are susceptible to communicable diseases of livestock or capable of being carriers of those diseases or their arthropod vectors.

APHIS representative. Any individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

Asia. Part of the continent of Asia, including the countries of: Afghanistan, Armenia, Azerbaijan, Bangladesh, Bhutan, Burma, Cambodia, China, Georgia, Hong Kong, India, Iran, Japan, Kazakhstan, Kygyzstan, Laos, Macau, Malaysia, Mongolia, Nepal, North Korea, Pakistan, Russia, Singapore, South Korea, Sri Lanka, Taiwan, Tajikistak, Thailand, Turkistan, Uzbekistan, Vietnam.

Atlantic. Island countries located in the Atlantic Ocean including: Bermuda, Cape Verde, Falkland Islands, South Georgia.

Australia. The continent of Australia including the country of Australia.

Border definitions.

(1) Natural physical barriers:

(i) Rivers, lakes or oceans with all crossing points such as bridges, ferries, or ports identified as controlled entry points;

(ii) Mountains with all crossing points (passes, etc.) identified as officially controlled entry points.

(2) *Man-made physical barriers.* Constructed fences, walls, moats, etc., that prevent animals from straying or being transported, trailed, or driven across the borders except at officially controlled entry points.

(3) *Protected borders:* Border areas that are identifiable geo-political boundaries between adjacent geographic regions. Protected border areas may be separated by man-made physical barriers with all gates or crossings identified as officially controlled entry points. Animals shall cross only at officially controlled entry points.

(4) *Uncontrolled borders:* Animals may cross unchecked at any point along the border.

(5) *Officially controlled entry points:* Land border check stations, airports, ship ports or other points of entry where animals or animal products may enter a region from any other region, but at which animals and animal products are barred from entry at all times that the entry points are not staffed.

Caribbean. The islands of the Caribbean Sea and nearby areas in the Atlantic Ocean including the countries and territories of: Anguilla, Aruba, Barbados, British Virgin Islands, Cayman Islands, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Montserrat, Netherlands Antilles, Puerto Rico, Saint Lucia, Saint Vincent, The Bahamas, The Bahamas, Trinidad and Tobago, Turks and Caicos, U.S. Virgin Islands.

Case. An individual animal affected by a communicable disease agent. Depending on the condition, this may be an animal with clinical signs, or an animal with serological or pathological evidence of infection, or an infested animal.

Cattle. Animals of the bovine species.

Communicable disease. Any contagious or infectious disease of animals. It can be transmitted either directly or indirectly to a susceptible animal from an infected animal, vector, inanimate source, or other sources.

Contact. (1) For animals, being in the same pen, pasture or means of conveyance with animals affected with a communicable disease, or being located in pens, pastures, or means of conveyance that are adjacent to, adjoin or otherwise come into contact with those containing animals affected with a communicable disease.

(2) For premises or regions, having on or within the premises or region, animals, feed, water, air, soil, tools or other objects, insects, or ectoparasites infected or contaminated with a communicable disease agent.

Contagious disease. Any communicable disease transmitted from one animal to another by direct contact or by feed, water, aerosol, or contaminated objects.

Driven. Moved (animals) from one place to another by walking under their own power and being herded and guided by persons or trained animals.

Ectoparasites. Acarid (mites, ticks) or insect members of the Phylum Arthropoda that spend all or part of their life cycle on the exterior of avian, reptilian or mammalian hosts, and that are known or suspected to be vectors of communicable disease agents or are the cause of disease or irritation to animals or birds.

Europe. The continent of Europe including the countries of: Albania, Andorra, Austria, Belgium, Bosnia-Herzogovania, Bulgaria, Bylorus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Moldavia, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom (England, Scotland, Wales, Northern Ireland, Channel Islands, Isle of Man), Vatican City, Yugoslavia.

Exposed. (1) An animal or means of conveyance that has been in contact with or that can reasonably be expected to have been in contact with an animal, feed, water, air, soil, tools, or other objects, insects, or ectoparasites infected or contaminated with a communicable disease agent, as determined by the Administrator.

(2) A region or premises where an animal, feed, water, air, soil, tools or other objects, insects, or ectoparasites contaminated with a communicable disease agent are or have been present.

(i) *Direct exposure.* Exposure by coming into direct contact with an infected animal, or with feed, water, air, soil, tools, or other objects that have been contaminated by discharges from an infected animal.

(ii) *Indirect exposure.* Exposure by coming into contact with vector insects or ectoparasites, or objects that have been contaminated other than by discharge from an infected animal.

Herd. (1) A group of animals under common ownership or supervision that are maintained and intermingle on one or more parts of a single premises (farm, ranch, feedlot, etc.); or

(2) A group of animals under common ownership or supervision maintained on geographically separated premises, but that have been interchanged between the different premises or have been otherwise intermingled.

Herd incidence rate. The proportion of herds, flocks or other groups of animals affected with a communicable disease within a specified period of time (usually 1 year). A herd, flock, or other group of animals would be counted only once during the specified time period regardless of the number of cases that may occur in the group of animals during the time period.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Livestock. Domesticated species of cattle, swine, sheep, goats, llamas, or horses that normally and historically have been kept and raised on farms. ''Livestock'' also includes bison, cervidae, and other species kept in captivity for production of food or fiber, or other commercial purposes.

Middle America. Part of the continent of North America including the countries of: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama.

Middle East. Parts of the continent of Asia and islands of the Mediterranean Sea, including the countries of: Bahrain, Cyprus, Iraq, Israel, Jordan, Kuwait, Lebanon, Malta, North Yemen, Oman, Palestine, Qatar, Saudi Arabia, South Yemen, Syria, Turkey, United Arab Emirates.

Moved directly. Moved (shipped, transported, or otherwise moved) without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs.

New Zealand. The islands that comprise the country of New Zealand.

North America. Part of the continent of North America including the countries of Canada, Mexico, United States.

Oceania. Islands of the Pacific and Indian Oceans including the countries of: Brunei, Fiji, French Polynesia, Indonesia, Kiribati, Maldives, Mauritius, Nauru, New Caledonia, Papua New Guinea, Philippines, Seychelles, Solomon Islands, Tonga, Vanuatu, Western Samoa.

Passive surveillance. A surveillance system that does not depend on active participation by the responsible agency to seek out and monitor a restricted disease agent. The system relies on mandatory reporting, a pool of trained investigators, diagnostic submission

procedures and laboratory support, and periodic public information and continuing education programs on diseases.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Provisional quarantine. Restrictions placed on movements of vaccinated livestock where the restricted agent in question is not known to exist, but the livestock may be exposed. Limited movement may be allowed from such a premises for livestock to go directly to slaughter or to a slaughter animal assembly point, or, in the case of vaccinated livestock not known to be affected, the animals may be moved to affected regions or regions that permit vaccination.

Quarantine. Confinement of all susceptible animals, animal products, feed, farm machinery, other equipment, means of conveyance, and any other potentially contaminated objects to a premises or region where infection with a specific restricted agent has been found or is suspected to exist.

Region. Any defined geographic land region identifiable by geological, political or surveyed boundaries. A region may consist of any of the following:

(1) A national entity (country);

(2) Part of a national entity (premises, zone, County, Department, Municipality, Parish, Province, State, etc.);

(3) Parts of several national entities combined into a region; or

(4) A group of national entities (countries) combined into a single trading block.

Restricted agent. A livestock communicable disease agent, vector, or host of an agent, not known to exist in the United States or that is subject to a Federal or cooperative Federal/State control or eradication program within the United States.

Risk Class regions. Exporting regions designated by the Administrator according to the results of qualitative or quantitative risk assessment criteria, as set forth in § 92.3, based on the risk of importing a restricted agent by unrestricted importation of live animals. Exporting regions will be classified into one of the following risk classes:

(1) *Risk Class RN (Negligible Risk).* A Risk Class RN region is not known to be affected with a restricted agent, and is physically isolated from any region known to be affected with a restricted agent. The probability in a Quantitative Risk Assessment of the introduction of a restricted agent through an unrestricted importation from a Risk Class RN region is less than 10^{-6} per live animal.

(2) *Risk Class R1 Region (Slight Risk).* A Risk Class R1 region is not known to be affected with a restricted agent. The probability in a Quantitative Risk Assessment of the introduction of a restricted agent through an unrestricted importation from a Risk Class R1 region is less than 10^{-5} per live animal.

(3) *Risk Class R2 Region (Low Risk).* A Risk Class R2 region is not known to be affected with a restricted agent. The probability in a Quantitative Risk Assessment of the introduction of a restricted agent through an unrestricted importation from a Risk Class R2 region is less than 10^{-4} per live animal.

(4) *Risk Class R3 Region (Moderate Risk).* A Risk Class R3 region is currently known to be affected with a restricted agent. The probability in a Quantitative Risk Assessment of the introduction of a restricted agent through an unrestricted importation from a Risk Class R3 region is less than 10^{-3} per live animal.

(5) *Risk Class R4 Region (High Risk).* A Risk Class R4 region is currently known to be affected with a restricted agent. The probability in a Quantitative Risk Assessment of the introduction of a restricted agent through an unrestricted importation from a Risk Class R4 region is less than 10^{-2} per live animal.

(6) *Risk Class RU Region (Unknown Risk).* A Risk Class RU region is an unclassified region that, due to lack of reliable information or other reasons, does not meet the requirements of any of the above classifications. The probability in a Quantitative Risk Assessment of the introduction of a restricted agent through an unrestricted importation is greater than 10^{-2} per live animal or unknown.

Ruminants. All animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.

South America. The continent of South America including the countries of: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela.

Surveillance. Systems to find, monitor, and confirm the existence or absence of a disease agent or agents in livestock, poultry and other animals. Surveillance may be passive or active.

Susceptible animals. Animals that can become infected with a specific disease agent.

Swine. The domestic hog and all varieties of wild hogs.

Trail. Move animals from one place to another by having them walk under their own power, and by leading them by ropes or other devices tied to the animal and guided by persons or trained animals.

Transported. Moved or shipped from one place to another by means of aircraft, truck, train, cart, or other means of conveyance.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

Vector-borne disease. A disease transmitted to an animal through an intermediate arthropod vector, including ticks or insects.

§ 92.2 Restricted agents and vectors.

(a) *Restricted contagious disease agents that affect livestock or poultry and that are not known to exist in the United States.*

African swine fever virus
Bovine spongiform encephalopathy (BSE) agent
Brucella melitensis
Contagious agalactia of sheep and goats (*Mycoplasma agalactiae*)
Contagious bovine pleuropneumonia (*Mycoplasma mycoides* subsp. *mycoides*)
Contagious caprine pleuropneumonia (*Mycoplasma mycoides* subsp. *capri*)
Foot-and-mouth disease virus
Goat pox virus
Hog Cholera (Classical swine fever) virus
Malignant catarrhal fever virus (African or Wildebeest form)
Peste des petits ruminants (Kata) virus
Pseudomonas pseudomallei (melioidosis)
Rinderpest virus
Sheep pox virus
Swine vesicular disease virus
Teschen disease virus
Vesicular Stomatitis virus

(b) *Restricted contagious disease agents that affect livestock and that exist in the United States, but that are subject to cooperative Federal/State control or eradication programs:*

Brucella abortus (brucellosis or Bangs disease)
Brucella suis
Mycobacterium bovis (bovine tuberculosis)
Pseudorabies virus
Scrapie disease agent

(c) *Restricted ectoparasites.* The following ectoparasites of animals are not known to exist in the United States or are subject to cooperative Federal/State control programs in the United States:

(1) *Ticks.*

Amblyomma astrion
A. cohaerens
A. gemma
A. hebraeum
A. javanense
A. lepidum

A. marmoreum
A. pomposum
A. sparsum
A. testudinarium
A. tholloni
A. variegatum
Boophilus annulatus
B. decoloratus
B. florae
B. geigyi
B. kohlsi
B. microplus
Dermacentor daghestanicus
D. marginatus
D. nuttalli
D. pictus
D. reticulatus
D. silvarium
Haemaphysalis bispinosa
H. leachii
H. longicornis
H. otophila
H. punctata
H. sulcata
Hyalomma anatolicum anatolicum
H. anatolicum excavatum
H. detritum
H. dromedarii
H. marginatum marginatum
H. marginatum rufipes
H. marginatum turanicum
H. scupense
H. truncatum
Ixodes persulcatus
I. pilosus
I. ricinus
Onithodoros erraticus
O. moubata
O. moubata porcinus
Rhipicephalus appendiculatus
R. bursa
R. capensis
R. compositus
R. evertsi evertsi
R. evertsi mimeticus
R. glabroscutatum
R. kochi
R. lunulatus
R. pulchellus
R. simus
R. turanicus
R. zambeziensis

(2) *Mites.*

Chorioptes bovis, various subspecies of which cause mange in horses, cattle, and sheep.
Psorergates ovis, the causative agent of sheep scabies.
Psoroptes cuniculi, the causative agent of ear mange in goats and rabbits.
P. ovis, various subspecies of which cause Common scabies in sheep, cattle, and horses.
Sarcoptes scabiei, various subspecies of which cause scabies and mange in horses, cattle, sheep, and swine.

(3) *Insects.*

Chrysomyia bezziana (Old world screwworm)
Cochliomyia hominivorax (Callitroga americana) (New world screwworm)
Hippobosca spp. and *Lipoptema* spp. (louse flies)

(d) *Restricted vector-borne disease agents that affect animals and that are not known to exist in the United States but which could be transmitted by native vectors in the United States.*

(1) *Tick-borne agents.*

Bovine petechial fever (Ondiri disease) due to (*Cytoecetes*) *ondiri*
Congo (Crimean Hemorrahagic Disease) virus
Heartwater due to *Cowdria ruminatium*
Jembrana (Tabanan) virus
Nairobi sheep disease (Dugbe, Ganjam) virus
Theileria spp. (east coast fever, corridor disease, Mediterranean fever)
Tick-borne encephalitis (louping ill, Central European encephalitis) virus
Tick-borne fever due to *Erlichia (Cytoecetes) phagocytophilia*

(2) *Insect-transmitted agents.*

African (salivarian- or tsetse-transmitted) *Trypanosoma* spp. (*T. brucei, T. congolense, T. evansi, T. suis, T. simiae, T. uniforme, T. vivax)*
Aino virus
Akabane virus
Besnoitia besnoiti (globidiosis)
Bluetongue virus (except serotypes 10, 11, 13 and 17)
Bovine ephemeral fever group (Kotonkan, Obodhiang) virus
Epizootic hemorrhagic disease of deer (Ibaraki) virus (except serotypes 1 and 2)
Getah virus
Japanese encephalitis virus
Lumpy Skin disease virus
Parafilariosis due to *Parafilaria bovicola*
Rift Valley fever virus
Trypanosoma spp. transmitted by vectors other than tsetse flies (NTT-Trypanosomas)
Wesselsbron virus

(e) *Other agents affecting domestic livestock.*

Taenia (Multiceps) multiceps (dog tapeworm) in livestock handling dogs

§ 92.3 Criteria for risk classification.

(a) *Risk Class RN Region (Negligible Risk).* A Risk Class RN region must meet either the provisions of paragraphs (a)(1)(i) through (a)(1)(viii) of this section or the provisions of paragraph (a)(2) of this section, and, if applicable, the provisions of paragraph (a)(3) of this section.

(1)(i) The restricted agent has not been diagnosed within the region during the lifetime of any currently living susceptible animal;

(ii) The restricted agent is not known to exist within any adjacent defined region;

(iii) Vaccination for the restricted agent has been prohibited within the region during the lifetime of any currently living susceptible animal (exceptions may be made for certain diseases such as vector-transmitted diseases, or animals specifically vaccinated to meet import requirements of other regions, when the Administrator determines that such vaccination would not increase the risk of importing restricted agents into the United States);

(iv) Any adjacent R1 or R2 regions for the restricted agent are separated by natural or man-made physical barriers or protected borders;

(v) All border access points from adjacent R1 or R2 regions for the restricted agent are controlled to prevent movement of susceptible animals or animal products from the adjacent regions except under conditions that have been reviewed and approved by the Administrator;

(vi) Movement of animals and animal products into the region from R1, R2, R3, R4 or RU regions for the restricted agent is done only under conditions that have been reviewed by the Administrator and that have been determined to achieve the same level of biosecurity as required for importations from R1, R2, R3, R4, or RU regions into the United States;

(vii) The region maintains a passive surveillance system to detect restricted agents in a timely fashion, as determined by the Administrator; and

(viii) The region maintains policies and infrastructure to respond to any occurrences of a restricted agent.

(2) The region or country requesting Risk Class RN classification submits a quantitative risk assessment that is determined by the Administrator to be scientifically valid and to demonstrate that fewer than 1 per 1 million (1×10^{-6}) live animals in the region would be expected to be affected with the restricted agent.

(3) A region previously classified as Risk Class RN that has an occurrence of the restricted agent may be reclassified as Risk Class RN 3 years after all known infected and exposed reservoirs of the disease in the region have been eliminated.

(b) *Risk Class R1 Region (Slight Risk).* A Risk Class R1 region must meet either the provisions of paragraphs (b)(1)(i) through (b)(1)(ix) of this section or the provisions of paragraph (b)(2) of this section, and, if applicable, the provisions of paragraph (b)(3) of this section.

(1)(i) Except for BSE, the restricted agent has not been diagnosed within the region within the past 5 years;

(ii) For BSE, no cases have been diagnosed in the region within the last 10 years;

(iii) Vaccination for the restricted agent is prohibited within the region (exceptions may be made for certain restricted agents such as vector transmitted diseases or for animals specifically vaccinated to meet import

requirements of other regions, when the Administrator determines that such vaccination would not increase the risk of importing restricted agents into the United States);

(iv) Any animals previously vaccinated against the disease have been slaughtered or moved out of the region, or are under provisional quarantine (exceptions may be made for certain restricted agents such as vector-transmitted diseases or animals specifically vaccinated to meet import requirements of other regions, when the Administrator determines that such vaccination would not increase the risk of importing restricted agents into the United States);

(v) Any adjacent R2, R3, R4 or RU regions for the restricted agent are separated by natural or man-made physical barriers or protected borders;

(vi) All border access points from adjacent R2, R3, R4 or RU regions for the restricted agent are strictly controlled to prevent movement of susceptible animals or animal products from the adjacent regions, except under conditions that have been reviewed and approved by the Administrator;

(vii) Movement of animals and animal products into the region from R2, R3, R4 or RU regions for the restricted agent is done only under conditions that have been reviewed by the Administrator and have been determined to achieve the same level of biosecurity as required for importation from R2, R3, R4, or RU regions into the United States;

(viii) The region maintains passive and active surveillance systems to detect restricted agents in a timely fashion, as determined by the Administrator; and

(ix) The region maintains policies and infrastructure to respond to any occurrences of a restricted agent.

(2) The region or country requesting Risk Class R1 classification submits a quantitative risk assessment that is determined by the Administrator to be scientifically valid and to demonstrate that fewer than 1 per 100,000 (1×10^{-5}) live animals in the region would be expected to be affected with the restricted agent.

(3) A region previously classified as Risk Class RN or R1 that has an occurrence of a restricted agent may be reclassified as R1 2 years after all known infected and exposed reservoirs of the restricted agent in the region have been eliminated.

(c) *Risk Class R2 Region (Low Risk).* A Risk Class R2 region must meet either the provisions of paragraphs (c)(1)(i) through (c)(1)(viii) of this section or the provisions of paragraph (c)((2) of this section.

(1)(i) Except for BSE or scrapie, the restricted agent has not been diagnosed within the region during the past year and the maximum annual herd incidence of the restricted agent over the past 5 years is less than 0.1 percent;

(ii) For BSE and scrapie, there have been no cases of the disease during the past 5 years;

(iii) Vaccination for the restricted agent is prohibited within the region or is limited to those herds that are at greatest risk of exposure from animals from affected regions (exceptions may be made for certain diseases such as vector-transmitted diseases or animals specifically vaccinated to meet import requirements of other regions, when the Administrator determines that such vaccination would not increase the risk of importing restricted agents into the United States);

(iv) Any adjacent R3, R4 or RU regions for the restricted agent are separated by natural or man-made physical barriers, or protected borders;

(v) All border access points from adjacent R3, R4 or RU regions for the restricted agent are controlled to prevent movement of susceptible animals or animal products from the adjacent regions except under conditions that have been reviewed and approved by the Administrator;

(vi) Movement of animals and animal products into the region from R3, R4 or RU regions for the restricted agent is done only under conditions that have been reviewed by the Administrator and that have been determined to achieve the same level of biosecurity as required for importation from R3, R4, or RU regions into the United States;

(vii) The region maintains passive and active surveillance systems to detect the restricted agent in a timely fashion, as determined by the Administrator; and

(viii) The region maintains policies and infrastructure to respond to any occurrences of the restricted agent.

(2) The region or country requesting Risk Class R2 classification submits a quantitative risk assessment that is determined by the Administrator to be scientifically valid and to demonstrate that fewer than 1 per 10,000 (1×10^{-4}) live animals in the region would be expected to be affected with the restricted agent.

(d) *Risk Class R3 Region (Moderate Risk).* A Risk Class R3 region must meet either the provisions of paragraphs (d)(1)(i) through (d)(1)(viii) of this section or the provisions of paragraph (d)(2) of this section.

(1)(i) The restricted agent has been diagnosed within the region during the past year, but the annual herd incidence of the disease over the past 5 years has not exceeded 0.1 percent;

(ii) An active control program with a goal of eradication for the restricted agent is in operation in the region;

(iii) Vaccination for the restricted agent is currently limited to those herds at greatest risk of infection (exceptions may be made for certain diseases, such as vector-transmitted diseases, or for animals specifically vaccinated to meet import requirements of other regions, when the Administrator determines that such vaccination would not increase the risk of importing restricted agents into the United States);

(iv) Any adjacent R4 or RU regions for the restricted agent are separated by natural or man-made physical barriers or protected borders;

(v) All border access points from adjacent R3, R4 or RU regions for the restricted agent are strictly controlled to prevent movement of susceptible animals or animal products from the adjacent regions except under conditions that have been reviewed and approved by the Administrator;

(vi) Movement of animals and animal products into the region is done only under conditions that have been reviewed by the Administrator and that have been determined to achieve the same level of biosecurity as required for importation from R4 or RU regions into the United States;

(vii) The region maintains passive and active surveillance systems to detect the restricted agent in a timely fashion, as determined by the Administrator; and

(viii) The region maintains policies and infrastructure to eliminate any outbreaks of the restricted agent that may occur.

(2) The region or country requesting Risk Class R3 classification submits a quantitative risk assessment that is determined by the Administrator to be scientifically valid and to demonstrate that fewer than 1 per 1,000 (1×10^{-3}) live animals in the region would be expected to be affected with the restricted agent.

(e) *Risk Class R4 Region (High Risk).* A Risk Class R4 region must meet either the provisions of paragraphs (e)(1)(i) through (e)(1)(vi) of this section or the provisions of paragraph (e)(2) of this section. (1)(i) A restricted agent has been diagnosed within the region within the past year and the annual herd incidence of the disease over the past 5 years may have exceeded 0.1 percent in 1 or more years or is unknown;

(ii) A control program for restricted agents may be in operation in the region but does not meet the minimum standards for a Risk Class R3 region;

(iii) Vaccination for the restricted agent may vary from herd to herd. If

vaccination is used as the primary control procedure, at least 80 percent of the livestock in 80 percent of the herds must be vaccinated as often as recommended by the manufacturers of the vaccine;

(iv) Movement of animals and animal products into the region may not be adequately controlled from regions that are Risk Class R3, R4, or RU for the restricted agent;

(v) The region maintains a passive and active surveillance system for the restricted agent at a level that may not fully meet standards for a Risk Class R3 region; and

(vi) The region maintains policies and infrastructure to effectively control and restrict spread of any outbreaks of the restricted agent that may occur.

(2) The region or country requesting Risk Class R4 classification submits a quantitative risk assessment that is determined by the Administrator to be scientifically valid and to demonstrate that fewer than 1 per 100 (1×10^{-2}) live animals in the region would be expected to be affected with the restricted agent.

(f) *Risk Class RU Region (Unknown Risk).* A Risk Class RU region will be classified using the following criteria:

(1) All countries and regions of the world that do not have specific classification as Risk Class RN, R1, R2, R3 or R4, and that have not been previously designated as a country not affected with a restricted agent will be classified as an RU region.

(2) Any region classified in this part as an RU region for any restricted agents of livestock may request classification as an RN, R1, R2, R3, or R4 region. All requests for reclassification will be reviewed and acted upon according to the procedures set forth in § 92.5.

§ 92.4 Risk classification by region and restricted disease agent.

(a) *Risk classification by region.* Abbreviations used:

AIN = Aino virus
AKA = Akabane virus
ASF = African swine fever virus
BB = *Besnoitia besnoiti* (globidiosis)
BEF = Bovine ephemeral fever group (Kotonkan Obodhiang) virus
BLU = Bluetongue virus (except serotypes 10, 11, 13 and 17)
BPF = Bovine petechial fever (Ondiri disease) due to *Erlichia* (*Cytoecetes*) *ondiri*
BR-A = *Brucella abortus* (brucellosis or Bangs disease)
BR-M = *Brucella melitensis*
BR-S = *Brucella suis*
BR-S4 = *Brucella suis* biovar 4
BSE = Bovine spongiform encephalopathy (BSE) agent
CASG = Contagious agalactia of sheep and goats (*Mycoplasma agalactiae*)
CBPP = Contagious bovine pleuropneumonia (*Mycoplasma mycoides* subsp. *mycoides*)
CCPP = Contagious caprine pleuropneumonia (*Mycoplasma mycoides* subsp. *capri*)
CHD = Congo (Crimean Hemorrhagic Disease) virus
ECF = *Theileria spp.* (east coast fever, corridor disease, Mediterranean fever)
ECTO = *Restricted ectoparasites*
EHD = Epizootic hemorrhagic disease of deer (Ibaraki) virus (except serotypes 1 and 2)
FMD = Foot-and-mouth disease virus
GET = Getah virus
GPV = Goat pox virus
HC = Hog Cholera (Classical swine fever) virus
HW = Heartwater due to *Cowdria ruminatium*
JEM = Jembrana (Tabanan) virus
JEV = Japanese encephalitis virus
LSD = Lumpy Skin disease virus
MCF = Malignant catarrhal fever virus (African or Wildebeest form)
MEL = *Pseudomonas pseudomallei* (melioidosis)
NEE = Near East Encephalitis virus
NSD = Nairobi sheep disease (Dugbe, Ganjam) virus
PARF = Parafilariosis due to *Parafilaria bovicola*
PPR = Peste des petits ruminants (Kata) virus
PRV = Pseudorabies virus
RP = Rinderpest virus
RVF = Rift Valley fever virus
SCR = Scrapie disease agent
SPV = Sheep pox virus
SVD = Swine vesicular disease virus
TB = *Mycobacterium bovis* (bovine tuberculosis)
TBE = Tick-borne encephalitis (louping ill, Central European encephalitis) virus
TBF = Tick-borne fever due to *Erlichia* (*Cytoecetes*) *phagocytophilia.*
TD = Teschen disease virus
TM = *Taenia* (*Multiceps*) *multiceps* (dog tapeworm) in livestock handling dogs
TRY-NTT = *Trypanosoma* spp. transmitted by vectors other than tsetse flies (NTT-Trypanosomas)
TRY-TT = African (salivarian- or tsetse-transmitted) *Trypanosoma* spp. (*T. brucei, T. congolense, T. evansi, T. suis, T. simiae, T. uniforme, T. vivax*)
VSV = Vesicular Stomatitis virus
WB = Wesselsbron virus

Region	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
Africa	BSE, BR-S4, GET, JEM, JEV, TD, TBE, VSV.					AIN, AKA, ASF, BLU, BB, BEF, BPF, BR-A, BR-M, BR-S, CASG, CBPP, CHD, CCPP, ECF, ECTO, EHD, FMD, GPV, HC, HW, LSD, MCF, MEL, NEE, NSD, PARF, PPR, PRV, RP, RVF, SCR, SPV, SVD, TM, TB, TBF, TRY-NTT, TRY-TT, WB.
Algeria						
Angola						
Benin						
Botswana						
Burkina Faso						
Burundi						
Cameroon						
Cent. African Rep.						
Chad						
Comoros						
Congo						
Djibouti						
Egypt						
Equatorial Guinea						
Gabon						
Ghana						
Guinea						
Guinea-Bissau						
Ivory Coast						
Kenya						
Lesotho						
Liberia						
Libya						
Madagascar						
Malawi						
Mali						
Mauritania						
Morocco						
Mozambique						
Namibia						
Niger						
Nigeria						
Rwanda						
Sao Tome and Princip						
Senegal						
Sierra Leone						
Somalia						
South Africa						
Sudan						
Swaziland						
Tanzania						
The Gambia						
Togo						

Tunisia						
Uganda						
Western Sahara						
Zaire						
Zambia						
Zimbabwe						
Asia	ASF, BPF, BSE, BR–S4 *except* Russia; ECF, LSD, MCF, RVF, TD, TRY–TT, VSV, WB.					AIN, AKA, BLU, BB, BEF, BR–A *except* Japan; BR–M, BR–S, CASG, CBPP, CHD, CCPP, ECTO, EHD, FMD *except* Japan & South Korea; GET, GPV, HW, HC, JEV, MEL, NEE, NSD, PARF, PPR, PRV, RP *except* Japan & South Korea; SCR, SPV, SVD, TM, TB, TBE, TBF, TRY–NTT.
Afghanistan	JEM					
Armenia	JEM					
Azerbaijan	JEM					
Bangladesh						JEM
Bhutan						JEM
Burma						JEM
Cambodia						JEM
China	JEM					
Georgia	JEM					
Hong Kong	JEM					
India						JEM
Iran	JEM					
Japan	JEM	FMD, RP	BR–A			
Kazakhstan	JEM					
Kygyzstan	JEM					
Laos						JEM
Macau	JEM					
Malaysia						JEM
Mongolia	JEM					
Nepal	JEM					
North Korea	JEM					
Pakistan	JEM					
Russia	JEM					BR–S4
Singapore						JEM
South Korea	JEM	FMD, RP				
Sri Lanka						JEM
Taiwan	JEM					
Tajikistak	JEM					
Thailand						JEM
Turkistan	JEM					
Ukraine	JEM					
Uzbekistan	JEM					
Vietnam						JEM

Region	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
Atlantic	ASF, AIN, AKA, BB, BEF, BPF, BSE, BR–S4, CHD, CBPP, CCPP, ECF, GET, GPV, JEV, JEM, LSD, MCF, MEL, NEE, NSD, PPR, NEE, RVF, SPV, TD, TBE, TBF, TRY–NTT, TRY–TT, VSV, WB.					BLU, BR–A, BR–M, BR–S, CASG, ECTO, EHD, FMD *except* Bermuda; HW, HC, PARF, PRV, RP *except* Bermuda; SCR, SVD, TM, TB *except* Bermuda and Falkland Islands.
Bermuda	FMD, RP, TB					
Cape Verde						
Falkland Islands	TB					
South Georgia						
Australia	ASF, BB, BPF, BR–M, BR–S4, BSE, CASG, ECF, FMD, HW, HC, LSD, MCF, NEE, NSD, PPR, RP, RVF, SCR, SPV, SVD, TBE, TBF, TD, TRY–NTT, TRY–TT, VSV, WB.	BR–A, CBPP, JEM				AIN, AKA, ASF, BLU, BEF, BR–S, CHD, CCPP, ECTO, EHD, GET, GPV, JEV, MEL, PARF, PRV, TM, TB.
Caribbean	AIN, AKA, BB, BEF, BPF, BR–S4, CASG, CBPP, CHD, CCPP, ECF, FMD *except* The Bahamas GET, GPV, JEV, JEM, LSD, MCF, NEE, NSD, PARF, PPR, RVF, RP *except* The Bahamas, SPV, TM, TBE, TBF, TD, TRY–TT, VSV, WB.	ASF *except* Cuba and Haiti,.				BLU, BR–A, BR–M, BR–S, BSE, ECTO, EHD, HW, HC, MEL, PRV, SCR, SVD *except* Haiti, Dominican Republic, and The Bahamas; TB *except* the Bahamas, TRY–NTT.
Anguilla						
Aruba						
Barbados						
British Virgin Islands						
Cayman Islands						
Cuba						ASF
Dominica						
Dominican Republic	SVD					
Grenada						
Guadeloupe						
Haiti	SVD					ASF
Jamaica						
Martinique						
Montserrat						
Netherlands Antilles						
Puerto Rico						
Saint Lucia						
Saint Vincent						
The Bahamas	SVD, TB	FMD, RP				

Trinidad and Tobago						
Turks and Caicos						
U.S. Virgin Islands						
Europe	AIN, AKA, BLU *except* Greece BEF, BPF, BR–S4, ECF, EHD, GET, HW, JEV, JEM, LSD, MCF, MEL, NEE, NSD, PPR, RVF, TRY–NTT, TRY–TT, VSV, WB.	ASF *except* Italy, Spain, and Portugal.				BB, BR–S *except* Ireland and United Kingdom; CASG, CHD, CCPP, ECTO, GPV, PARF, PRV, SCR, SPV, TM, TBE, TBF, TD.
Albania		CBPP, RP, BSE				BR–A, BR–M, FMD, RP, SVD, TB.
Andorra		CBPP, RP, BSE				BR–A, BR–M, FMD, RP, SVD, TB.
Austria		CBPP, FMD, RP, SVD, BSE.				BR–A, BR–M, TB.
Belgium		CBPP, FMD, RP, BSE				BR–A, BR–M, SVD, TB.
Bosnia-Herzogovina		CBPP, RP, BSE				BR–A, BR–M, RP, SVD, FMD, TB.
Bulgaria	BR–A	CBPP, RP, BSE				FMD, RP, SVD, TB.
Bylorus		CBPP, RP, BSE				BR–A, FMD, RP, SVD, TB.
Croatia		CBPP, RP, BSE				BR–A, FMD, RP, SVD, TB.
Czech Republic	BR–M	BR–A, BSE, CBPP, RP				FMD, RP, SVD, TB.
Denmark	BR–A, BR–M	CBPP, FMD, RP, SVD				BSE, TB.
Estonia	BR–M	CBPP, RP, BSE				BR–A, BR–M, FMD, RP, SVD, TB.
Finland	BR–A, BR–M, TB	CBPP, FMD, BSE, RP SVD.				
France		CBPP				BR–A, BSE, SVD, TB.
France *except* St. Pierre and Miquelon.		FMD, RP				TB.
France (Territory of St Pierre and Miquelon).	FMD, RP					TB.
Germany		CBPP, BR–A, BSE, FMD, RP.				BR–M, SVD, TB.
Gibraltar		CBPP, RP, BSA				BR–A, BR–M, FMD, RP, SVD, TB.
Greece		CBPP, RP, BSE				BR–A, BR–M, FMD, RP, SVD, TB.
Greenland	BR–M, FMD, RP	CBPP, BSE				BR–A, BR–M, SVD, TB.
Hungary	BR–A	CBPP, FMD, BSE, RP				BR–M, SVD, TB.
Iceland	BR–M, FMD, RP	CBPP, BSE				BR–A, SVD, TB.
Ireland	BR–M, BR–S	CBPP, FMD, RP, SVD				BR–A, BSE, TB.
Italy		CBPP, RP, BSE				BR–A, BR–M, SVD, FMD, RP, TB.
Latvia	BR–M	CBPP, RP, BSE				BR–A, SVD, FMD, RP, TB.
Liechtenstein		CBPP, RP BSE				BR–A, BR–M, FMD, SVD, RP, TB.
Lithuania	BR–M	CBPP, RP, BSE				BR–A, FMD, SVD, RP, TB.
Luxembourg	BR–M, TB	CBPP, RP, BSE, SVD				BR–A, FMD, RP.

Region	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
Moldavia		CBPP, RP, BSE				BR–A, BR–M, FMD, SVD, RP, TB.
Monaco		CBPP, RP, BSE				BR–A BR–M, FMD, SVD, RP, TB.
Netherlands	BR–M	CBPP, FMD, BSE, RP				BR–A, SVD, TB.
Norway	BR–A, BR–M, TB	CBPP, FMD, RP, BSE, SVD.				
Poland	BR–M	CBPP, FMD, BSE, RP				BRA–A, SVD.
Portugal		FMD, BSE, RP				CBPP, BR–A, BR–M, SVD, RP, TB.
Romania	BR–A	CBPP, RP, BSE				BR–M, FMD, SVD, RP, TB.
San Marino		CBPP, RP, BSE				BR–A, BR–M, FMD, SVD, RP, TB.
Slovakia	BR–M	CBPP, BR–A, RP				FMD, BSE, SVD, RP, TB.
Slovenia		CBPP, RP, BSE				BR–A, BR–M, FMD, RP, SVD, TB.
Spain		FMD, RP, BSE				BR–A, BR–M, CBPP, SVD, TB.
Sweden	BR–A, BR–M	CBPP, FMD, RP, SVD, BSE.				RP, TB.
Switzerland	BR–A	CBPP, FMD, RP, SVD				BR–M, BSE, RP, TB.
United Kingdom (Channel Islands).	BR–A, BR–M, BR–S	CBPP, RP, SVD				BSE, TB except Isle of Jersey.
United Kingdom (England, Northern Ireland, Scotland, Wales, Isle of Man).	BR–M, BR–S	CBPP, BR–A, RP, SVD				TB.
United Kingdom (Isle of Jersey).	TB					
Vatican City		CBPP, RP, BSE				BR–A, BR–M, SVD, RP, TB.
Yugoslavia		CBPP, RP, BSE				BR–A, BR–M, FMD, RP, SVD, TB.
Middle America	ASF, AIN, AKA, BB, BEF, BPF, BSE, BR–S4, CASG, CBPP, CHD, CCPP, ECF, FMD *except* Panama; GET, GPV, HW, JEV, JEM, LSD, MCF, NEE, NSD, PARF, PPR, RP, RVF, SPV, SVD, TM, TBE, TBF, TD, TRY–TT, WB.					BLU, BR–A *except* Belize; BR–M, BR–S, ECTO, EHD, HC, MEL, PRV, SCR, TB, TRY–NTT, VSV.
Belize	BR–A					
Costa Rica						
El Salvador						
Guatemala						
Honduras						
Nicaragua						
Panama		FMD				

Middle East	ASF, BEF, BPF, BR–S4, ECF, GET, HW, JEV, JEM, NSD, MCF, TBE, TD, TRY–TT, VSV, WB.	BSE *except* Oman				AIN, AKA, BLU, BB, BR–A *except* Cyprus & Israel; BR–M, BR–S, CASG, CBPP, CHD, CCPP, ECTO, EHD, FMD, GPV, HC, LSD, MEL, NEE, PARF, PPR, PRV, RP, RVF, SCR, SPV, SVD, TM, TB *except* Cyprus; TBF, TRY–NTT.
Bahrain						
Cyprus	BR–A, TB.					
Iraq						
Israel	BR–A.					
Jordan						
Kuwait						
Lebanon						
Malta						
North Yemen						
Oman						
Palestine						
Qatar						
Saudi Arabia						
South Yemen						
Syria						
Turkey						
United Arab Emirates						
New Zealand	ASF, AIN, AKA, BLU, BB, BEF, BPF, BR–M, BR–S4, BSE, CBPP, CHD, CCPP, ECF, EHD, FMD, GET, GPV, HW, HC, JEV, JEM, LSD, MCF, MEL, NEE, NSD, PARF, PPR, RP, RVF, SCR, SPV, SVD, TBE, TBF, TD, TRY–NTT, TRY–TT, VSV, WB.					BR–A, BR–S, CASG, ECTO, PRV, TM, TB.
North America	ASF, AIN, AKA, BB, BEF, BPF, BLU, CASG, CBPP, CHD, CCPP, ECF, EHD, FMD, GET, GPV, HW, JEV, JEM, LSD, MCF, NEE, NSD, PARF, PPR, RP, RVF, SPV, SVD, TM, TBE, TBF, TD, TRY–NTT, TRY–TT, WB.					
Canada	BR–M, BR–S, ECTO, HC, MEL, PRV.	BR–A	TB	SCR		BR–S4

Region	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
Mexico						BR–A, ECTO, HC *except* the State of Sonora; MEL, BR–M, BR–S, PRV, SCR, TB, VSV.
The State of Sonora in Mexico.		HC.				
United States						
Oceania	ASF, BB, BPF, BSE, BR–M, BR–S4, CHD, HW, LSD, MCF, NEE, NSD, PPR, RVF, TBE, TBF, TD, TRY–TT, VSV, WB.					AIN, AKA, BEF, BLU, BR–A *except* French Polynesia & Papua New Guinea; BR–S, CASG, CBPP, CCPP, ECF, ECTO, EHD, GET, GPV, HC, JEV, JEM, MEL, PARF, PRV, SCR, SPV, TM, TB, TRY–NTT.
Brunei						FMD, SVD, RP.
Fiji	SVD	FMD, RP				
French Polynesia	BR–A					FMD, SVD, RP.
Indonesia						FMD, SVD, RP.
Kiribati						FMD, SVD, RP.
Maldives						FMD, SVD, RP.
Mauritius						FMD, SVD, RP.
Nauru						FMD, SVD, RP.
New Caledonia		FMD, RP				FMD, SVD.
Papau New Guinea	BR–A	FMD, RP				SVD.
Philippines						FMD, SVD, RP.
Seychelles						FMD, SVD, RP.
Solomon Islands						FMD, SVD, RP.
Tonga						FMD, SVD, RP.
Trust territory of the Pacific Islands.	FMD, RP, SVD					
Vanuatu						FMD, SVD, RP.
Western Samoa						FMD, SVD, RP.
South America	AIN, AKA, BEF, BPF, BR–S4, BSE, CASG, CBPP, CHD, CCPP, ECF, GET, HW, JEV, JEM, LSD, MCF, NEE, NSD, PARF, PPR, RP *except* Chile, RVF, TBE, TBF, TD, TRY–TT, WB.	ASF *except* Brazil				BLU, BB, BR–A, BR–M, BR–S, ECTO, EHD, FMD *except* Argentina, Chile, and Uruguay; GPV, HC, MEL, PRV, SCR, SPV, SVD *except* Chile; TM, TB, TRY–NTT, VSV.
Argentina			FMD			
Bolivia						
Brazil						ASF.
Chile		FMD, RP, SVD				

Colombia Ecuador French Guiana Guyana Paraguay Peru Suriname Uruguay ..... Venezuela	.....	FMD				

(b) *Risk classification by restricted disease agent.*

Restricted disease agent	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
African swine fever	Asia, Atlantic, Australia, Middle America, New Zealand, North America, Oceania.	Europe *except* Italy, Spain and Portugal; Caribbean *except* Cuba and Haiti; South America *except* Brazil.	None	None	None	All regions of the world *except* those specifically listed as Risk Class RN, R1, R2, R3 or R4
Aino virus	Atlantic, Caribbean, Europe, Middle America, New Zealand, North America, South America.	None	do	do	do	Do.
Akabane virus	Atlantic, Caribbean, Europe, Middle America, New Zealand, North America, South America.	do	do	do	do	Do.
Besnoitia besnoitii (globidosis).	Atlantic, Australia, Caribbean, Middle America, North America, Oceania.	do	do	do	do	Do.
Bluetongue virus (except serotypes 10, 11, 13, 17).	Europe *except* Greece, New Zealand, Canada, Mexico.	do	do	do	do	Do.
Bovine ephemeral fever virus group (Kotonkan, Obodhiang).	Atlantic, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, South America.	do	do	do	do	Do.
Bovine infectious petechial fever.	Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, South America.	do	do	do	do	Do.
Bovine spongiform encephalopathy.	Africa, Asia, Atlantic, Australia, Caribbean, Middle America, New Zealand, Oceania, South America, North America *except* Canada.	Middle East *except* Oman; Europe *except* Denmark, France, United Kingdom, Republic of Ireland, and Switzerland.	Canada	do	do	Do.
Brucella abortus	Belize, Bulgaria, Channel Islands (United Kingdom), Cyprus, Denmark, Finland, French Polynesia, Hungary, Israel, Norway, Papua New Guinea, Romania, Sweden, Switzerland.	Australia, Canada, Czech Republic, Germany, Slovakia, United Kingdom except Channel Islands.	do	do	do	Do.

Brucella melitensis	Oceania, Australia, New Zealand, Canada, Czech Republic, Denmark, Estonia, Finland, Greenland, Iceland, Ireland,Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovakia, Sweden, United Kingdom, Taiwan.	None	do	do	do	Do.
Brucella suis except biovar 4.	Canada, Ireland, United Kingdom.	do	do	do	do	Do.
Brucella suis except biovar 4.	Africa; Asia *except* Russia; Atlantic; Australia; Caribbean; Europe; Mexico; Middle America; Middle East; New Zealand; Oceania, South America.	do	do	do	do	Do.
Congo virus (Crimean Hemorrhagic Disease).	Atlantic, Caribbean, Middle America, New Zealand; North America, Oceania; South America.	do	do	do	do	Do.
Contagious agalactia of sheep and goats due to *Mycoplasma agalactiae*.	Australia, Caribbean, Middle America, New Zealand, North America, South America.	do	do	do	do	Do.
Contagious bovine pleuro-pneumonia (*Mycoplasma mycoides* subsp. *mycoides*).	Atlantic, Caribbean, Middle America, New Zealand, North America, South America.	Europe *except* Portugal and Spain; Australia; Oceania.	do	do	do	Do.
Contagious caprine pleuro-pneumonia (*Mycoplasma mycoides* subsp. *capri*).	Atlantic, Caribbean, Middle America, New Zealand, North America, and South America.	None	do	do	do	Do.
Epizootic hemorrhagic disease of deer (Ibaraki) virus (except serotypes 1 and 2).	Canada, Europe, New Zealand.	Mexico	do	do	do	Do.
Foot-and-mouth disease virus.	Australia; Barbados; Bermuda; all regions of North and Middle America *except* Panama; all regions of the Caribbean *except* The Bahamas; Greenland; Iceland; Territory of St. Pierre and Miquelon; Trust territory of the Pacific Islands.	Austria, The Bahamas, Belgium, Chile, Denmark, Fiji, Finland, France, Germany, United Kingdom, Hungary, Japan, New Caledonia, The Netherlands, Norway, Papua New Guinea, Panama, Poland, Portugal, Republic of Ireland, Republic of Korea, Sweden, Spain, Switzerland, Uruguay.	Argentina	do	do	Do.

Restricted disease agent	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
Getah virus	Africa; Atlantic; Caribbean; Europe; Middle America; Middle East; New Zealand; North America; and South America.	None	None	....do	....do	Do.
Heartwater due to *Cowdria ruminantium*.	Asia; Atlantic; Australia; Europe; Middle America; Middle East; New Zealand; North America; Oceania; and South America.	None	None	None	....do	Do.
Hog cholera (classical swine fever).	Australia, Canada, Dominican Republic, Fiji, United Kingdom, Iceland, New Zealand; Northern Ireland, Norway, the Republic of Ireland, Sweden, and Trust Territory of the Pacific Islands.	Denmark, Finland, Spain, the State of Sonora in Mexico.	....do	....do	....do	Do.
Japanese encephalitis virus.	Africa, Atlantic, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, and South America.	None	....do	....do	....do	Do.
Jembrana (Tabanan) virus.	Africa; Atlantic; Asia *except* for Bangladesh, Bhutan, Burma, Cambodia, India, Laos, Malaysia, Singapore, Sri Lanka, Thailand, and Vietnam; Caribbean; Europe; Middle America; Middle East; New Zealand; North America; South America.	....do	....do	....do	....do	Do.
Lumpy skin disease (Neethling virus).	Asia, Atlantic, Australia, Caribbean, Europe, Middle America, New Zealand, North America, Oceania, South America.	....do	....do	....do	....do	Do.
Malignant catarrhal fever virus (African or wildebeest form).	Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.	....do	....do	....do	....do	Do.

Mycobacterium bovis	Bermuda, The Bahamas, Falkland Islands, Luxembourg, Norway, Isle of Jersey (United Kingdom), Cyprus.	do	Canada	do	do	Do.
Nairobi sheep disease (Ganjam, Dugbe) virus.	Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, and South America.	do	None	do	do	Do.
Near East encephalitis virus.	Atlantic, Australia, Caribbean, Europe; Middle America, New Zealand, North America, Oceania, and South America.	do	do	do	do	Do.
Parafilariosis due to *Parafilaria bovicola*.	North America, Middle America, South America, Caribbean.	do	do	do	do	Do.
Peste des petits ruminants (Kata) virus.	Atlantic, Europe, North America, South America, Australia, Oceania.	do	do	do	do	Do.
Pseudomonas pseudomallei (melioidosis).	Europe, Canada, Atlantic	do	do	do	do	Do.
Pseudorabies (Aujesky's) virus.	None	Canada	do	do	do	Do.
Restricted ectoparasites	Canada	None	do	do	do	Do.
Rift Valley fever virus	Asia, Atlantic, Australia, Caribbean, Europe, Middle America, New Zealand, North America, Oceania, South America.	do	do	do	do	Do.
Rinderpest virus	Australia; Bermuda; North America; Middle America; South America *except* Chile; Caribbean *except* The Bahamas; Greenland; Iceland, Japan, Territory of St. Pierre and Miquelon, Trust territory of the Pacific Islands, Papua New Guinea, Republic of Korea.	Austria, The Bahamas, Belgium, Chile, Denmark, Finland, Fiji France, Germany, United Kingdom, Hungary, Japan, The Netherlands, New Caledonia, Norway, Papua New Guinea, Poland, Ireland, South Korea, Spain, Sweden.	do	do	do	Do.
Scrapie disease agent	Australia, New Zealand	None	do	do	do	Do.
Sheep pox and/or goat pox virus.	Atlantic, Australia, Caribbean, Middle America, New Zealand, North America.	do	do	do	do	Do.

Restricted disease agent	Risk class RN regions	Risk class R1 regions	Risk class R2 regions	Risk class R3 regions	Risk class R4 regions	Risk class RU regions
Swine vesicular disease virus.	Australia, North America, Middle America, Dominican Republic, Fiji, Finland, Greenland, Haiti, Iceland, New Zealand, Norway, Rumania, Sweden, Trust Territories of the Pacific Islands.	Austria, The Bahamas, Bosnia-Herzogovania, Bulgaria, Chile, Croatia, Denmark, Ireland, Luxembourg, Macedonia, Ireland, Slovenia, Switzerland, United Kingdom, Yugoslavia.	.....do	.....do	.....do	Do.
Taenia (Multiceps) multiceps (dog tapeworm) in livestock handling dogs.	North America, Middle America, Caribbean.	None	.....do	.....do	.....do	Do.
Teschen disease virus ...	Africa, Asia, Atlantic, Australia, Caribbean, Middle America, Middle East, New Zealand, North America, Oceania, South America.	.....do	.....do	.....do	.....do	Do.
Theileriosis (east coast fever, corridor disease Mediterranean fever).	Atlantic, Asia, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, South America.	.....do	.....do	.....do	.....do	Do.
Tick-borne encephalitis (louping ill, Central European encephalitis) virus.	Africa, Atlantic, Australia, Caribbean, Middle America, Middle East, New Zealand, North America, Oceania, South America.	.....do	.....do	.....do	.....do	Do.
Tick-borne fever due to *Erlichia (Cytoecetes) phagocytophilia*.	Atlantic, Australia, Caribbean, Middle America, Middle East, New Zealand, North America, Oceania, South America.	.....do	.....do	.....do	.....do	Do.
Trypanosoma African (salivarian-or tsetse-transmitted) spp. (*T. brucei, T. congolense, T. evansi, T. suis, T. simiae, T. uniforme, T. vivax*).	Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, South America.	.....do	.....do	.....do	.....do	Do.
Trypanosoma spp. transmitted by vectors other than tsetse flies (NTT–Trypano-somas).	Atlantic, Australia, Europe, New Zealand, and North America.	.....do	.....do	.....do	.....do	Do.
Vesicular Stomatitis virus	Africa; Asia; Atlantic; Australia; Caribbean; Europe; Middle East; New Zealand; North America *except* Mexico; Oceania.	.....do	.....do	.....do	.....do	Do.

Wesselsbron virus	Asia, Atlantic, Australia, Caribbean, Europe, Middle America, Middle East, New Zealand, North America, Oceania, South America.	.....do	.....do	.....do	.....do	Do.

§ 92.5 Application for recognition of Risk Class RN, R1, R2, R3, or R4.

(a) *Evaluation procedure.* (1) The official of the national government of any country who has the authority in that country to request such a change may request at any time that all or part of the country be classified or reclassified as a Risk Class RN, R1, R2, R3, or R4 region, or be included within an adjacent previously classified region.

(2) Requests for classifying or reclassifying a region must be sent to the Administrator, stating that the official making the request believes the region is prepared to document all claims represented that would permit the region to be eligible for consideration for a change in disease risk classification.

(3) The Chief Veterinary Officer of the region will then be sent a formal questionnaire relating to the specific disease(s) in question.

(4) The Chief Veterinary Officer of the region must submit to APHIS the completed questionnaire, along with a complete set of the region's applicable agricultural laws and regulations, written in English (if the official language of the country or region is other than English, there must be supplied an official certified translation into English), relative to the animal health infrastructure, livestock populations, diagnostic facilities and procedures, control, eradication, and surveillance of the specific disease(s) in question.

(5) When all of the requested information is received by APHIS, the Administrator will initiate an investigation to document those claims represented in the completed questionnaire. Following this investigation, a committee, composed of USDA veterinary experts, will be convened to evaluate the information provided by the Chief Veterinary Officer for the region and the investigative report submitted by APHIS. This committee will be formed by the Administrator when necessary to address any such requests for change in region risk class status and may be composed of representatives from APHIS, other branches of the USDA, or other persons knowledgeable about the disease(s) in question from other Federal agencies.

(b) *Decision procedures.* (1) Depending upon the information provided by the Chief Veterinary Officer of the region and the results of the investigation by APHIS, the committee may complete a risk analysis of the region and may make one of several recommendations. These recommendations may include, but are not limited to:

(i) Requesting additional information about the region, or the country if the region is part of a country, or other countries if the region is made up of more than one country;

(ii) Deferring any decision until a veterinary team composed of staff representatives of APHIS can personally visit the region in question and do an on-site evaluation of any concerns;

(iii) Denying the request, but specifying certain conditions that would warrant further consideration, should the region decide to implement the committee's recommendations;

(iv) Denying the request, listing the specific reasons for that action;

(v) Recommending reclassifying the region into a risk class other than the risk class specifically requested; and

(vi) Approving the request by the region and recommending that the region be added to the list of risk class regions for which it applied.

(2) After the committee has met and made a recommendation, a letter to the Administrator will be prepared, stating the recommendation of the committee, and will be signed by the committee chairperson.

(c) *Action on the committee's recommendations.* (1) If the Administrator concurs with the committee's recommendation, a letter will be sent to the foreign official who made the request, informing him or her as follows whether the request was approved or denied, or is still being considered:

(i) If the request is approved, the letter will state that a notice of proposed rulemaking will be published in the Federal Register, proposing the status of the region for the restricted agent in question.

(ii) If the request is denied, the letter will state the reasons for that action. The region will continue to be classified according to its current risk class or be classified as Risk Class RU if the region had not been previously classified as Risk Class RN, R1, R2, R3, or R4. The decision may be appealed by resubmitting the request to the Administrator and specifically responding to each of the reasons stated for denying the request, and supplying any supporting information or data related to the reasons stated for denial. The committee will evaluate the appeal following the procedures outlined in paragraphs (a)(5) and (b) of this section. The Administrator will act on the committee's recommendation of the appeal as outlined in this paragraph (c) and paragraph (d) of this section.

(iii) If the request is still being considered, the letter will state that:

(A) Additional information is needed; if furnished, the request will be reconsidered according to the procedures outlined in paragraphs (a)(5) and (b) of this section;

(B) An on-site visit is required before a final decision can be made; and/or

(C) The region must implement certain actions for compliance with APHIS requirements before it will be eligible for a reclassification.

(iv) Final approval will be given by the Administrator by publishing a final rule Federal Register stating the status of the region for the restricted agent in question and the effective date of the risk class change. The Administrator will notify the Chief Veterinary Official of the country(ies) where the reclassified region is located when the final rule is published in the Federal Register.

(d) *Committee follow-up, if needed.* (1) The committee may be reconvened for final recommendation after:

(i) An appeal has been made or additional information needed is received;

(ii) An on-site evaluation report is received; or

(iii) The region has implemented specific recommendations made by the committee and has furnished that information in writing, and this information has been documented by the APHIS investigator assigned to conduct the investigation.

(2) After the committee has reconvened and reconsidered the request, a letter to the Administrator will be prepared stating the revised recommendation of the committee, and will be signed by the chairperson of the committee.

(e) *Removal or change of status of region due to failure to meet the criteria of the present risk class, or discovery of a restricted agent in the region.*

(1) Whenever the Administrator receives notice from the Chief Veterinary Officer representing any region classified as Risk Class RN, R1 or R2, either directly or through the International Office of Epizootics, that a restricted agent has been discovered within the region or that animals in the region have been exposed to a restricted agent, the Administrator may immediately suspend the current risk classification and reclassify the region as a Risk Class R3, R4 or RU region, and will publish a rule to that effect in the Federal Register.

(2) Whenever the Administrator determines that a region no longer meets the criteria of its current Risk Class classification, the Administrator shall

take action to change the classification of the region as he or she deems appropriate.

(3) Reclassification pursuant to paragraph (e)(1) or (e)(2) of this section shall remain in effect until either:

(i) The official of the national government of the country of origin who has the authority to request a change does so in accordance with the procedures in paragraph (a) of this section; or

(ii) The Administrator makes a determination based on the procedures in paragraph (b) of this section.

PART 93—IMPORTATION OF CERTAIN ANIMALS AND POULTRY; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN ANIMALS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

4. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

5. The heading for part 93 would be revised to read as set forth above.

Subpart A—Birds

§ 93.101 [Amended]

6. Newly designated § 93.101 would be amended as follows:

a. In paragraph (b)(1), the reference to ''§§ 92.205, 92.214, and 92.216'' would be removed and a reference to ''§§ 93.205, 93.214, and 93.216'' would be added in its place;

b. In paragraph (b)(3)(i)(B), the reference to ''§ 92.103(a)(2)(iv)'' would be removed, and a reference to ''§ 93.103(a)(2)(iv)'' would be added in its place;

c. In paragraph (b)(3)(i)(I), the reference to ''§ 92.103(a)(2)(iv)'' would be removed, and a reference to ''§ 93.103(a)(2)(iv)'' would be added in its place;

d. In paragraph (b)(3)(i)(J), the reference to ''§ 92.104(a)'' would be removed, and a reference to ''§ 93.104(a)'' would be added in its place;

e. In paragraph (b)(3)(i)(K), the reference to ''§ 92.104(a)'' would be removed, and a reference to ''§ 93.104(a)'' would be added in its place;

f. In paragraph (c)(1), the reference to ''§§ 92.102 or 92.203'' would be removed and a reference to ''§§ 93.103 or 93.203'' would be added in its place, and the reference to ''§ 92.105'' would be removed and a reference to ''§ 93.105'' would be added in its place;

g. In paragraph (c)(2)(i), the reference to ''§ 92.101(c)(1)'' would be removed and a reference to ''§ 93.101(c)(1)'' would be added in its place;

h. In paragraph (c)(3), the introductory text, the reference to ''§ 92.102(a)'' would be removed and a reference to ''§ 93.102(a)'' would be added in its place;

i. In paragraph (c)(3)(ii), the references to ''§ 92.103(a)(3)'' would be removed both times they appear and references to ''§ 93.103(a)(3)'' would be added in their place, and the references to ''§ 92.102(a)'' would be removed each time they appear and references to ''93.102(a)'' would be added in their place;

j. In paragraph (c)(3)(iv), the reference to ''§ 92.106(a)'' would be removed and a reference to ''93.106(a)'' would be added in its place;

k. In paragraph (c)(3)(v), the reference to ''§ 92.210 (b) and (c)'' would be removed and a reference to ''§ 93.210(b) and (c)'' would be added in its place;

l. In paragraph (d), the introductory text, the reference to ''§ 92.103'' would be removed and a new references ''§ 93.103'' would be added in its place;

m. In paragraph (d)(1)(ii), the reference to ''§ 92.103(c)'' would be removed and a reference to ''§ 93.103(c)'' would be added in its place;

n. In paragraph (e), the reference to ''§§ 92.102(a), 92.103, 92.104, 92.105(a), and 92.106(a)'' would be removed and a reference to ''§§ 93.102(a), 93.103, 93.104, 93.105(a), and 92.106(a)'' would be added in its place; and

o. In paragraph (f), the reference to ''§ 92.102 or 92.203'' would be removed and a reference to ''§ 93.102 or 93.203'' would be added in its place; and the reference to ''§ 92.103'' would be removed and a reference to ''§ 93.103'' added in its place.

§ 93.102 [Amended]

7. Newly designated § 93.102 would be amended as follows:

a. In paragraph (a), the reference to ''§ 92.101(c)'' would be removed and a reference to ''§ 93.101(c)'' would be added in its place, and the reference to ''§ 92.101(f)'' would be removed and a reference to ''§ 93.101(f)'' would be added in its place;

b. In paragraph (c), the reference to ''§ 92.105(a)'' would be removed and a reference to ''§ 93.105(a)'' would be added in its place; and

c. In paragraph (d), the reference to ''§ 92.101(c) (1) or (2)'' would be removed and a reference to ''§ 93.101(c)(1) or (2)'' would be added in its place.

§ 93.103 [Amended]

8. Newly designated § 93.103 would be amended as follows:

a. In paragraph (a)(1), the reference to ''§§ 92.101 (b) and (c), 92.103(c), and 92.214'' would be removed and a reference to ''§§ 93.101 (b) and (c), 93.103(c), and 93.214'' would be added in its place;

b. In paragraph (a)(1)(x), the reference to ''§ 92.106(c)(5)'' would be removed and a reference to ''§ 93.106(c)(5)'' would be added in its place;

c. In paragraph (a)(1)(xii), the reference to ''§§ 92.100 through 92.107'' would be removed and a reference to ''§§ 93.100 through 93.107'' would be added in its place;

d. In paragraph (a)(2)(i), the reference to ''§ 92.106(c)'' would be removed and a reference to ''§ 93.106(c)'' would be added in its place; and

e. In paragraph (a)(2)(v), the reference to ''§ 92.101 (b)(3)(i)(G) and (b)(3)(i)(J)'' would be removed and a reference to ''§ 93.101 (b)(3)(i)(G) and (b)(3)(i)(J)'' would be added in its place, and the reference to ''§ 92.101 (b)(3)(i)(B) and (b)(3)(i)(C)'' would be removed and a reference to ''§ 93.101(b)(3)(i)(B) and (b)(3)(i)(C)'' would be added in its place.

§ 93.104 [Amended]

9. Newly designated § 93.104 would be amended as follows:

a. In paragraph (a), the reference to ''§ 92.101 (b) and (c)'' would be removed and a reference to ''§ 93.101 (b) and (c)'' would be added in its place;

b. In paragraph (c)(14), the reference to ''§ 92.101(b)(3)(i)(B)'' would be removed and a reference to ''§ 93.101(b)(3)(i)(B)'' would be added in its place, and the reference to ''§ 92.101(b)(3)(i)(C)'' would be removed and a reference to ''§ 93.101(b)(3)(i)(C)'' would be added in its place;

c. In paragraph (d)(9), the reference to ''§ 92.101(b)(2)(iii)(I)'' would be removed and a reference to ''§ 93.101(b)(2)(iii)(I)'' would be added in its place; and

d. In paragraph (d)(10), the reference to ''§ 92.101(b)(3)(i)(B)'' would be removed and a reference to ''§ 93.101(b)(3)(i)(B)'' would be added in its place, and the reference to ''§ 92.101(b)(3)(i)(C)'' would be removed and a reference to ''§ 93.101(b)(3)(i)(C)'' would be added in its place.

§ 93.105 [Amended]

10. In newly designated § 93.105, paragraph (b) would be amended as follows:

a. The reference to ''§ 92.101(c)(2)'' would be removed both times it appears and a reference to ''§ 93.101(c)(2) would be added in its place;

b. The reference to ''§ 92.102(a)'' would be removed and a reference to ''§ 93.102(a)'' would be added in its place; and

c. The reference to ''§ 92.102 and 92.203'' would be removed and a reference to ''§§ 93.102 and 93.203'' would be added in its place.

§ 93.106 [Amended]

11. Newly designated § 93.106 would be amended as follows:

a. In paragraph (a), the reference to ''§ 92.101(c)'' would be removed and a reference to ''§ 93.101(c)'' would be added in its place, and the reference to ''§ 92.103'' would be removed and a reference to ''§ 93.103'' would be added in its place;

b. In paragraph (b)(1), the reference to ''§ 92.103'' would be removed and a reference to ''§ 93.103'' would be added in its place;

c. In paragraph (c)(2)(ii)(L), the reference to ''§ 92.103'' would be removed and a reference to ''§ 93.103'' would be added in its place;

d. In paragraph (c)(2)(ii)(M), the reference to ''§ 92.103'' would be removed and a reference to ''§ 93.103'' would be added in its place;

e. In the ''Cooperative and Trust Fund Agreement,'' paragraph (A)(5), the reference to ''§ 92.106(c)'' would be removed and a reference to ''§ 93.106(c)'' would be added in its place;

f. In the ''Cooperative and Trust Fund Agreement,'' paragraph (A)(13), the reference to ''§ 92.106(c)(3)(ii)(C)'' would be removed and a reference to ''§ 93.106(c)(3)(ii)(C)'' would be added in its place; and

g. In the ''Cooperative and Trust Fund Agreement,'' paragraph (A)(20), the reference to ''§ 92.106(c)'' would be removed and a reference to ''§ 93.106(c)'' would be added in its place.

12. In subpart A, footnote 13 would be amended by removing the reference to ''§ 92.107'' and adding in its place a reference to ''§ 93.107''.

§ 93.107 [Amended]

13. Newly designated § 93.107 would be amended by removing the reference to ''§ 92.103'' and adding in its place a reference to ''§ 93.103'', and by removing the reference to ''§ 92.101'' and adding in its place a reference to ''§ 93.101''.

Subpart B—Poultry

§ 93.200 [Amended]

14. In newly designated § 93.200, the definition of Operator would be amended by removing the reference to ''§ 92.209'' and adding in its place a reference to ''§ 93.209''.

§ 93.201 [Amended]

15. Newly designated § 93.201 would be amended as follows:

a. In paragraph (b), the introductory text, the reference to ''part 92'' would be removed and a reference to ''part 93'' would be added in its place, and the reference to ''§ 92.204'' would be removed and a reference to ''§ 93.204'' would be added in its place;

b. In paragraph (b)(1)(ii), the reference to ''§ 92.204(c)'' would be removed and a reference to ''§ 93.204(c)'' would be added in its place; and

c. In paragraph (c), the reference to ''§ 92.203'' would be removed and a reference to ''§ 93.203'' would be added in its place, and the reference to ''§ 92.204'' would be removed and a reference to ''§ 93.204'' would be added in its place.

§ 93.204 [Amended]

16. In newly designated § 93.204, paragraph (a)(1) would be amended by removing the reference to ''§§ 92.204(c), 92.214, 92.217, and 92.218'' and adding in its place a reference to ''§§ 93.204(c), 93.214, 93.217, and 93.218''.

§ 93.207 [Amended]

17. Newly designated § 93.207 would be amended by removing the reference to ''§§ 92.215 and 92.220'' and adding in its place a reference to ''§§ 93.215 and 93.220''.

§ 93.209 [Amended]

18. In newly designated § 93.209, paragraph (a)(1) would be amended by removing the reference to ''§ 92.216'' and adding in its place a reference to ''§ 93.216''.

19. In subpart B, footnote 6 would be amended by removing the reference to ''§§ 92.214 to 92.216'' and adding in its place a reference to ''§§ 93.214 to 93.215''.

§ 93.214 [Amended]

20. Newly designated § 93.214 would be amended as follows:

a. In paragraph (a), the reference to ''§ 92.204'' would be removed and a reference to ''§ 93.204'' would be added in its place, and the reference to ''§ 92.203(b)'' would be removed and a reference to ''§ 93.203(b)'' would be added in its place; and

b. In paragraph (b), the reference to ''§ 92.206'' would be removed and a reference to ''§ 93.206'' would be added in its place.

§ 93.215 [Amended]

21. In newly designated § 93.215(a)(1), the reference to ''§ 92.204'' would be removed and a reference to ''§ 93.204'' would be added in its place, and the reference to ''§ 92.201'' would be removed and a reference to ''§ 93.201'' would be added in its place.

§ 93.216 [Amended]

22. Newly designated § 93.216 would be amended by removing the reference to ''§ 92.209'' and adding in its place a reference to ''§ 93.209''.

23. In subpart B, footnote 7 would be amended by removing the reference to ''§ 92.217'' and adding in its place a reference to ''§ 93.217''.

§ 93.217 [Amended]

24. Newly designated § 93.217 would be amended as follows:

a. In paragraph (a), the reference to ''§ 92.204'' would be removed and a reference to ''§ 93.204'' would be added in its place;

b. In paragraph (b), the reference to ''§ 92.206'' would be removed and a reference to ''§ 93.206'' would be added in its place; and

c. In paragraph (c), the reference to ''§§ 92.205, 92.207, 92.209, and 92.210'' would be removed and a reference to ''§ 93.205, 93.207, 93.209, and 93.210'' would be added in its place.

25. In subpart B, footnote 8 would be amended by removing the reference to ''§§ 92.218 to 92.220'' and adding in its place a reference to ''§§ 93.218 to 93.220''.

§ 93.218 [Amended]

26. In newly designated § 93.218, paragraph (a) would be amended by removing the reference to ''§ 92.204'' and adding in its place a reference to ''§ 93.204''.

§ 93.219 [Amended]

27. Newly designated § 93.219 would be amended by removing the reference to ''§ 92.206'' and adding in its place a reference to ''§ 93.206''.

§ 93.220 [Amended]

28. In newly designated § 93.220, paragraph (b) would be amended by removing the reference to ''§ 92.203'' and adding in its place a reference to ''§ 93.203''.

Subpart C—Horses

§ 93.301 [Amended]

29. Newly designated § 93.301 would be amended as follows:

a. In paragraph (b), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'';

b. In paragraph (c)(2)(i), the reference to ''§ 92.301(a)'' would be removed and a reference to ''§ 93.301(a)'' would be added in its place;

c. In paragraph (c)(2)(ii), the reference to ''§ 92.314'' would be removed and a reference to ''§ 93.314'' would be added in its place;

d. In paragraph (c)(2)(iii), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place;

e. In paragraph (c)(2)(iv), introductory text, the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place, and the reference to ''§ 92.314'' would be removed and a reference to ''§ 93.314'' would be added in its place;

f. In paragraph (c)(2)(v)(A)(*1*), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place;

g. In paragraph (c)(2)(v)(A)(*2*), the reference to ''§ 92.314'' would be removed and a reference to ''§ 93.314'' would be added in its place;

h. In paragraph (c)(2)(v)(G), the reference to ''§ 92.401(c)(2)(v)'' would be removed and a reference to ''§ 93.401(c)(2)(v)'' would be added in its place;

i. In paragraph (c)(2)(vi)(A)(*1*), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place;

j. In paragraph (c)(2)(vi)(A)(*2*), the reference to ''§ 92.314'' would be removed and a reference to ''§ 93.314'' would be added in its place;

k. In paragraph (c)(2)(vi)(E), the reference to ''§ 92.308'' would be removed and a reference to ''§ 93.308'' would be added in its place;

l. In paragraph (c)(2)(vi)(G), the reference to ''§ 92.304(a)'' would be removed and a reference to ''§ 93.304(a)'' would be added in its place;

m. In paragraph (c)(2)(vii)(A), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place;

n. In paragraph (c)(2)(vii)(B), the reference to ''§ 92.314'' would be removed and a reference to ''§ 93.314'' would be added in its place;

o. In paragraph (c)(2)(viii)(A), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place;

p. In paragraph (c)(2)(viii)(E), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place;

q. In paragraph (c)(2)(ix), the reference to ''§ 92.304(a)'' would be removed and a reference to ''§ 93.304(a)'' would be added in its place, the reference to ''§ 92.304(a)(4)(ii)'' would be removed and a reference to ''§ 93.304(a)(4)(ii)'' would be added in its place, and the reference to ''§ 92.304(a)(5)(iii)'' would be removed and a reference to ''§ 93.304(a)(5)(iii)'' would be added in its place;

r. In paragraph (c)(2)(x), the reference to ''§ 92.304(a)'' would be removed and a reference to ''§ 93.304(a)'' would be added in its place, the reference to ''§ 92.304(a)(7)(ii)'' would be removed and a reference to ''§ 93.304(a)(7)(ii)'' would be added in its place, and the reference to ''§ 92.304(a)(8)(iii)'' would be removed and a reference to ''§ 93.304(a)(8)(iii)'' would be added in its place;

s. The second paragraph (c)(2)(xi)(C)(*2*) would be redesignated as paragraph (c)(2)(xi)(C)(*3*);

t. In newly designated paragraph (c)(2)(xi)(C)(*3*), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place; and

u. In paragraph (c)(2)(xi)(E), the reference to ''§ 92.308(a), (b), and (c)'' would be removed and a reference to ''§ 93.308 (a), (b), and (c)'' would be added in its place.

§ 93.303 [Amended]

30. Newly designated § 93.303 would be amended as follows:

a. In paragraph (a), the reference to ''§§ 92.308 (a), (b), and (c) and 92.317'' would be removed and a reference to ''§§ 93.308 (a), (b), and (c) and 93.317'' would be added in its place; and

b. In paragraph (e), the reference to ''§§ 92.301(c), 92.304(a), 92.306, 92.308 (a), (b), and (c), and 92.314'' would be removed and a reference to ''§§ 93.301(c), 93.304(a), 93.306, 93.308 (a), (b), and (c), and 93.314'' would be added in its place.

§ 93.304 [Amended]

31. Newly designated § 93.304 would be amended as follows:

a. In paragraph (a)(1)(i), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§§ 92.315, 92.319, and 92.321'' would be removed and a reference to ''§§ 93.315, 93.319, and 93.321'' would be added in its place;

b. In paragraph (a)(1)(ii), introductory text, the two references to ''§ 92.301(c)(2)(viii)'' would be removed and references to ''§ 93.301(c)(2)(viii)'' would be added in their place;

c. In paragraph (a)(1)(iii), the reference to ''§ 92.301(c)(2)(viii)'' would be removed and a reference to ''§ 93.301(c)(2)(viii)'' would be added in its place;

d. In paragraph (a)(2), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place;

e. In paragraph (a)(4)(i), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(iv) or § 92.301(c)(2)(ix)'' would be removed and a reference to ''§ 93.301(c)(2)(iv) or § 93.301(c)(2)(ix)'' would be added in its place;

f. In paragraph (a)(4)(ii), the reference to ''§ 92.301(c)(2)(iv) and § 92.301(c)(2)(ix)'' would be removed and a reference to ''§§ 93.301(c)(2)(iv) and 93.301(c)(2)(ix)'' would be added in its place;

g. In paragraph (a)(5)(ii)(A), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(iv) or § 92.301(c)(2)(ix)'' would be removed and a reference to ''§ 93.301(c)(2)(iv) or § 93.301(c)(2)(ix)'' would be added in its place;

h. In paragraph (a)(5)(iii), introductory text, the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(iv) or § 92.301(c)(2)(ix)'' would be removed and a reference to ''§ 93.301(c)(2)(iv) or § 93.301(c)(2)(ix)'' would be added in its place;

i. In paragraph (a)(7)(i), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(v), § 92.301(c)(2)(vi), § 92.301(c)(2)(vii) or § 92.301(c)(2)(x)'' would be removed and a reference to ''§ 93.301(c)(2)(v), § 93.301(c)(2)(vi), § 93.301(c)(2)(vii) or § 93.301(c)(2)(x)'' would be added in its place;

j. In paragraph (a)(7)(ii), the reference to ''§ 92.301(c)(2)(v), § 92.301(c)(2)(vi), § 92.301(c)(2)(vii) and § 92.301(c)(2)(x)'' would be removed and a reference to ''§§ 93.301(c)(2)(v), 93.301(c)(2)(vi), 93.301(c)(2)(vii) and 93.301(c)(2)(x)'' would be added in its place;

k. In paragraph (a)(8), introductory text, the reference to ''§ 92.301(c)(2)(v), § 92.301(c)(2)(vi), § 92.301(c)(2)(vii) or § 92.301(c)(2)(x)'' would be removed and a reference to ''§ 93.301(c)(2)(v), § 93.301(c)(2)(vi), § 93.301(c)(2)(vii) or § 93.301(c)(2)(x)'' would be added in its place;

l. In paragraph (a)(8)(ii), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(v), § 92.301(c)(2)(vi), § 92.301(c)(2)(vii) or § 92.301(c)(2)(x)'' would be removed and a reference to ''§ 93.301(c)(2)(v), § 93.301(c)(2)(vi), § 93.301(c)(2)(vii) or

§ 93.301(c)(2)(x)'' would be added in its place;

m. In paragraph (a)(8)(iii), introductory text, the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(v), § 92.301(c)(2)(vi), § 92.301(c)(2)(vii) or § 92.301(c)(2)(x)'' would be removed and a reference to ''§ 93.301(c)(2)(v), § 93.301(c)(2)(vi), § 93.301(c)(2)(vii) or § 93.301(c)(2)(x)'' would be added in its place;

n. In paragraph (a)(8)(iii)(B), the reference to ''§ 92.301(c)(2)(vii)'' would be removed and a reference to ''§ 93.301(c)(2)(vii)'' would be added in its place;

o. In paragraph (a)(8)(iii)(C), introductory text, the reference to ''§ 92.304(a)(8)(iii)(B)'' would be removed and a reference to ''§ 93.301(a)(8)(iii)(B)'' would be added in its place;

p. In paragraph (a)(8)(iii)(D), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, the reference to ''§ 92.301(c)(2)(v) or § 92.301(c)(2)(vii)'' would be removed and a reference to ''§ 93.301(c)(2)(v) or § 93.301(c)(2)(vii)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(v)(G), § 92.301(c)(2)(vi)(F), or § 92.301(c)(2)(vi)(G)'' would be removed and a reference to ''§ 93.301(c)(2)(v)(G), § 93.301(c)(2)(vi)(F), or § 93.301(c)(2)(vi)(G)'' would be added in its place;

q. In paragraph (a)(8)(iii)(E), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place, and the reference to ''§ 92.301(c)(2)(vii) or § 92.301(c)(2)(x)'' would be removed and a reference to ''§ 93.301(c)(2)(vii) or § 93.301(c)(2)(x)'' would be added in its place; and

r. In paragraph (b), the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1)'' would be added in its place.

§ 93.306 [Amended]

32. In newly designated § 93.306, paragraph (a) would be amended by removing the reference to ''§§ 92.318 and 92.323'' and adding in its place a reference to ''§§ 93.318 and 93.323''.

§ 93.308 [Amended]

33. Newly designated § 92.308 would be amended as follows:

a. In paragraph (a), the reference to ''§ 92.324'' would be removed and a reference to ''§ 93.324'' would be added in its place, and the reference to ''§ 92.303'' would be removed and a reference to ''§ 93.303'' would be added in its place;

b. In paragraph (a)(1), the reference to ''§§ 92.317 and 92.324'' would be removed and a reference to ''§§ 93.317 and 92.324'' would be added in its place, and the reference to ''§ 92.303'' would be removed and a reference to ''§ 93.303'' would be added in its place;

c. In paragraph (b), the reference to ''§ 92.303(e)'' would be removed and a reference to ''§ 93.303(e)'' would be added in its place; and

d. In paragraph (c)(4)(ii), the reference to ''§ 92.308(a)'' would be removed and a reference to ''§ 93.303(a)'' would be added in its place.

§ 93.314 [Amended]

34. In newly designated § 92.314, the reference to ''§ 92.301(c)(2) (i) through (viii)'' would be removed and a reference to ''§ 93.301(c)(2) (i) through (viii)'' would be added in its place, and the reference to ''§ 92.301(c)(1)'' would be removed and a reference to ''§ 93.301(c)(1) would be added in its place.

35. In subpart C, footnote 18 would be amended by removing the reference to ''§§ 92.315, 92.316, 92.317 and 92.318'' would be removed and a reference to ''§§ 93.315, 93.316, 93.317 and 93.318'' would be added in its place.

§ 93.315 [Amended]

36. Newly designated § 93.315 would be amended by removing the reference to ''§ 92.305'' and adding in its place a reference to ''§ 93.305''.

§ 93.316 [Amended]

37. Newly designated § 93.316 would be amended by removing the reference to ''§ 92.306'' and adding in its place a reference to ''§ 93.306''.

§ 93.317 [Amended]

38. In newly designated § 93.317(a), the reference to ''§ 92.306'' would be removed and a reference to ''§ 93.306'' would be added in its place, and the reference to ''§ 92.314'' would be removed both times it appears and a reference to ''§ 93.314'' would be added each time in its place.

§ 93.318 [Amended]

39. Newly designated § 93.318 would be amended as follows:

a. In paragraph (a)(1), the reference to ''§ 92.304'' would be removed and a reference to ''§ 93.304'' would be added in its place, and the reference to ''§ 92.301'' would be removed and a reference to ''§ 93.301'' would be added in its place; and

b. In paragraph (b), the reference to ''§ 92.317(b)'' would be removed and a reference to ''§ 93.317(b)'' would be added in its place.

40. In subpart C, footnote 19 would be amended by removing the reference to ''§§ 92.319 and 92.320'' and adding in its place a reference to ''§§ 93.319 and 93.320''.

§ 93.319 [Amended]

41. Newly designated § 93.319 would be amended by removing the reference to ''§ 92.305'' and adding in its place a reference to ''§ 93.305''.

§ 93.320 [Amended]

42. Newly designated § 93.320 would be amended by removing the reference to ''§ 92.306'' and adding in its place a reference to ''§ 93.306'', by removing the reference to ''§ 92.314'' and adding in its place a reference to ''§ 93.314'', and by removing the reference to ''§ 92.308 (a), (b) and (c)'' and adding in its place a reference to ''§ 93.308 (a), (b), and (c)''.

43. In subpart C, footnote 20 would be amended by removing the reference to ''§§ 92.321 to 92.326'' and adding in their place a reference to ''§§ 93.321 to 93.326''.

§ 93.322 [Amended]

44. Newly designated § 93.322 would be amended by removing the reference to ''§ 92.305'' and adding in its place a reference to ''§ 93.305''.

§ 93.323 [Amended]

45. In newly designated § 93.323, paragraphs (a) and (b) would be amended by removing the references to ''§ 92.324'' and adding in their place a reference to ''§ 93.324''.

§ 93.324 [Amended]

46. Newly designated § 93.324 would be amended by removing the reference to ''§ 92.303(a)'' and adding in its place a reference to ''§ 93.303(a)''.

§ 93.325 [Amended]

47. Newly designated § 93.325 would be amended by removing the reference to ''§§ 92.306 and 92.323'' and adding in its place a reference to ''§§ 93.306 and 92.323'', by removing the reference to ''§ 92.314'' and adding in its place a reference to ''93.314'', and by removing the reference to ''§ 92.324'' and adding in its place a reference to ''§ 93.324''.

§ 93.326 [Amended]

48. Newly designated § 93.326 would be amended by removing the reference to ''§§ 92.321, 92.322, 92.323'' and adding in its place a reference to ''§§ 93.321, 93.322, and 93.323'', and by removing the reference to ''§ 92.324'' the second time it appears and adding in its place a reference to ''§ 93.324''.

49. Subparts D and E would be revised to read as follows:

Subpart D—Ruminants

Sec.
93.400 Definitions.
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Subpart D—Ruminants

§ 93.400 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Adjacent regions. Any defined geographic land area identifiable by geological, political or surveyed boundaries that shares common boundaries with, or is proximate to any region of a different risk class, as determined by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Affected animals. Animals currently infected or infested with, or exposed to, a communicable disease agent, or that are not known to be infected, infested, or exposed but that because of information, proximity, location, season, or lack of surveillance data could reasonably be expected to be infected, infested, or exposed to a communicable disease agent.

Affected premises or region. A premises or region where a communicable disease agent is known to exist; that is adjacent to or proximate to any known infected or infested premises or region so that airborne, vector, or mechanical transmission of the disease agent could occur; or that, because of lack of surveillance data, could reasonably be expected to be infected, infested, or exposed to a communicable disease agent.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animals. All species of the animal kingdom including: Cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, and poultry that are susceptible to communicable diseases of livestock or capable of being carriers of those diseases or their arthropod vectors.

APHIS representative. Any individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

Approved bovine tuberculosis test. Any test recognized as an Official tuberculosis test in the United States according to § 77.1 of this chapter or a test recognized as an equivalent test by the Administrator and that is recognized as an official test in a country exporting animals to the United States.

Approved brucellosis test. Any test recognized as an official brucellosis test in the United States according to § 78.1 of this chapter, or a test recognized as an equivalent test by the Administrator and that is recognized as an official test in a country exporting animals to the United States.

Approved tests for restricted diseases or agents. Diagnostic tests or procedures that are determined by the Administrator to be scientifically valid to diagnose a restricted animal disease.

Authorized veterinarian. A veterinarian accredited, employed or authorized by the National Veterinary Services of the country to carry out the required inspection and certification services.

Border definitions. See § 92.1 of this chapter.

Case. An individual animal affected by a communicable disease agent. Depending on the condition, this may be an animal with clinical signs, or an animal with serological or pathological evidence of infection, or an infested animal.

Cattle. Animals of the bovine species.

Communicable disease. Any contagious or infectious disease of animals. It can be transmitted either directly or indirectly to a susceptible animal from an infected animal, vector, inanimate reservoir, or other source.

Contagious disease. Any communicable disease transmitted from one animal to another. Such transmission includes, but is not limited to, contact with other animals or by feed, water, aerosol, or contaminated objects.

Department. The United States Department of Agriculture (USDA).

Driven. Moved (animals) from one place to another by walking under their own power and being herded and guided by persons or trained animals.

Ectoparasites. Acarid (mites, ticks) or insect members of the Phylum Arthropoda that spend all or part of their life cycle on the exterior of avian, reptilian or mammalian hosts and that are known or suspected to be the vectors of communicable disease agents, or are the cause of disease or irritation in animals or birds.

Equivalent test. A serologic, microbiologic, chemical, or physical test approved for use in a region exporting livestock or livestock products to the United States and recognized by the Administrator as providing results equal to a test approved by the United States Department of Agriculture. Recognition of a test as an ''equivalent test'' will be made by the Administrator after he or she reviews scientific data that shows that the results of the test are equal to the USDA-approved test.

Exposed. (1) An animal or means of conveyance that has been in contact with or that can reasonably be expected to have been in contact with an animal, feed, water, air, soil, tools, or other objects, insects, or ectoparasites infected or contaminated with a communicable disease agent, as determined by the Administrator.

(2) A region or premises where an animal, feed, water, air, soil, tools or other objects, insects, or ectoparasites contaminated with a communicable disease agent are or have been present within the known incubation period for the disease agent.

(i) *Direct exposure.* Exposure by coming into direct contact with an infected animal, or with feed, water, air, soil, tools, or other objects, that have been contaminated by discharges from an infected animal.

(ii) *Indirect exposure.* Exposure by coming into contact with vector insects or ectoparasites, or objects that have been contaminated other than by discharges from an infected animal.

Herd. (1) A group of animals under common ownership or supervision that are maintained and intermingle on one or more parts of a single premises (farm, ranch, feedlot, etc.); or

(2) A group of animals under common ownership or supervision maintained on geographically separated premises but that have been interchanged between the different premises or have been otherwise intermingled.

Identification. (1) *Permanent identification.* Brands, tattoos, or electronic identification that cannot be readily removed or altered.

(2) *Semi-permanent identification.* Identification such as metal or plastic ear tags that may remain on an animal permanently but can be easily altered, lost or removed.

(3) *Non-permanent identification.* Identification such as temporary ear tags, chain tags, back tags, or tail tags.

(4) *Temporary identification.* Lot identification if lots are not mixed, or the origin of all lots in a mixed lot.

Immediate slaughter. Consignment directly from the port of entry to a recognized slaughtering establishment [1] and slaughter thereat within two weeks from the date of entry.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Inspector. An employee of the Animal and Plant Health Inspection Service authorized to perform duties required under this subpart.

Livestock. Domesticated species of cattle, swine, sheep, goats, llamas, horses, or poultry that normally and historically have been kept and raised on farms. Livestock also includes bison and cervidae or other species kept in captivity for producing food or fiber, or for other commercial purposes.

Moved directly. Moved (shipped, transported, other otherwise moved) without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs.

Official seal. A serially numbered, metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, or a serially numbered, self-locking button which can be used for this purpose.

Operator. Any person operating an approved quarantine facility.

Permitted treatment. A treatment authorized by the Administrator to be used in the official treatment of animals for control or removal of ectoparasites.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Port Veterinarian. A veterinarian employed by APHIS to perform duties required under this part at a port of entry.

Post-importation quarantines. Quarantines applied in the importing region at a facility specially designated as an import quarantine facility.

Pre-embarkation quarantines. Quarantines applied in the exporting region. May be on the premises of origin, a separate quarantine facility, a border station, or other facility used to hold animals while in transit.

Quarantine. Confinement of all susceptible animals, animal products, feed, farm machinery, other equipment, means of conveyance, and any other potentially contaminated objects to a premises or area where infection or infestation with a specific restricted agent has been found or is suspected to exist.

Recognized slaughtering establishment. An establishment [2] where slaughtering operations are regularly carried on under Federal or State inspection and that has been approved by APHIS to receive animals for slaughter under this part.

Region. Any defined geographic land region identifiable by geological, political or surveyed boundaries.

Restricted agents. A livestock communicable disease agent, vector, or host of an agent not known to exist in the United States or that is subject to Federal or cooperative Federal/State control or eradication program within the United States. Restricted agents are listed in § 92.2 of this chapter.

Risk Class regions. Exporting regions designated by the Administrator according to the results of a risk assessment as defined in § 92.1 of this chapter, and determined by criteria as set forth in § 92.3 of this chapter, are incorporated herein and are applicable to this part.

Ruminants. All animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.

Shipping container. For the purposes of § 93.402, any container of a type specially adapted for use in transporting any article on the means of conveyance involved.

Susceptible animals. Species of ruminants or other animals that can become infected with a specific disease agent.

Trail. Move animals from one place to another by having them walk under their own power, and by leading them by ropes or other devices tied to the animal and guided by persons or trained animals.

Transported. Moved or shipped from one place to another by any means of conveyance, such as airplane, ship, boat, barge, truck, train, cart, or other vehicle.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

Vector-borne disease. A disease transmitted indirectly to an animal through an intermediate arthropod vector, including ticks or insects.

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State or area concerned.

Wether. A castrated male sheep or goat.

Zoological park. A zoo, park, garden or other place, maintained under the surveillance of a licensed Doctor of Veterinary Medicine, for the exhibition of live animals, pigeons or birds, for the purpose of public recreation or education.

§ 93.401 General prohibitions; exceptions.

(a) No ruminant subject to the provisions of this part may be imported into the United States except in accordance with the regulations in this part, nor may any such ruminant be handled or moved after physical entry into the United States before final release from quarantine or any other form of Federal governmental detention except in compliance with such regulations; *Provided that:* Except as prohibited by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), the Administrator may, upon request in specific cases, allow ruminants to be brought into or through the United States under such conditions as he or she may prescribe, when he or she determines in the specific case that

[1] The name of recognized slaughtering establishments approved under this part may be obtained from the Area Veterinarian in Charge (AVIC), Veterinary Services, Animal and Plant Health Inspection Service, for the State of destination of the shipment. AVIC telephone numbers can be found in the local telephone book.

[2] See footnote 1 in § 93.400.

such action will not endanger the livestock or poultry of the United States.

(b) Except for ruminants prohibited entry by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), the provisions in this part relating to ruminants shall not apply to healthy ruminants in transit through the United States if they are not known to be infected with or exposed, within 60 days preceding the date of export from the region of origin, to communicable diseases of ruminants, and if an import permit[3] has been properly applied for and obtained under § 93.404 of this chapter and all conditions therein are observed; and if the following conditions are also met:

(1)(i) The ruminants are maintained under continuous confinement in transit through the United States aboard an aircraft, ocean vessel, or other means of conveyance; or

(ii) The ruminants are unloaded, in the course of such transit, into a ruminant holding facility that is provided by the carrier or its agent and has been approved[4] in advance by the Administrator in accordance with paragraph (c) of this section as adequate to prevent the spread within the United States of any livestock disease, and the ruminants are maintained there under continuous confinement until loaded aboard a means of conveyance for transportation from the United States and are maintained under continuous confinement aboard such means of conveyance until it leaves the United States; the import permit will specify any additional conditions necessary to ensure that the transit of the ruminants through the United States can be made without endangering the livestock or poultry of the United States, and that Department inspectors may inspect the ruminants on board such means of conveyance or in such holding facility as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d) to ascertain whether the requirements of this paragraph are met, and dispose of them in accordance with section 2 of the Act of July 2, 1962 (21 U.S.C. 134a) if such conditions are not met; and

(2) The carrier or its agent executes and furnishes to the collector of U.S. Customs at the first port of arrival in the United States a declaration stating that the ruminants will be retained aboard such means of conveyance or in an approved holding facility during transshipment as required by this paragraph.

(c) Provisions for the approval of facilities required in this paragraph are:

(1) They must be sufficiently isolated to prevent direct or indirect contact with all other animals and birds while in the United States.

(2) They must be so constructed that they provide adequate protection against environmental conditions and can be adequately cleaned, washed and disinfected.

(3) They must provide for disposal of ruminant carcasses, manure, bedding, waste and any related shipping materials in a manner that will prevent dissemination of disease.

(4) They must have provisions for adequate sources of feed and water and for attendants for the care and feeding of ruminants in the facility.

(5) They must comply with additional requirements as may be imposed by the Administrator if deemed applicable for a particular shipment.

(6) They must also comply with all applicable local, State and Federal requirements for environmental quality and with the provisions of the Animal Welfare Regulations in chapter I of this title, as applicable.

§ 93.402 Inspection of certain aircraft and other means of conveyance and shipping containers thereon; unloading, cleaning, and disinfection requirements.

(a) *Inspection.* All aircraft and other means of conveyance (including shipping containers thereon) moving into the United States from any foreign country are subject to inspection without a warrant by properly identified and designated APHIS inspectors to determine whether they are carrying any animal, carcass, product or article regulated or subject to disposal under any law or regulation administered by the Secretary of Agriculture for prevention of the introduction or dissemination of any communicable animal disease (21 U.S.C. 134d).

(b) *Unloading requirements.* Whenever in the course of any such inspection at any port in the United States the APHIS inspector has reason to believe that the means of conveyance or container is contaminated with material of animal origin, such as, but not limited to, meat, organs, glands, extracts, secretions, fat, bones, blood, lymph, urine, or manure, so as to present a danger of the spread of any communicable animal disease, the inspector may require the holding and unloading of the means of conveyance and the emptying of the container if he or she deems it necessary to enable him or her to determine whether the means of conveyance or container is in fact so contaminated. The principal operator of the means of conveyance and his or her agent in charge of the means of conveyance must comply with any such requirements under the immediate supervision of, and in the time and manner prescribed by, the inspector.

(c) Cleaning and disinfection. Whenever, upon inspection under this section, an inspector determines that a means of conveyance or shipping container is contaminated with material of animal origin so as to present a danger of the spread of any communicable animal disease, he or she shall notify the principal operator of the means of conveyance or his or her agent in charge, of such determination and the requirements under this section. The person so notified must cause the proper cleaning and disinfection of such means of conveyance and container under the immediate supervision of, and in the time and manner prescribed by, the inspector.

§ 93.403 Ports designated for the importation of ruminants.

(a) *Air and ocean ports.* The following ports have APHIS inspection and quarantine facilities necessary for quarantine stations and all ruminants shall be entered into the United States only through these stations, except as otherwise provided in this section; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York.

(b) *Canadian border ports.* The following land border ports are designated as having the necessary inspection facilities for the entry of ruminants from Canada: Eastport, Idaho; Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Baudette, Minnesota; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, and Champlain, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; Blaine, Lynden, Oroville, and Sumas, Washington.

(c) Mexican border ports. The following land border ports are designated as having the necessary inspection facilities for the entry of ruminants from Mexico: Brownsville, Hidalgo, Laredo, Eagle Pass, Del Rio, and Presidio, Texas; Douglas, Naco, Nogales, Sasabe, and San Luis, Arizona; Calexico and San Ysidro, California; and Antelope Wells, Columbus, and Santa Teresa, New Mexico.

(d) *Special ports.* Charlotte Amalie, St. Thomas, and Christiansted, St. Croix, in the United States Virgin Islands, are

[3] Such permit may be obtained from the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

[4] Requests for approval of ruminant holding facilities should be made to the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

hereby designated as quarantine stations for the entry of ruminants from the British Virgin Islands into the United States Virgin Islands for immediate slaughter.

(e) Limited ports. The following ports are designated as having inspection facilities for the entry of ruminants and ruminant test specimens that do not appear to require restraint and holding inspection facilities: Anchorage and Fairbanks, Alaska; San Diego, California; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; El Paso, Galveston and Houston, Texas; and Seattle, Spokane, and Tacoma, Washington.

(f) *Designation of other ports.* The Secretary of the Treasury has approved the designation as quarantine stations of the ports specified in this section. In special cases other ports may be designated as quarantine stations under this section by the Administrator, with the concurrence of the Secretary of the Treasury.

(g) *Ports and privately operated quarantine facilities for sheep.* Sheep may be entered into the United States at any port specified in paragraph (a) of this section, or at any other port designated as an international port or airport by the U.S. Customs Service and quarantined at privately operated quarantine facilities provided the applicable provisions of §§ 93.401, 93.404(a), 93.405, 93.406, and 93.407 are met.

§ 93.404 Import permits for ruminants and for ruminant specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) *Application for import permit; reservation required.* (1) To import ruminants and ruminant test specimens for diagnostic screening purposes from any part of the world, the importer must first apply for and obtain from APHIS an import permit, except that, the following types of ruminants are exempt from import permit requirements when they are imported through a land border port: sheep and goats from regions classified as Risk Class RN for foot-and-mouth disease and rinderpest, when imported for immediate slaughter; and cattle, bison, and wethers whether or not they are imported for immediate slaughter. The application must specify the name and address of the importer; the species, breed, number or quantity of ruminants or ruminant test specimens to be imported; the purpose of the importation; individual ruminant identification that includes a description of the ruminant, name, age, markings, if any, registration number, if any, and tattoo or eartag; the region of origin; the name and address of the exporter; the port of embarkation in the foreign country; the mode of transportation, route of travel, and the port of entry in the United States; the proposed date of arrival of the ruminants or ruminant test specimens to be imported; and the name of the person to whom the ruminants or ruminant test specimens will be delivered and the location of the place in the United States to which delivery will be made from the port of entry. Additional information may be required in the form of certificates concerning specific diseases to which the ruminants are susceptible, as well as vaccinations or other precautionary treatments to which the ruminants or ruminant test specimens have been subjected. Notice of any such requirement will be given to the applicant in each case.[5]

(2) An application for permit to import ruminants and/or ruminant test specimens may also be denied because of: Communicable disease conditions in the region of origin, or in a region where the shipment has been or will be held or through which the shipment has been or will be transported; deficiencies in the regulatory programs for the control or eradication of animal diseases and the unavailability of veterinary services in the above mentioned regions; the importer's failure to provide satisfactory evidence concerning the origin, history, and health status of the ruminants; the lack of satisfactory information necessary to determine that the importation will not be likely to transmit any communicable disease to livestock or poultry of the United States; or any other circumstances that the Administrator believes require such denial to prevent the dissemination of any communicable disease of livestock or poultry into the United States.

(3)(i) The importer or importer's agent must pay or ensure payment of a reservation fee for each lot of ruminants to be quarantined in a facility maintained by USDA. For ruminants, the reservation fee shall be 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge.

(ii) At the time the importer or the importer's agent requests a reservation of quarantine space, the importer or importer's agent must pay the reservation fee by check or U.S. money order or ensure payment of the reservation fee by an irrevocable letter of credit from a commercial bank (the effective date on such letter of credit must run to 30 days after the date the ruminants are scheduled to be released from quarantine); except that anyone who issues a check to the Department for a reservation fee that is returned because of insufficient funds shall be denied any further request for reservation of a quarantine space until the outstanding amount is paid.

(iii) Any reservation fee paid by check or U.S. money order shall be applied against the expenses incurred for services received by the importer or importer's agent in connection with the quarantine for which the reservation was made. Any part of the reservation fee that remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation was made, shall be returned to the individual who paid the reservation fee. If the reservation fee is ensured by a letter of credit, the Department will draw against the letter of credit unless payment for services received by the importer or importer's agent in connection with the quarantine is otherwise made at least 3 days prior to the expiration date of the letter of credit.

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the lot of ruminants for which the reservation was made: Except that a reservation fee shall not be forfeited if:

(A) Written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility[6] during regular business hours (8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays) no later than 15 days prior to the beginning of the time of importation of the ruminants as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 15 days period shall not include Saturdays, Sundays, or holidays); or

(B) The Administrator determines that services, other than provided by carriers, necessary for the importation of

[5] See §§ 93.405, 93.406, and 93.415 for additional requirements for the importation of ruminants.

[6] The addresses of USDA quarantine facilities may be found in telephone directories listing the facilities or by contacting the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

the ruminants within the requested period are unavailable because of unforeseen circumstances as determined by the Administrator (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

(v) If the reservation fee was ensured by a letter of credit and the fee is to be forfeited under paragraph (a)(3)(iv) of this section, the Department will draw against the letter of credit unless the reservation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

(vi) When a reservation is canceled in accordance with paragraph (a)(3)(iv)(A) of this section and the provisions of paragraph (a)(3)(iv)(B) of this section do not apply, a $40.00 cancellation fee shall be charged. If a reservation fee was paid, the cancellation fee shall be deducted from any reservation fee returned to the importer or the importer's agent. If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

(b) *Import Permit.* When an import permit is issued, the original and two copies will be sent to the importer. It shall be the responsibility of the importer to forward the original import permit and one copy to the shipper in the country of origin, and it shall also be the responsibility of the importer to insure that the shipper presents the copy of the import permit to the carrier and makes proper arrangements for the original permit to accompany the shipment to the specified U.S. port of entry for presentation to the collector of customs. All ruminants and ruminant test specimens for diagnostic screening purposes intended for importation into the United States for which an import permit has been issued, must be received at the specified port of entry within the time prescribed in the import permit and shall not exceed 14 days from the first day that the permit is effective for all permits relevant to the shipment or shipments. All ruminants and ruminant test specimens for which an import permit is required by these regulations will not be eligible for entry into the United States if an import permit has not been issued; if the ruminants or ruminant test specimens are unaccompanied by such a permit; if the shipment is from any port other than the one designated in the permit; if arrival in the United States is at any port other than the one designated in the permit; if the ruminants or ruminant test specimens imported are different from those described in the permit; if the ruminants or ruminant test specimens are not handled as outlined in the application for the import permit and as specified in the permit issued; or if ruminants or swine other than those covered by the import permits are aboard the transporting carrier.

§ 93.405 Certificate of export and other requirements for ruminants.

(a) All ruminants imported or offered for importation from any part of the world, except for ruminants that are imported for immediate slaughter from regions classified as Risk Class RN for all restricted agents of ruminants, and except as provided in paragraphs (c) and (d) of this section,[7] must be accompanied by a certificate of export issued and signed by an authorized veterinarian and endorsed by an official of the National Veterinary Services of the country of export, who certifies that the veterinarian signing and issuing the certificate is authorized to do so and who certifies that:

(1) The ruminants originate from premises that are not known to have been affected with any communicable diseases of ruminants during the previous 60 days;

(2) The ruminants originate from premises that are not known to have been affected with restricted ectoparasites of ruminants during the previous 60 days;

(3) During transportation to the port of embarkation there was no direct or indirect exposure to any potential carrier animals from any region affected with restricted agents that affect ruminants;

(4) While en route to the port of entry, the ruminants were not trailed or driven through any Risk Class R3, R4 or RU region for any tick-borne restricted agents that affect ruminants;

(5) While en route to the port of entry, the ruminants were not trailed, driven, transported, or otherwise moved through any Risk Class R3, R4, or RU region for any restricted insect-transmitted agents that affect ruminants, during a time of year when insect vectors were active;

(6) The ruminants were either inspected on the day of embarkation and were found to be free of restricted ectoparasites as listed in § 92.2 of this chapter, or were treated with one of the permitted treatments listed in § 72.13(b) of this chapter within 10 to 14 days of embarkation. If treated, the pesticide, active ingredient, concentration, and date applied must be recorded on the health certificate; and

(7) The ruminants were transported to the United States only in means of conveyance or vehicles that were cleaned and disinfected prior to use.

(b) Prior to entry into the United States, the ruminants must be identified in accordance with § 71.18 of this chapter.

(c) Cattle, sheep, and goats that are from a region classified as RN for all restricted diseases affecting the type of animal in question, and that are to be transported in-bond through the United States for immediate export, shall be inspected at the border port of entry and, when accompanied by an import permit obtained under § 93.404 and when all conditions therein are observed, shall be allowed entry into the United States and shall be otherwise handled in accordance with § 93.401(b).

(d) Ruminants originating in the United States and transported directly through a region classified as RN for all restricted diseases for the type of ruminant being transported, may re-enter the United States without foreign health or test certificates when accompanied by copies of the United States export health certificates properly issued and endorsed in accordance with the regulations in part 91 of this chapter: *Provided,* That, to qualify for reentry into the United States, the date, time, port of entry, and signature of the port veterinarian of the foreign country that inspected the ruminants for entry into the foreign country shall be recorded on the United States health certificate, or a paper containing such information shall be attached to the certificate that accompanies the ruminants. In all cases, it shall be determined by the veterinary inspector at the United States port of entry that the ruminants are the identical ruminants covered by said certificate.

(e) If any ruminants are unaccompanied by the export certificate as required by paragraph (a) of this section, or if such ruminants are found upon inspection at the United States port of entry to be affected with or to have been exposed to a communicable disease, they shall be refused entry and shall be handled thereafter in accordance with the provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103), or quarantined, or otherwise disposed of as the Administrator may direct.

§ 93.406 Permit, certificate, declaration and other documents for ruminants.

(a) The export certificates, import permits, declarations, and affidavits required by the regulations in this part

[7] See § 93.415 for additional requirements for ruminants imported from specific risk class regions.

must be presented by the importer or his or her agent to the collector of customs at the port of entry upon arrival of ruminants at such port, for the use of the veterinary inspector at the port of entry.

(b) For all ruminants imported or offered for importation, the importer or his or her agent must first present two copies of a declaration that lists the port of entry, the name and address of the importer, the name and address of the broker, the origin of the ruminants, the number, breed, species, and purpose of the importation, the name of the person to whom the ruminants will be delivered, and the location of the place to which such delivery will be made.

§ 93.407 Inspection at the port of entry.

Ruminants imported from any part of the world must be inspected at the United States port of entry. All ruminants found to be free from communicable disease and not to have been exposed thereto within 60 days prior to their exportation to the United States shall be admitted subject to the other provisions in this part; all other ruminants shall be refused entry. Ruminants refused entry, unless exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, shall be disposed of as the Administrator may direct, in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103). Such portions of the transporting vessel, and of its cargo, that have been exposed to any such ruminants or their emanations, must be disinfected in such manner as may be considered necessary by the inspector in charge at the port of entry to prevent the introduction or spread of livestock or poultry disease, before the cargo is allowed to land.

§ 93.408 Articles accompanying ruminants.

No litter or manure, fodder or other aliment, nor any equipment such as boxes, buckets, ropes, chains, blankets, or other things used for or about ruminants governed by the regulations in this subpart, may be landed from any conveyance except under such restrictions as the inspector in charge at the port of entry shall direct.

§ 93.409 Movement from conveyances to quarantine station.

Platforms and chutes used for handling imported ruminants must be cleaned and disinfected under APHIS supervision after being so used. The said ruminants may not be moved over any highways nor allowed to come in contact with other animals, but must be transferred from the conveyance to the quarantine grounds only in boats, cars, or vehicles approved by the inspector in charge at the port of entry. Such cars, boats, or vehicles must be cleaned and disinfected under APHIS supervision immediately after such use, by the carrier moving the same. The railway cars so used must be either cars reserved for this exclusive use or box cars not otherwise employed in the transportation of animals or their fresh products. When movement of the aforesaid ruminants upon or across a public highway is unavoidable, it shall be under such careful supervision and restrictions as the inspector in charge at the port of entry and the local authorities may direct.

§ 93.410 Ruminant quarantine facilities.

(a) *Privately operated quarantine facilities.* The importer, or his or her agent, of ruminants subject to quarantine under the regulations in this subpart must arrange for acceptable transportation to the privately operated quarantine facility and for the care, feed, and handling of the ruminants from the time of unloading at the quarantine port to the time of release from quarantine. Such arrangements shall be agreed to in advance by the Administrator. All expenses resulting therefrom or incident thereto shall be the responsibility of the importer; APHIS assumes no responsibility with respect thereto. The quarantine facility must be suitable for the quarantine of such ruminants and must be approved by the Administrator prior to the issuance of any import permit. The facilities occupied by ruminants must be kept clean and sanitary. If for any cause the care, feed, or handling of ruminants, or the sanitation of the facilities, is neglected, in the opinion of the inspector assigned to supervise the quarantine, such services may be furnished by APHIS in the same manner as though arrangements had been made for such services as provided by paragraph (b) of this section, and/or the ruminants may be disposed of as the Administrator may direct, including sale in accordance with the procedure described in paragraph (b) of this section. The importer, or his or her agent, must request in writing such inspection and other services as may be required, and shall waive all claim against the United States and APHIS or any employee of APHIS for damages that may arise from such services. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When it is found necessary to extend the usual minimum quarantine period, the importer, or his or her agent, shall be so advised in writing and must pay for such additional quarantine and other services required. Payment for all services received by the importer, or his or her agent, in connection with each separate lot of ruminants must be made by certified check or U.S. money order prior to release of the ruminants. If such payment is not made, the ruminants may be sold in accordance with the procedure described in paragraph (b) of this section, or otherwise disposed of as directed by the Administrator.

(b) *Quarantine facilities maintained by APHIS.* The importer, or his or her agent, of ruminants subject to quarantine under the regulations in this subpart must arrange for acceptable transportation to the quarantine facility, and for the care, feed, and handling of the ruminants from the time they arrive at the quarantine port to the time of release from quarantine. Such arrangements shall be agreed to in advance by the Administrator. The importer or his or her agent shall request in writing such inspection and other services as may be required, and shall waive all claim against the United States and APHIS or any employee of APHIS, for damages that may arise from such services. All expenses resulting therefrom or incident thereto shall be the responsibility of the importer; APHIS assumes no responsibility with respect thereto. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When it is found necessary to extend the usual minimum quarantine period, the importer, or his or her agent, shall be so advised in writing and must pay for such additional quarantine and other services required. Payment for services received by the importer, or his or her agent, in connection with each separate lot of ruminants must be made by certified check or U.S. money order prior to release of the ruminants. If such payment is not made, the ruminants may be sold in accordance with the procedure described in this paragraph or otherwise disposed of as directed by the Administrator. When payment is not made and the ruminants are to be sold to recover payment for services received, the importer, or his or her agent, will be notified by the inspector that if said charges are not immediately paid or satisfactory arrangements made for payment, the ruminants will be sold at public sale to pay the expense of care, feed, and handling during that period. The sale will be held after the expiration of the quarantine period, at such time

and place as may be designated by the General Services Administration of the United States Government or other designated selling agent. The proceeds of the sale, after deducting the charges for care, feed, and handling of the ruminants and other expenses, including the expense of the sale, shall be held in a Special Deposit Account in the United States Treasury for 6 months from the date of sale. If not claimed by the importer, or his or her agent, within 6 months from the date of sale, the amount so held shall be transferred from the Special Deposit Account to the General Fund Account in the United States Treasury.

§ 93.411 Quarantine stations, visiting restricted; sales prohibited.

Visitors shall not be admitted to the quarantine enclosure during any time that ruminants are in quarantine except that an importer (or his or her accredited agent or veterinarian) may be admitted to the yards and buildings containing his or her quarantined ruminants at such intervals as may be deemed necessary, and under such reasonable conditions and restrictions as may be imposed, by the inspector in charge of the quarantine station. On the last day of the quarantine period, owners, officers or registry societies, and others having official business or whose services may be necessary in the removal of the ruminants may be admitted upon written permission from the said inspector. No exhibition or sale shall be allowed within the quarantine grounds.

§ 93.412 Milk from quarantined ruminants.

Milk or cream from ruminants quarantined under the provisions of this subpart may not be used by any person other than those in charge of such ruminants, nor be fed to any animals other than those within the same enclosure, without permission of the inspector in charge of the quarantine station and subject to such restrictions as he or she may consider necessary to each instance. No milk or cream may be removed from the quarantine premises except in compliance with all State and local regulations.

§ 93.413 Manure from quarantined ruminants.

No manure may be removed from the quarantine premises until the release of the ruminants producing the manure.

§ 93.414 Appearance of disease among ruminants in quarantine.

(a) If any restricted agent or other communicable disease appears among ruminants during the pre-embarkation or post-importation quarantine periods, special precautions shall be taken to prevent spread of the infection to other animals in the quarantine station or to those outside the grounds. The affected ruminants in post-importation quarantine shall be disposed of as the Administrator may direct, depending upon the nature of the disease.

(b) If there are test-positive animals during the post-importation quarantine (in the absence of clinical signs of disease), the Administrator may require additional testing of the test-positive animal(s) and/or test-negative animals to determine if any of the animals will be eligible for entry into the United States.

§ 93.415 Requirements for importation of live ruminants from various risk class regions.

Ruminants may be imported from any regions of the world only if they meet the requirements of this section, and all other applicable requirements of this part.[8]

(a) *Regions classified as Risk Class RN for all restricted agents affecting ruminants.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class RN must certify that the ruminants to be imported have only been on premises located in regions listed as Risk Class RN for the specific restricted agent and that they meet all other requirements of this subpart.

(b) *Mycobacterium bovis.* Any ruminant with positive results to an approved test for *M. bovis* shall be refused entry. Ruminants with negative results may be eligible for entry based on their status as determined by part 77 of this chapter. However, all ruminants imported for immediate slaughter are exempt from *M. bovis* testing and quarantine requirements. Such ruminants must be consigned from the port of entry to a recognized slaughtering establishment and there slaughtered within 2 weeks from the date of import. Such ruminants must be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as Risk Class R1 for M. bovis.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants over 6 months of age from regions that are classified as Risk Class R1 for *M. bovis,* must certify that the ruminants to be imported were born and resided only in regions that are classified as Risk Class RN or R1 for *M. bovis.*

(2) *Regions classified as Risk Class R2 for M. bovis.*

(i) In addition to the export requirements of § 93.405, the certificate of export for live ruminants over 6 months of age from regions that are classified as Risk Class R2 for *M. bovis,* must certify that:

(A) The ruminants to be imported were born and resided only in regions that are classified as Risk Class RN, R1, or R2 for *M. bovis;* and

(B) If the ruminants to be imported are not neutered, that the ruminants have had a negative result to an approved test for *M. bovis* not less than 60 nor more than 90 days (not less than 90 nor more than 120 days for any non-neutered cervidae) prior to export.

(ii) Non-neutered ruminants must be detained at the port of entry or designated entry quarantine facility for a minimum of 72 hours until tested with negative results to an approved test for *M. bovis.*

(3) *Regions classified as Risk Class R3 for M. bovis.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants over 6 months of age from regions that are classified as R3 for *M. bovis* must certify that:

(A) The ruminants to be imported were born and resided only in regions classified as Risk Class RN, R1, R2, or R3 for *M. bovis*;

(B) The ruminants to be imported have had a negative result to an approved test for *M. bovis* not less than 60 nor more than 90 (not less than 90 nor more than 120 days for cervidae) days prior to export; and

(C) If the ruminants to be imported are non-neutered ruminants from herds of origin that do not meet the requirements for accredited free herd status in part 77 of this chapter, the ruminants come from herds that have had a negative result to an approved test for *M. bovis* no less than 4 months nor more than 12 months prior to the date of export.

(ii) Neutered ruminants must be identified by a permanent, legible mark on the right hip. The mark must consist of an ''M'' for neutered males and an ''Mx'' for neutered females, not less than 2″ nor more than 3″ high.

(iii) Non-neutered ruminants must be detained at the United States port of entry or designated entry quarantine facility a minimum of 72 hours until tested with negative results to an approved test for *M. bovis.*

(4) *Regions classified as R4 and RU for M. bovis.*

[8] 8 See §§ 93.404, 93.405, and 93.406.

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants over 6 months of age from regions that are classified as Risk Class R4 or RU for *M. bovis* must certify that the ruminants to be imported:

(A) Have had a negative result to an approved test for *M. bovis* not less than 30 nor more than 60 days (60–90 days for cervidae) prior to export;

(B) Originate from herds in which the entire herd has had a negative result to an approved test for *M. bovis* not less than 4 nor more than 12 months prior to the date of exportation; and

(C) Non-neutered ruminants have undergone at least 60 days (90 days for cervidae) of pre-embarkation quarantine prior to export.

(ii) Neutered ruminants must be identified by a permanent, legible mark on the right hip. The mark must consist of an ''M'' for neutered males and an ''Mx'' for neutered females, not less than 2″ nor more than 3″ high.

(iii) Non-neutered ruminants to be imported must be quarantined at a post-importation quarantine facility designated and approved by the Administrator for a minimum of 30 days, during which time they must be tested with negative results with an approved test for *M. bovis.*

(c) *Brucella abortus, B. suis biovar 4, and B. melitensis.* All ruminants imported for immediate slaughter are exempt from all brucellosis test and quarantine requirements. Such ruminants must be consigned from the port of entry to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. Such ruminants must be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as Risk Class R1 for B. abortus, B. suis biovar 4, and B. melitensis.* In addition to the export certificate requirements of § 93.405, the certificate of export for live non-neutered ruminants over 6 months of age from regions that are classified as Risk Class R1 for *B. abortus, B. suis biovar 4,* and *B. melitensis* must certify that the ruminants to be imported:

(i) Were born and resided only in regions that are classified as Risk Class RN or R1 for *B. abortus, B. suis biovar 4,* and *B. melitensis*; and

(ii) Have not been vaccinated with any live brucella vaccine.

(2) *Regions classified as Risk Class R2 or (if brucellosis certified-free herds) regions classified as Risk Class R3 for B. abortus, B. suis biovar 4, and B. melitensis.*

(i) To be considered as from a brucellosis certified-free herd, an animal's herd must be the requirements for a brucellosis certified-free herd in part 78 of this chapter.

(ii) In addition to the export certificate requirements of § 93.405, the certificate of export for live non-neutered ruminants over 6 months of age from regions that are classified as Risk Class R2 or (if the ruminants are from brucellosis certified-free herds) as Risk Class R3 for *B. abortus, B. suis biovar 4,* and *B. melitensis* must certify that the ruminants to be imported:

(A) Were born and resided only in regions that are classified as Risk Class RN, R1, or R2, or regions that are classified as Risk Class R3 (if brucellosis certified-free herds) for *B. abortus, B. suis biovar 4,* and *B. melitensis*;

(B) If vaccinated, have only been vaccinated with *B. abortus* Strain 19 according to the procedures in part 78 of this chapter; and

(C) Had a negative result to an approved test for brucellosis no less than 30 nor more than 60 days prior to the date of exportation.

(iii) The ruminants must be detained at the port of entry or quarantine facility until tested with negative results for *B. abortus, B. suis biovar 4,* and *B. melitensis* under the supervision of the port veterinarian.

(3) *Regions classified as Risk Class R3 (if the ruminants are not from herds certified free of brucellosis), R4, and RU for B. abortus, B. suis biovar 4, and B. melitensis.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live non-neutered ruminants from regions that are classified as Risk Class R3 (if the ruminants are not from herds certified as free of brucellosis), R4, and RU for *B. abortus, B. suis biovar* 4, and *B. melitensis* must certify that the ruminants to be imported:

(A) Originated from a herd where all non-neutered ruminants over 6 months of age had negative results to an approved brucellosis test not more than 12 months nor less than 6 months prior to export; If any test-positive animals were found during the herd test, they were removed from the herd and all remaining animals were re-tested with negative results not less than 6 months after any test positive animals were removed;

(B) If vaccinated, have been vaccinated only with *B. abortus* Strain 19 according to the procedures in part 78 of this chapter;

(C) Have undergone a minimum of 30 days pre-embarkation quarantine prior to export; and

(D) Have had a negative result to an approved test for *B. abortus, B. suis biovar* 4, and *B. melitensis* within the 30 days prior to export.

(ii) The ruminants must be quarantined for at least 15 days at a post-importation quarantine designated and approved by the Administrator.

(iii) The ruminants must have a negative result to approved tests for *B. abortus, B. suis biovar* 4, and *B. melitensis* during the post-importation quarantine period.

(d) *Foot-and-mouth disease (FMD) virus.* All ruminants imported for immediate slaughter that are born and raised in regions classified as Risk Class R1 or R2 for FMD are exempt from the test and quarantine requirements of this section. The ruminants must be consigned from the port of entry to a recognized slaughtering establishment and there slaughtered within 48 hours from the date of entry. The ruminants must be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as Risk Class R1 for FMD virus.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 for FMD must certify that the ruminants to be imported:

(i) Were born and resided only in regions listed as Risk Class RN or R1 for FMD;

(ii) Have not been vaccinated for FMD; and

(iii) Have had a negative result to an approved serological test for FMD within 30 days prior to the date of export.

(2) *Regions classified as Risk Class R2 for FMD virus.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R2 for FMD virus must certify that the ruminants to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1 or R2 for FMD;

(B) Have not been vaccinated for FMD;

(C) Have had a negative result to an approved serological test for FMD within 30 days prior to export; and

(D) Underwent pre-embarkation quarantine for a minimum of 30 days prior to export.

(ii) The ruminants must undergo post-importation quarantine for a minimum of 15 days at a facility designated and approved by the Administrator.

(iii) The ruminants must have a negative result to an approved serological test for FMD during the post-importation quarantine period.

(3) *Regions classified as Risk Class R3 for FMD virus.*

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R3 for FMD virus, must certify that the ruminants to be imported:

(A) Were born and resided only in regions listed as Risk Class RN, R1, R2 or R3 for FMD;

(B) Have not been vaccinated for FMD;

(C) Have not been on any premises affected with FMD virus during the 12 months prior to export;

(D) Have not been on any premises located within 25 miles (40 km) of any premises affected with FMD virus in the 90 days prior to export;

(E) Have undergone pre-embarkation quarantine for at least 60 days prior to export under USDA supervision in a facility approved by the Administrator according to § 93.431 of this subpart; and

(F) Have had, during the pre-embarkation quarantine, negative results to two tests not less than 15 days apart for FMD virus using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(ii) The ruminants to be imported must be quarantined at the Harry S Truman Animal Import Center according to the procedures of § 93.430 for at least 60 days without sentinel animals, during which time such animals will be subjected to a test for FMD virus at least once using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(4) *Regions classified as Risk Class R4 or RU for FMD virus.*

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R4 or RU for FMD must certify that the ruminants to be imported:

(A) Have not been vaccinated for FMD;

(B) Have not been on any premises affected with FMD virus during the 12 months prior to export;

(C) Have not been on a premises located within 25 miles (40 km) of any premises affected with FMD virus in the 90 days prior to export;

(D) Have undergone pre-embarkation quarantine for at least 60 days prior to export under USDA supervision in a facility approved by the Administrator according to § 93.431; and

(E) During pre-embarkation quarantine, have had negative results to two tests conducted not less than 15 days apart for FMD virus using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples were taken for further testing.

(ii) The ruminants to be imported must be quarantined at the Harry S Truman Animal Import Center according to the procedures of § 93.430 for at least 90 days with sentinel animals, during which time such animals will be subjected to a test for FMD virus at least once using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(5) *Wild ruminants from R3, R4, or RU regions affected with foot-and-mouth disease or rinderpest.* (i) Wild ruminants originating in regions classified as Risk Class R3, R4 or RU for foot-and mouth disease or rinderpest may be carriers of such diseases even though the animals do not show clinical evidence of the diseases. In view of these circumstances and in order to prevent the introduction and dissemination of restricted agents of livestock and to protect the livestock of the United States, import permits for the importation of wild ruminants, such as, but not limited to, giraffes, deer and antelopes, will be issued only if such animals are intended for exhibition purposes in a zoological park previously approved by the Administrator, in accordance with the standards specified in paragraph (d)(5)(ii) of this section and if the operator of such approved zoological park and the importer, if such operator and importer are different parties, has or have entered into the agreement set forth in paragraph (d)(5)(iv) of this section with APHIS for the maintenance and handling of such wild ruminants in the manner specified in the agreement to prevent the introduction and dissemination of communicable disease. The New York port of entry is the only port at which facilities are available that are adequate for the quarantining of wild ruminants. Accordingly, permits issued for the importation of such wild ruminants will require that the ruminants be imported through the port of New York and be quarantined at that port. The Administrator may cancel such a permit when he or she finds that any provision of this section or any other provision of the regulations has not been or is not being complied with.

(ii) Approval of a zoological park for the receipt and maintenance of imported wild ruminants as described in this paragraph, shall be on the basis of an inspection, by an authorized representative of the Department, of the physical facilities of the establishment and its methods of operation. Standards for acceptable physical facilities shall include satisfactory pens, cages, or enclosures in which the ruminants can be maintained so as not to be in contact with the general public and free from contact with domestic livestock; natural or established drainage from the zoological park that will avoid contamination of land areas where domestic livestock are kept or with which domestic livestock may otherwise come in contact; provision for the disposition of manure, other wastes, and dead ruminants within the zoological park; and other reasonable facilities considered necessary to prevent the dissemination of diseases from the zoological park. The operator of the zoological park must have available the services of a full-time or part-time veterinarian, or a veterinarian on a retainer basis, who must make periodic examinations of all animals maintained at the zoological park for evidence of disease; who must make a post-mortem examination of each animal that dies; and who must make a prompt report of suspected cases of contagious or communicable diseases to appropriate State or Federal livestock sanitary officials.

(iii) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date a ruminant enters the park. If an APHIS veterinarian determines that a ruminant shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that a ruminant does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the ruminant's manure and other wastes may safely be disposed of outside the zoological park.

(iv) Prior to the issuance of an import permit under this section and § 93.404, the operator of the approved zoological park to which the wild ruminants are to be consigned, and the importer of the wild ruminants, if such operator and importer are different parties, must execute an agreement covering each wild ruminant or group of wild ruminants for which the import permit is requested. The agreement shall be in the following form:

Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine

_____, operator(s) of the zoological park known as _____ (Name) located at _____ (City and state), and _____ (Importer) hereby request a permit for the importation of _____ (Number and kinds of animals) for exhibition purposes at the said zoological park, said animals originating in a Risk Class R3, R4, or RU region for foot-and-mouth disease or rinderpest, and being subject to restrictions under regulations contained in part 93, title 9, Code of Federal Regulations.

In making this request, it is understood and agreed that:

1. The animals for which an import permit is requested will be held in isolation at a port of embarkation in the country of origin, approved by the Administrator as a port having facilities that are adequate for maintaining wild animals in isolation from all other animals and having veterinary supervision by officials of the country of origin of the animals. Such animals will be held in such isolation for not less than 60 days under the supervision of the veterinary service of that country to determine whether the animals show any clinical evidence of restricted agents or other communicable disease and to assure that the animals will not have been exposed to such a disease within the 60 days prior to their exportation from that country.

2. Shipment will be made directly from such port of embarkation to the port of New York as the port of entry into the United States. If shipment is made by ocean vessel the animals will not be unloaded in any foreign port en route. If shipment is made by air, the animals will not be unloaded at any port or other place of landing except at a port approved by the Administrator as a port not located in a region classified as R3, R4, or RU for rinderpest or foot-and-mouth disease or as a port in such a region having facilities and inspection approved by the Administrator as adequate for maintaining wild animals in isolation from all other animals.

3. No ruminants or swine will be aboard the transporting vehicle, vessel or aircraft except those for which an import permit has been issued.

4. The animals will be quarantined for not less than 30 days in the Department's Animal Import Center in Newburgh, New York.

5. Upon release from quarantine, the animals will be delivered to the zoological park named in this agreement to become the property of the park and they will not be sold, exchanged or removed from the premises without the prior consent of APHIS.

_____

(Signature of importer)

Subscribed and sworn to before me this _____ day of _____, 19____.

_____

(Title or designation)

_____

(Name of zoological park)

By _____ (Signature of officer of zoological park)

_____

(Title of officer)

Subscribed and sworn to before me this ____ day of _____, 19____.

_____

(Title or designation)

(e) *Rinderpest and peste de petits ruminants (PPR).* Ruminants imported for immediate slaughter that are born and raised in regions classified as Risk Class R1 or R2 for rinderpest and/or PPR are exempt from the test and quarantine requirements of this section. Such ruminants must be consigned from the port of entry to a recognized slaughtering establishment and there slaughtered within 2 weeks from the date of entry, and be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as Risk Class R1 for rinderpest and PPR.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 for rinderpest and/or PPR must certify that the ruminants to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for rinderpest and/or PPR;

(ii) Have not been vaccinated for rinderpest or PPR; and

(iii) Have had a negative result to an approved serological test for rinderpest and/or PPR within 30 days prior to export.

(2) *Regions classified as Risk Class R2 for rinderpest and PPR.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 for Rinderpest and/or PPR must certify that the ruminants offered to be imported:

(A) Were born and resided only in regions listed as Risk Class RN, R1 or R2 for rinderpest and/or PPR;

(B) Have not been vaccinated for rinderpest or PPR;

(C) Have undergone pre-embarkation quarantine for a minimum of 30 days prior to export; and

(D) Have had a negative result to an approved serological test for rinderpest and/or PPR 30 days prior to export.

(ii) The ruminants must undergo post-importation quarantine for a minimum of 15 days at a facility designated and approved by the Administrator.

(iii) The ruminants must have a negative result to an approved serological test for rinderpest and/or PPR during the post-importation quarantine period.

(3) *Regions classified as Risk Class R3 for rinderpest and PPR.*

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R3 for rinderpest and/or PPR must certify that the ruminants to be imported:

(A) Were born and resided only in regions listed as Risk Class RN, R1, R2 or R3 for rinderpest and/or PPR;

(B) Have not been vaccinated for rinderpest or PPR;

(C) Have not been on any premises affected with rinderpest and/or PPR virus during the 12 months prior to export;

(D) Have not been on a premises located within 25 miles (40 km) of any premises affected with rinderpest and/or PPR virus in the 90 days prior to export;

(E) Have undergone pre-embarkation quarantine for a minimum of 30 days prior to export under USDA supervision in a facility approved by the Administrator in accordance with § 93.431;

(F) During pre-embarkation quarantine, have had negative results to two tests conducted not less than 15 days apart for rinderpest and/or PPR virus using an approved serological test. If indicated, nasal swabs or other tissues or samples will be taken for further testing.

(ii) The ruminants to be imported must be quarantined at the Harry S Truman Animal Import Center according to the procedures of § 93.430 for at least 30 days without sentinel animals, during which time the animals will be subjected to a test for rinderpest and/or PPR virus at least once using an approved serological test. If indicated, nasal swabs or other samples will be taken for further testing.

(4) *Regions classified as Risk Class R4 or RU for rinderpest and PPR.*

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R4 or RU for rinderpest and PPR must certify that the ruminants to be imported:

(A) Have not been vaccinated for rinderpest or PPR;

(B) Have not been on any premises affected with rinderpest and PPR virus during the 12 months prior to export;

(C) Have not been on a premises located within 25 miles (40 km) of any premises affected with rinderpest and PPR virus in the 90 days prior to export;

(D) Have undergone pre-embarkation quarantine for a minimum of 30 days prior to export under USDA supervision

in a facility approved by the Administrator according to § 93.431; and

(E) During pre-embarkation quarantine, have had negative results to two tests conducted not less than 15 days apart for rinderpest and PPR virus using an approved serological test. If indicated, nasal swabs or other samples will be taken for further testing.

(ii) The ruminants to be imported must be quarantined at the Harry S Truman Animal Import Center according to the procedures of § 93.430 for at least 30 days with sentinel animals, during which time such animals will be subjected to a test for Rinderpest and/or PPR virus at least once using an approved serological test. If indicated, nasal swabs or other samples will be taken for further testing.

(f) *Restricted ectoparasites*—(1) *Regions classified as Risk Class R1 or R2 regions for restricted ectoparasites.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 or R2 for restricted ectoparasites must certify that the ruminants to be imported resided for the 60 days prior to export only in regions listed as Risk Class RN, R1, or R2 for restricted ectoparasites.

(ii) All ruminants to be imported must be inspected at the port of entry for ectoparasites, and given a precautionary treatment with one of the permitted treatments listed in § 72.13(b) of this chapter. If found to be infested with restricted ectoparasites, the ruminants will be refused entry until treated with one of the permitted treatments listed in § 72.13(b) of this chapter, and retreated 10 to 14 days after the initial treatment.

(2) Regions classified as Risk Class R3, R4, or RU for restricted ectoparasites. (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R3, R4 or RU for restricted ectoparasites must certify that the ruminants to be imported:

(A) Were treated for ectoparasites with an approved treatment 10 to 14 days prior to export. If quarantine in a pre-embarkation facility is required under this subpart, the ruminants were treated immediately prior to entering a pre-embarkation facility; and

(B) Were inspected while at the pre-embarkation facility and found to be free of any ectoparasites.

(ii) The ruminants to be imported must be inspected at the port of entry for any ectoparasites, and given a precautionary treatment. If found to be infested with any ectoparasites, the ruminants will be refused entry until treated with one of the permitted treatments listed in § 72.13(b) of this chapter, and retreated 10 to 14 days after the initial treatment.

(g) *Bovine Spongiform Encephalopathy (BSE)*—(1) *Regions classified as Risk Class R1 or R2 for BSE.* In addition to the export certificate requirements of § 93.405, the certificate of export for live cattle from regions classified as Risk Class R1 or R2 for BSE must certify that the cattle offered to be imported were born and resided only in R1 or R2 regions, and that the cattle have only been on premises where no cases of BSE have been diagnosed during the 10 years immediately preceding the date of exportation.

(2) *Regions classified as Risk Class R3, R4, RU for BSE.* The importation of live cattle from regions that are classified as Risk Class R3, R4, or RU for BSE is prohibited.

(h) *Scrapie*—(1) *Regions classified as Risk Class R1 or R2 for scrapie.* In addition to the export certificate requirements of § 93.405, the certificate of export for live sheep or goats from regions that are classified as Risk Class R1 or R2 for scrapie must certify that the imported sheep or goats have only been on premises where no cases of scrapie have been diagnosed during the 5 years immediately preceding the date of intended exportation, and have resided only in regions listed as R1 or R2.

(2) *Regions classified as Risk Class R3 for scrapie.* In addition to the requirements of § 93.405, the certificate of export for live sheep or goats from regions that are classified as classified as Risk Class R3 for scrapie must certify that the sheep and goats to be imported:

(i) Have been inspected on the premises of origin and found free of scrapie;

(ii) That, as far as can be determined, scrapie has not existed on any premises on which such sheep or goats were located during the 42 months immediately prior to shipment to the United States; and

(iii) That each of the animals is not the progeny of a sire or dam that has been affected with scrapie.

(3) *Regions classified as Risk Class R4 or RU for scrapie.* The importation of live sheep or goats from regions that are classified as R4 or RU for scrapie is prohibited.

(i) *Contagious agalactia (CA) due to Mycoplasma agalactiae, sheep pox virus (SP), goat pox virus (GP), and contagious caprine pleuropneumonia due to Mycoplasma mycoides subsp. capri (CCPP).*

(1) *Regions classified as Risk Class R1 for CA, SP, GP, and/or CCPP.* In addition to the export certificate requirements of § 93.405, the certificate of export for sheep or goats from regions that are classified as Risk class R1 for CA, SP, GP, and/or CCPP must certify that the sheep and goats to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for CA, SP, GP, or CCPP;

(ii) Have had a negative result to an approved serological test for CA, SP, GP, and/or CCPP within 30 days prior to export; and

(iii) Have not been vaccinated for CA, SP, GP, and/or CCPP.

(2) *Regions classified as Risk Class R2 for CA, SP, GP, and/or CCPP.*

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for sheep or goats from regions classified as Risk Class R2 for CA, SP, GP, and/or CCPP must certify that the sheep or goats to imported:

(A) Were born and resided only in regions listed as Risk Class RN, R1 or R2 for CA, SP, GP, and CCPP;

(B) Have had a negative result to an approved serological test for CA, SP, GP, and/or CCPP 30 to 60 days prior to export to the United States; and

(C) Have not been vaccinated for CA, SP, GP, or CCPP.

(ii) The sheep or goats to be imported must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The sheep or goats must have a negative result to an approved serological test for CA, SP, GP, and/or CCPP during the post-importation quarantine period.

(3) *Regions listed as Risk Class R3 for CA, SP, GP, and/or CCPP.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for sheep or goats from regions classified as Risk class R3 for CA, SP, GP, and/or CCPP must certify that the sheep or goats to be imported:

(A) Were born and resided only in regions listed as Risk Class RN, R1, R2 or R3 for CA, SP, GP, and CCPP;

(B) Have not been vaccinated for CA, SP, GP, or CCPP;

(C) Meet one of the following requirements:

(*1*) Have had a negative result to an approved serological test for CA, SP, GP, and/or CCPP 30 to 60 days prior to export to the United States; or

(*2*) Originate from a herd or flock in which all sheep and goats over 6 months of age have had a negative result to an approved serological test within 12 months prior to the time of export; and

(D) Were quarantined for at least 30 days prior to export from all animals not

part of the group to be imported in facilities approved by the Administrator.

(ii) The sheep and goats to be imported must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The sheep and goats must have a negative result to an approved serological test for CA, SP, GP, and/or CCPP during the post-importation quarantine period.

(4) *Regions classified as Risk Class R4 or RU for CA, SP, GP, and/or CCPP.*

(i) In addition to the export certificate requirements of § 93.405, the certificate of export for sheep and goats from regions that are classified as Risk Class R4 or RU for CA, SP, GP, and/or CCPP must certify that the sheep and goats to be imported:

(A) Have not been vaccinated for CA, SP, GP, or CCPP;

(B) Have undergone a minimum 60-day pre-embarkation quarantine; and

(C) Have had negative results to two approved tests conducted no sooner than 30 days apart for CA, SP, GP and/or CCPP, with the second test during the pre-embarkation quarantine period and not more than 30 days before export.

(ii) The sheep and goats to be imported must be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The sheep or goats to be imported must have a negative result to an approved serological test for CA, SP, GP, and/or CCPP during the post-importation quarantine period.

(j) *Malignant catarrhal fever—African type (MCF)*—(1) *Regions classified as Risk Class R1 for MCF.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 for MCF must certify that the ruminants to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for MCF;

(ii) Have had a negative result to an approved serological test for MCF within 30 days prior to the date of export; and

(iii) Have not been vaccinated for MCF.

(2) *Regions classified as Risk Class R2 for MCF.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R2 for MCF must certify that the ruminants to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1 or R2 for MCF;

(B) Have not been vaccinated for MCF; and

(C) Have had a negative result to an approved serological test for MCF 30 to 60 days prior to the date of export.

(ii) The ruminants to be imported must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The imported ruminants must have a negative result to an approved serological test for MCF during the post-importation quarantine period.

(3) *Regions classified as Risk Class R3 for MCF.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R3 for MCF must state that the ruminants to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1, R2 or R3 for MCF;

(B) Have not been vaccinated for MCF;

(C) Meet one of the following requirements:

(*1*) Have had a negative result to an approved serological test for MCF 30 to 60 days prior to the date of export; or

(*2*) Originate from a herd in which all ruminants in the herd over 6 months of age have had a negative result with an approved test for MCF within the previous 12 months; and

(D) Have been in a pre-embarkation quarantine facility approved by the Administrator for a minimum of 30 days prior to export.

(ii) The ruminants to be imported must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The imported ruminants must have a negative result to an approved serological test for MCF during the post-importation quarantine period.

(4) *Regions classified as Risk Class R4 or RU for MCF.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R4 or RU for MCF must certify that the ruminants to be imported:

(A) Originate from herds that have not been affected with MCF during the previous 12 months;

(B) Have not been vaccinated for MCF;

(C) Have undergone a minimum of 60 days pre-embarkation quarantine; and

(D) During pre-embarkation quarantine, have had negative results to two tests conducted not less than 15 days apart with an approved serological test for MCF.

(ii) The ruminants to be imported must undergo post-importation quarantine for at least 15 days at a facility designated and approved by the Administrator.

(iii) The imported ruminants must have a negative result to an approved serological test for MCF during the post-importation quarantine period.

(k) *Contagious bovine pleuropneumonia (CBPP)*—(1) *Regions classified as Risk Class R1 for CBPP.* In addition to the export certificate requirements of § 93.405, the certificate of export for live cattle from regions classified as Risk Class R1 for CBPP must certify that the cattle to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for CBPP;

(ii) Have not been vaccinated for CBPP;

(iii) Have undergone a minimum 30-day pre-embarkation quarantine; and

(iv) Have had a negative result to an approved serological test for CBPP within 30 days prior to export.

(2) *Regions classified as Risk Class R2 for CBPP.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live cattle from regions classified as Risk Class R2 for CBPP must certify that the cattle to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1 or R2 for CBPP;

(B) Have not been vaccinated for CBPP; and

(C) Have had a negative result to an approved serological test for CBPP 30 to 60 days prior to the date of export.

(ii) The imported cattle must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The imported cattle must have a negative result to an approved serological test for CBPP during the post-importation quarantine period.

(3) *Regions classified as Risk Class R3 for CBPP.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live cattle from regions classified as Risk Class R3 for CBPP must certify that the cattle to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1, R2 or R3 for CBPP;

(B) Have not been vaccinated for CBPP;

(C) Meet one of the following requirements:

(*1*) Have had a negative result to an approved serological test for CBPP 30 to 60 days prior to export; or

(*2*) Originate from a herd in which all cattle in the herd over 6 months of age have had a negative result to an approved test for CBPP within the previous 12 months; and

(D) Have been quarantined and isolated for at least 30 days prior to export from all animals not part of the group to be imported.

(ii) The imported cattle must be quarantined for at least 15 days at a post-embarkation quarantine facility designated and approved by the Administrator.

(iii) The imported cattle must have a negative result to an approved serological test for CBPP during the post-embarkation quarantine period.

(4) *Regions classified as Risk Class R4 or RU for CBPP.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live cattle from regions that are classified as Risk Class R4 or RU for CBPP must certify that the cattle to be imported:

(A) Originate from herds that have not been affected with CBPP during the previous 12 months;

(B) Have not been vaccinated for CBPP;

(C) Have undergone a minimum 60-day pre-embarkation quarantine; and

(D) During pre-embarkation quarantine, have had negative results to two tests for CBPP conducted not less than 30 days apart with an approved serological test.

(ii) The imported cattle must be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The imported cattle must have a negative result to an approved serological test for CBPP during the post-importation quarantine period.

(l) *Aino and Akabane virus*—(1) *Regions classified as Risk Class R1 and R2 for aino and/or akabane virus.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R1 and R2 for aino and/or akabane must certify that the ruminants to be imported:

(i) For at least 60 days have been only on premises in regions classified as Risk Class RN, R1 and R2;

(ii) Have not been vaccinated for akabane or aino virus;

(iii) Have had a negative result using an approved serological test for akabane and/or aino virus within 30 days prior to the date of export. If any of the ruminants in the shipment to be imported had a positive result to the test, then:

(A) All positive pregnant female ruminant animals were removed from the group to be imported; and

(B) All remaining ruminants (both positive and negative) were re-tested at least 30 days following the first test, and all had negative, decreasing or stabilized test results.

(2) *Regions classified as Risk Class R3, R4, and RU for aino and/or akabane virus.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants imported from regions classified as Risk Class R3, R4, or RU for aino and/or akabane must certify that the ruminants to be imported:

(A) Do not originate from a herd that has been known to be infected with aino and/or akabane virus within 12 months prior to the date of export;

(B) Have not been vaccinated for aino or akabane virus;

(C) If offered for export during a time of year when vectors are active, were quarantined for at least 60 days prior to export in a vector-proof facility approved by the Administrator and by the national veterinary services in the country of origin;

(D) If offered for export during a time of year when insect vectors are not active, at least 60 days has passed since the first killing frost of the season, and

(E) Were tested twice with negative results at least 30 days apart with the second test within 30 days prior to the date of export, using an approved serological test for akabane and/or aino virus. The tests must be conducted at least 30 days apart. If any of the ruminants in the shipment to be imported had a positive result to either test, then:

(*1*) All pregnant female ruminant animals were removed from the group to be imported; and

(*2*) All remaining ruminants (both positive and negative) were re-tested at least 30 days following the first test, with negative, decreasing or stabilized test results.

(ii) The imported ruminants must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) During the post-importation quarantine period, all the imported ruminants must have negative, decreasing, or stabilized test results to an approved serological test for akabane and/or aino virus.

(m) *Bluetongue virus except for serotypes 10, 11, 13 and 17 (BT); Epizootic Hemorrhagic Disease virus (Ibaraki) except serotypes 1 and 2 (EHD); Bovine Ephemeral Fever virus group (Kotonkan, Obodhiang) (BEF); Rift Valley Fever virus (RVF); and/or Wesselsbron(WB) virus*—(1) *Regions classified as Risk Class R1 and R2 for BT, EHD, BEF, RVF, and WB virus.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R1 and R2 for BT, EHD, BEF, RVF, and/or WB virus must certify that the ruminants to be imported:

(i) Have resided for at least 60 days prior to export only on premises located in regions classified as Risk Class RN, R1 or R2;

(ii) Have not been vaccinated for BT, EHD, BEF, RVF, or WB virus;

(iii) Have had a negative result to an approved serological test for BT, EHD, BEF, RVF, and/or WB virus within 30 days prior to export. If any of the ruminants in the group to be imported test positive, then all the remaining ruminants in that group must qualify as ruminants from a Risk Class R3, R4 or RU region according to paragraph (m)(2) of this section.

(2) *Regions classified as Risk Class R3, R4, and RU for BT, EHD, BEF, RVF, and/or WB virus.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R3, R4 or RU for BT, EHD, BEF, RVF, and/or WB virus must certify that the ruminants to be imported:

(A) If offered for export during a season of the year when insect vectors are active, or less than 60 days after the first killing frost in the fall of the year, were quarantined and isolated from all animals not part of the group to be imported for at least 60 days prior to embarkation in a vector-proof facility approved by the Administrator;

(B) If offered for export during a season of the year when insect vectors are not active, have remained on premises located in areas where the first killing frost in the fall occurred at least 60 days prior to date of embarkation;

(C) Have not been vaccinated for BT, EHD, BEF, RVF, or WB virus;

(D) Have had negative results to an approved serological test 30 to 60 prior to embarkation;

(E) If any of the ruminants in the group to be imported tests positive, then the positive animals must be removed from the group and all ruminants that tested negative to the first test required in paragraph (m)(2)(i)(D) of this section have had negative results to a second approved serological test for BT, EHD, BEF, RVF, and/or WB virus within 30 days prior to embarkation; and

(F) If any of the ruminants in the group to be imported tests positive to the second test required in paragraph (m)(2)(i)(E) of this section, then:

(*1*) If during a season of year in the exporting region when insect vectors are active, the remaining animals may not be exported to the United States during the insect vector season; or

(*2*) If during a season of year when insect vectors are not active:

(*i*) All positive animals were removed from the group to be imported; and

(*ii*) All remaining animals were negative to a third test at least 30 days following the second test required in paragraph (m)(2)(i)(E) of this section.

(ii) Imported ruminants must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator if imported during a season of the year in the United States when vectors are not active, and must be quarantined for 60 days if imported during a season of the year when vectors are active in the United States.

(iii) During the post-importation quarantine period, all the imported ruminants must have negative results to an approved serological test for BT, EHD, BEF, RVF, and/or WB virus.

(n) *Nairobi Sheep Disease (Dugbe, Ganjam) virus (NSD)*—(1) *Regions classified Risk Class R1 and R2 for NSD.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R1 and R2 for NSD must certify that the ruminants to be imported:

(i) Have resided for at least 60 days on premises located in regions classified as Risk Class RN, R1 or R2 for NSD;

(ii) Have not been vaccinated for NSD;

(iii) Have had a negative result to an approved serological test for NSD virus within 30 days prior to export. If any of the ruminants tests positive, then all the remaining ruminants in the group to be imported must meet the requirements for ruminants from Risk Class R3, R4 or RU regions, as set forth in paragraph (n)(2) of this section.

(2) *Regions classified as Risk Class R3, R4, and RU for NSD.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R3, R4, or RU for NSD virus must certify that the ruminants to be imported:

(A) Were quarantined from all animals not part of the group to be imported, for at least 60 days prior to export, in a vector-proof facility approved by the Administrator and by the national Veterinary Services in the country of export;

(B) Have not been vaccinated for NSD virus; and

(C) During the pre-embarkation quarantine period, were tested twice, within 60 days prior to export and at least 30 days apart, with negative results, using an approved serological test for NSD virus. If any ruminants in the group to be imported tested positive to the first serological test, then all animals (positive and negative) were retested at least 30 days following the previous test with negative, decreasing, or stabilized test results to an approved serological test. Only those ruminants that are negative on both tests, or that were negative on virus isolation procedures may be exported to the United States.

(ii) The imported ruminants must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) During the post-importation quarantine period, all the imported ruminants must have a negative test result to an approved serological test for NSD.

(o) *Cowdria ruminantium (Heartwater), tick-borne encephalitis, and/or Louping Ill*—(1) *Regions classified as Risk Class R1 and R2 for Cowdria ruminantium, tick-borne encephalitis, and Louping Ill.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R1 and R2 for *Cowdria ruminantium*, tick-borne encephalitis, and Louping Ill must certify that the ruminants to be imported:

(i) Have resided on premises located in Risk Class RN, R1 and R2 regions for *Cowdria ruminantium*, tick-borne encephalitis, or Louping Ill for at least 60 days immediately prior to export;

(ii) Have not been vaccinated for *Cowdria ruminantium*, tick-borne encephalitis, or Louping Ill; and

(iii) Have had a negative result to an approved serological test for *Cowdria ruminantium*, tick-borne, and/or Louping Ill within 30 days prior to export.

(2) *Regions classified as Risk Class R3, R4, and RU for Cowdria ruminantium, tick-borne encephalitis, and/or Louping Ill.* (i) In addition to the export requirements of § 93.405, the certificate of export for ruminants imported directly from regions classified as Risk Class R3, R4, and RU for *Cowdria ruminantium*, tick-borne encephalitis, and/or Louping Ill must certify that the ruminants to be imported:

(A) Were quarantined for at least 60 days immediately prior to export in a vector-proof facility approved the Administrator and the national Veterinary Services in the country of export;

(B) Have not been vaccinated for *Cowdria riminantium*, tick-borne encephalitis, and Louping Ill; and

(C) During the pre-embarkation quarantine period, were tested twice, within 60 days prior to export and at least 30 days apart, with negative results using an approve serological test for *Cowdria ruminantium*, tick-borne encephalitis, and/or Louping Ill.

(ii) The imported ruminants must be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) During the post-importation quarantine period the imported ruminants must be tested at least once, with negative results, for *Cowdria ruminantium*, tick-borne encephalitis, and/or Louping Ill using an approved serological test.

(p) *Theileria*—(1) *Regions classified as Risk Class R1 and R2 for Theileria.* In addition to the export certificate requirements of § 93.405, the certificate of export for the live ruminants from regions that are classified as Risk Class R1 and R2 for Theileria must certify that the ruminants to be imported:

(i) For at least 1 year immediately prior to export, have resided only on premises located in regions classified as Risk Class RN, R1 or R2;

(ii) Have not been vaccinated for Theileria; and

(iii) Had a negative result to an approved serological test for Theileria within 30 days prior to export.

(2) *Regions classified as Risk Class R3, R4, and RU for Theileria.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants imported from regions classified as Risk Class R3, R4, and RU for Theileria must certify that the ruminants to be imported:

(A) Were quarantined for at least 60 days prior to export in a vector-proof facility approved by the Administrator and the National Veterinary services of the country of export;

(B) Have not been vaccinated for Theileria; and

(C) During the pre-embarkation quarantine period, we were tested twice, at least 30 days apart, with negative results using an approved serological test for Theileria.

(ii) The imported ruminants must be quarantined for at least 30 days at a port-importation quarantine facility

designated and approved by the Administrator.

(iii) During the post-importation quarantine period, the imported ruminants must be tested at least once with negative results using an approved serological test for Theileria.

(q) *African (Salivarian or Tsetse-transmitted) Trypanosomes*—

(1) *Regions classified as Risk Class R1 and R2 for African trypanosomes.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 and R2 for African trypannosomes must certify that the ruminants to be imported:

(i) Have resided only on premises located in Risk Class RN, R1 or R2 regions for trypanosomes and tsetse flies (*Glossina* spp.) for their entire life;

(ii) Have not been vaccinated for trypanosomes; and

(iii) Have had a negative result to an approved serological test for African trypanosomes within 30 days prior to export.

(2) *Regions classified as Risk Class R3, R4, and RU for African trypanosomes.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for ruminants imported from regions classified as Risk Class R3, R4, and RU for African trypanosomes and Tsetse flies (*Glossina* spp.) must certify that the ruminants to be imported:

(A) Originated from premises that have not had trypanosomiasis diagnosed during the previous 24 months;

(B) Were quarantined for least 60 days prior to export in a vector-proof facility approved by the Administrator and the National Veterinary Services of the country of export;

(C) Have not been vaccinated for trypanosomes; and

(D) During the pre-embarkation quarantine period, had negative results to an approved serological test for trypanosomes.

(ii) The imported ruminants must be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) During the post-importation quarantine period, the imported ruminants must be tested at least once for trypanosomes, with negative results, using approved serological tests.

(r) *Globidiosis due to Besnoitia besnoiti, Lumpy Skin Disease (LSD) virus, and/or Parafilaria bovicola (parafilariasis)*—(1) *Regions classified as Risk Class R1 and R2 for Besnoitia besnoiti*, LSD, and/or Parafilaria bovicola. In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions that are classified as Risk Class R1 and R2 for Besnoitia besnoiti, LSD, and/or *Parafilaria bovicola* must certify that the ruminants to be imported:

(i) For at least 60 days immediately prior to export, have resided only on premises located in Risk Class RN, R1 and R2 regions for *Besnoitia besnoiti*, LSD, and/or *Parafilaria bovicola*;

(ii) Have not been vaccinated for *Besnoitia besnoiti*, LSD, or *Parafilaria bovicola*; and

(iii) Had a negative result to an approved serological test for *Besnoitia besnoiti*, LSD, and/or *Parafilaria bovicola* within 30 days prior to export.

(2) *Regions classified as Risk Class R3, R4, and RU for Besnoitia besnoiti, LSD, and/or Parafilaria bovicola.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants imported from regions that are classified as Risk Class Regions R3, R4, and/or RU for *Besnoitia besnoiti*, LSD, and/or *Parafilaria bovicola* must certify that the ruminants to be imported:

(A) Were quarantined, for at least 60 days prior to export, from all animals not part of the shipment, in a vector-proof facility approved by the Administrator;

(B) Have not been vaccinated for *Besnoitia besnoiti*, LSD, or *Parafilaria bovicola*; and

(C) During the pre-embarkation quarantine period, were tested twice at least 30 days apart with negative results, using an approved serological test for *Besnoitia besnoiti*, LSD, and/or *Parafilaria bovicola*.

(ii) The imported ruminants must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) During the post-importation quarantine period the ruminants must be tested at least once, with negative results, using approved serological tests.

(s) *Trypanosoma spp. transmitted by vectors other than tsetse flies (Glossina spp.) (NTT-Trypanosomas), tick-borne fever due to Erlichia (Cytoecetes) phagocytophilia (TBF), bovine infectious petechial fever (Ondiri disease) due to Erlichia(Cytoecetes) ondiri (BPF)*—(1) *Regions classified as Risk Class R1 and R2 for NTT-Trypanosomas, TBF, and/or BPF.* In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants from regions classified as Risk Class R1 and R2 for NTT-Trypanosomas, TBF, and/or BPF must certify that the ruminants to be imported:

(i) Have resided for their entire life only on premises located in regions classified as Risk Class RN, R1 and R2 for NTT-Trypanosomas, TBF, and BPF;

(ii) Have not been vaccinated for NTT-Trypanosomas, TBF, or BPF; and

(iii) Had a negative result to an approved serological test for NTT-Trypanosomas, TBF, and/or BPF within 30 days prior to export.

(2) *Regions classified as Risk Class R3, R4, and RU for NTT-Trypanosomas, TBF, and/or BPF.* (i) In addition to the export certificate requirements of § 93.405, the certificate of export for live ruminants imported from regions that are classified as Risk Class R3, R4, and/or RU for NTT-Trypanosomas, TBF, and/or BPF must certify that the ruminants to be imported:

(A) Were quarantined from all animals not part of the group to be imported, for at least 60 days prior to export, in a vector-proof facility approved by the Administrator and the National Veterinary Services of the country of export;

(B) Have not been vaccinated for NTT-Trypanosomas, TBF, or BPF; and

(C) During the pre-embarkation quarantine period, were tested twice at least 30 days apart with negative results, using an approved serological test for NTT-Trypanosomas, TBF, and/or BPF.

(ii) If imported during a season of the year when vectors are not active in the United States, the ruminants imported must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator

(iii) if imported during a season of the year when vectors are active in the United States, the ruminants imported must be quarantined for at least 60 days at a post-importation quarantine facility designated and approved by the Administrator.

(iv) During the post-importation quarantine period the imported ruminants must be retested at least once with negative results to an approved serological test for NTT-Trypanosomas, TBF, and/or BPF.

(t) *Vesicular Stomatitis virus (VSV)*—(1) *Regions classified as Risk Class R1 for VSV.* In addition to the requirements of § 93.405 of this part, the certificate of export for live ruminants from regions that are classified as Risk Class R1 for VSV must certify that the ruminants to be imported:

(i) Have resided for at least 60 days prior to export only on premises located in Risk Class RN or R1 regions for VSV; and

(ii) Have not been vaccinated for VSV.

(2) *Regions classified as Risk Class R2 for VSV.* In addition to the requirements of § 93.405 of this part, the certificate of export for live ruminants imported from regions that are classified as Risk Class R2 for VSV must certify that the ruminants to be imported:

(i) Have resided for at least 60 days prior to export only on premises located in Risk Class RN, R1 or R2 regions for VSV;

(ii) Have not been vaccinated with any live attenuated vaccines for VSV; and

(iii) Have not been vaccinated with inactivated vaccines for VSV within 60 days prior to export.

(3) *Regions classified as Risk Class R3, R4, and RU regions for VSV.* (i) In addition to the requirements of § 93.405 of this part, the certificate of export for live ruminants imported from regions that are classified as Risk Class R3, R4, and/or RU for VSV must certify that the ruminants to be imported:

(A) Have not been vaccinated with any live attenuated vaccines for VSV;

(B) Have not been vaccinated with inactivated vaccines for VSV within 60 days prior to export;

(C) Have not been located on any premises where VSV has occurred within 60 days prior to export; and

(D) If exported during a season of the year when insect vectors were active:

(1) Were quarantined and isolated from all other animals not part of the shipment for at least 30 days prior to export in a vector-proof facility approved by the Administrator; and

(2) During the pre-embarkation quarantine period, had negative results to an approved serological test for VSV within 14 days prior to export.

(ii) If imported during a season of the year when insect vectors are active within the United States, the imported ruminants:

(1) Must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator; and

(2) During the post-importation quarantine period, must have negative results to an approved serological test for VSV.

§ 93.416 Importation of ruminants through the Harry S Truman Animal Import Center (HSTAIC).

(a) *Exclusive right to use HSTAIC.* The Animal and Plant Health Inspection Service will enter into a cooperative-service agreement with only one importer for each importation through the Harry S Truman Animal Import Center (HSTAIC). Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list. An importer granted the exclusive right to use HSTAIC may include in his or her allotted number, animals of the same species belonging to other persons interested in importing animals through HSTAIC, except that llamas and alpacas may be included in the same importation. However, APHIS will deal exclusively with the importer in whose name the application for use of HSTAIC was submitted. The Animal and Plant Health Inspection Service will hold this importer solely responsible for all costs (excepting capital expenditures at HSTAIC) incurred during the animal qualification process. The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable. HSTAIC can accommodate a finite number of animals at one time, but the maximum allowed for a particular importation will vary, depending on the size of the species. The Animal and Plant Health Inspection Service will specify this figure in the cooperative-service agreement, reproduced in paragraph (d) of this section.

(b) *Scheduling.* Applications from prospective users of HSTAIC are processed according to the following system:

(1) *All applications for use of HSTAIC.* (i) To qualify to use HSTAIC, an importer must submit a completed application,[9] providing estimates when exact information as required on the application form is unavailable.

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day that HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, and ending either with the day that APHIS receives the signed cooperative-service agreement or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

(2)(i) During the first seven days of December,[10] APHIS will hold a lottery, randomly drawing the names of applicants in an order that will determine the order in which they will be offered use of HSTAIC for an importation during the next calendar year. To be included in the annual December lottery, applications must reach the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 of that year.

(ii) One application is required for each importation proposed. Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery.

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year,

[9] Application forms are available from, and must be submitted to Import/Export Animals Staff, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

[10] The Animal and Plant Health Inspection Service will publish a notice announcing the exact date in the Federal Register at least 30 days in advance of the December drawing.

superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b) (1) and (2) of this section), and whose deposits have reached APHIS at least 7 calendar days prior to the date of the lottery, will be drawn during the December lottery. The order in which names appear on the priority list will correspond to that established by the lottery. If the person first offered the right to use HSTAIC does not ensure receipt of the cooperative-service agreement by the Import-Export Animals Staff, Veterinary Services, within 30 days of receiving the cooperative-service agreement, APHIS will void that offer, and make an offer to the applicant next on the priority list. The Animal and Plant Health Inspection Service will limit importations to one per importer for the period encompassing the calendar year for which the lottery is held and the following two calendar years, except when no other lottery participants are prepared to use HSTAIC during the time it would be available in those years. The priority list established during the December lottery will remain in effect during the calendar year following the lottery, and will take precedence over any applications received after October 15th. Applications received after October 15th will be added to the priority list, with precedence established by the order in which the Import-Export Animals Staff, Veterinary Services, receives them.

(5) If the Import-Export Animals Staff, Veterinary Services, does not receive more than one application between October 1st and October 15th for the December lottery, the December lottery for that year will be canceled, and APHIS will grant the exclusive right to use HSTAIC for an importation during the next calendar year in the order applications are received.

(6) The Secretary of Agriculture may grant priority over other applications to an application from an agency of the United States Government, if for an importation potentially of value to the general public, and if received before July 15 of the year preceding the proposed importation.[11] However, an agency of the United States Government must submit its application in accordance with this section, except that, an agency of the United States Government must enter into an interagency agreement with APHIS for a deposit of $32,000 by certified check or money order, payable in U.S. funds. HSTAIC importations by agencies of the United States government will be limited to one per year, except when HSTAIC is available and the Import-Export Animals Staff, Veterinary Services, has received no other applications for its use during that year.

(c) *Responsibilities of the Applicant Selected.* By certified mail, return receipt requested, APHIS will send a cooperative-service agreement to the applicant being offered the exclusive right to use HSTAIC, as provided in paragraph (d) of this section. The applicant must, within 30 days of receipt, sign and ensure that the Import-Export Animals Staff, Veterinary Services, receives the cooperative-service agreement. The cooperative-service agreement must be accompanied by a certified check or money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. For importations requiring use of a pre-embarkation quarantine facility, physical plans for the facility, including site-specific blueprints and location, must be included when the cooperative-service agreement is returned to the Import-Export Animals Staff, Veterinary Services.

(1) An importer interested in animals ineligible for importation because officials in the exporting country or area will not allow APHIS to provide the services prescribed in the cooperative-service agreement, may, upon notification of this ineligibility from APHIS, propose to substitute animals available from another location. If this importer has not returned the signed cooperative-service agreement within the 30 days specified in the cooperative-service agreement, APHIS will return any portion of the importer's deposit that has not been expended. In that case, the applicant next in priority will be offered the exclusive right to use HSTAIC, in accordance with the procedures in this section.

(2) The importer may not abrogate his/her responsibility for costs incurred after the signing of the cooperative-service agreement, regardless of any occurrences that prevent the importation from proceeding as planned.

(3) The importer signing the cooperative-service agreement returned to APHIS is responsible for paying all costs, excluding capital expenditures at HSTAIC, incurred in qualifying the specified animals for importation through HSTAIC. A partial list of costs for which the importer must assume responsibility includes: expenses for preparing and maintaining HSTAIC in readiness for the importation; expenses for sentinel animals in the United States, when required, and for tested animals prevented, for any reason, from moving from HSTAIC elsewhere within the United States; laboratory tests; medical treatment; official travel by APHIS personnel, including per diem expenses in the country from which animals are being exported, when required; courier services to transport test samples to the Foreign Animal Disease Diagnostic Laboratory, when required; salaries of HSTAIC personnel; all supplies for animals care, maintenance, and testing during the quarantine and in the post-quarantine cleaning and disinfection of HSTAIC; utilities and overhead, including support staff, during the quarantine and post-quarantine cleanup.

(4) Capital expenditures at HSTAIC constitute the only costs for which the importer will not be held responsible.

(5) For costs incurred during any stage of the importation through HSTAIC—that is, costs not calculated into the amount collected from the importer in accordance with the cooperative-service agreement—APHIS will bill the importer at a later date. Payment will be due upon receipt of the bill.

(6) The Animal and Plant Health Inspection Service will return to the importer any part of the money remitted with the cooperative-service agreement set forth in paragraph (d) of this section that is not used to cover the non-capital costs of the importation through HSTAIC.

(d) *Cooperative-Service Agreement.* Each importer being granted the right to use HSTAIC must sign, and comply with, the cooperative-service agreement with APHIS. A sample cooperative-service agreement for importers other than agencies of the United States government is reproduced in this paragraph. (Agencies of the United States government being granted the

[11] If the Secretary grants priority to an application from an agency of the United States Government, the Animal and Plant Health Inspection Service will publish a notice in the *Federal Register* prior to October 1 of the year preceding the proposed importation.

right to use HSTAIC must enter into an interagency agreement with APHIS.) The amount of money the importer must advance, left blank in the following sample, will depend on figures unique to a particular importation. This amount will be specified in the cooperative-service agreement the importer receives.

Cooperative-Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service

The importer, _____, wishes to qualify animals for importation into the United States. The United States Department of Agriculture, Animal and Plant Health Inspection Service, administers the Harry S Truman Animal Import Center (HSTAIC), a facility through which the importer may import animals into the United States.

To effect this importation, both parties agree to the following terms:

The importer agrees:

1. To have this cooperative-service agreement in the office of the Animal and Plant Health Inspection Service's Import-Export Animals Staff, Veterinary Services, within 30 days of the date of receipt, evidenced by the postal return-receipt.

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

3. To limit to _____ the number of animals, species _____ transported to HSTAIC for an importation scheduled to begin on or about _____ and to end with the animals' release from HSTAIC, scheduled for _____.

4. To assume liability for all costs (except capital expenditures at HSTAIC) attributable to preparing and maintaining HSTAIC in readiness for the importation, and to qualifying animals for and through quarantine in the pre-embarkation quarantine facility (PEQF), when quarantine in a PEQF is required, and in HSTAIC for importation into the United States. (A partial list of these costs would include expenses for sentinel animals in the United States and for tested animals prevented, for any reason, from moving from HSTAIC elsewhere within the United States; laboratory tests; medical treatment; official travel by Animal and Plant Health Inspection Service personnel, including per diem expenses in the country from which the animals are being exported; courier services to transport test samples to the Foreign Animal Disease Diagnostic Laboratory; salaries of HSTAIC personnel; all supplies for animal care, maintenance, and testing during the quarantine and in the post-quarantine cleaning and disinfection of HSTAIC; utilities and overhead, including support staff, during the quarantine and post-quarantine cleanup.)

5. To obtain from foreign government officials authorizations granting Animal and Plant Health Inspection Service personnel free access to the PEQF, when quarantine in a PEQF is required, and permits for export.

6. To secure from animal carriers permission for Animal and Plant Health Inspection Service personnel to accompany the animals to the PEQF, when quarantine in a PEQF is required, and from the PEQF to HSTAIC.

7. To maintain and operate the PEQF, when quarantine in a PEQF is required, in compliance with 9 CFR 93.417 of the Code of Federal Regulations.

8. To accept as final the findings of the Administrator, Animal and Plant Health Inspection Service, on the animals' eligibility to enter the PEQF, when quarantine in a PEQF is required, to enter HSTAIC, and to be released from HSTAIC.

9. To follow procedures prescribed by the Animal and Plant Health Inspection Service, appropriate to the disease and pest status of the quarantined animals. (When quarantine in a PEQF is required, the presence in the PEQF of even one animal either exposed to, or infected with, rinderpest, foot-and-mouth disease, hog cholera, African swine fever, swine vesicular disease, or certain other contagious, exotic diseases, automatically disqualifies all animals in the PEQF from entering HSTAIC. The presence in HSTAIC of even one animal either exposed to, or infected with, one of the diseases referred to in this paragraph, automatically disqualifies all animals in HSTAIC from moving anywhere within the United States after the period in quarantine.)

10. To assume responsibility for disposal of quarantined animals that do not qualify to move into or within the United States. (In the case of animals disqualified while quarantined in HSTAIC, the Animal and Plant Health Inspection Service will stipulate the conditions under which the disqualified animals in HSTAIC must be destroyed. The importer must, within 10 days of notification from the Animal and Plant Health Inspection Service, remove from the PEQF or HSTAIC, animals untreatable or treated for, but not cured of, a communicable disease other than foot-and-mouth disease or any of certain other exotic diseases. Animals removed from HSTAIC must be moved out of the United States or be destroyed under conditions stipulated by the Animal and Plant Health Inspection Service.)

11. To assume responsibility for all costs the Animal and Plant Health Inspection Service incurs during this importation, excluding capital expenditures at HSTAIC.

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

The Animal and Plant Health Inspection Service Agrees:

1. To provide the personnel required to perform inspections, laboratory procedures, and examinations, and to provide on-site supervision of the isolation, quarantine, care and handling of animals on premises of origin, in the PEQF when quarantine in a PEQF is required, and in HSTAIC.

2. To inform the importer of any quarantined animals in the PEQF or in HSTAIC that fail to qualify for entry into the United States, and to inform the importer that he/she must assume responsibility for their disposal.

3. To finance capital expenditures at HSTAIC without charging the importer.

4. To account for all money disbursed from the amount remitted, and to provide the importer with a complete written accounting upon termination of this cooperative-service agreement.

5. To refund to the importer any part of the money remitted with this cooperative-service agreement that is not used to cover the non-capital costs of the importation through HSTAIC.

Both parties agree:

1. That this cooperative-service agreement is effective upon signature by both parties.

2. That this cooperative-service agreement will not be signed by the Administrator if the Import-Export Animals Staff, Veterinary Services, Animal and Plant Health Inspection Service, has not received this signed cooperative-service agreement, including the specified remittance for the amount due, by 4:30 p.m. on the thirtieth calendar-day after the date on the United States Postal Service's return receipt, evidencing its receipt by the importer.

3. That this cooperative-service agreement will not be signed by the Administrator if the cooperative-service agreement is not accompanied by the physical plans for the PEQF, including its location and site-specific blueprints (except when quarantine in a PEQF is not required).

4. That this cooperative-service agreement will be voided if the Administrator, Animal and Plant Health Inspection Service, determines that the importer has not completed arrangements with the responsible officials in the exporting country by 4:30 p.m. on the date 42 calendar-days after the importer's signing of this cooperative-service agreement.

5. That, if both parties agree, this cooperative-service agreement may be amended in writing.

6. That either party may terminate this cooperative-service agreement upon giving 30 days written notice to the other party, but premature termination will not relieve the importer of responsibility for costs incurred, as provided in this cooperative-service agreement, nor will it relieve the Animal and Plant Health Inspection Service of responsibility for providing the importer with a complete written accounting of money disbursed from the amounts remitted.

7. That during the performance of this cooperative-service agreement, the importer agrees to be bound by the Equal Employment Opportunity and Nondiscrimination provisions set forth in Exhibit A and the Nonsegregation of Facilities provisions set forth in Exhibit B,[1] which are attached to and

[1] 1 Import-Export Animal Staff, National Center for Import and Export, Veterinary Services, APHIS,

Continued

made part of this cooperative-service agreement.

8. That no member of, or delegate to, Congress may participate in, or benefit from, this cooperative-service agreement.

Date

Importer

Date

Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture.

§ 93.417 Pre-embarkation quarantine facility; criteria and standards for approval.

Criteria for establishment of a pre-embarkation quarantine facility outside the United States for the purpose of importing ruminants into the United States that are eligible for importation only through the Harry S Truman Animal Import Center are as follows:

(a) *Establishment.* (1) The Administrator may enter into an agreement with one or more parties for the establishment of such a facility pursuant to the standards in paragraph (b) of this section.

(2) To qualify for designation as a pre-embarkation quarantine facility (PEQF) for a specifically authorized importation, the facility must meet the requirements of paragraph (b) of this section.

(3) All costs associated with the establishment and operation of such a pre-embarkation quarantine facility shall be borne by the owner or operator of such facility.

(4) The Animal and Plant Health Inspection Service requires that the importer submit the physical plans for the PEQF for which he/she is requesting approval. The physical plans must include location of the facility and site-specific blueprints. The importer must send these physical plans, due with the cooperative-service agreement as provided in § 93.430(d) to the Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Approval of a PEQF will expire at the end of the specifically authorized quarantine. Subsequent importers granted use of HSTAIC and proposing to use one of the existing PEQFs must apply for approval as if for a new facility. No more than one PEQF will receive approval for a specific HSTAIC importation. If the PEQF specified in the signed cooperative-service agreement, as provided in § 93.430(d), is not approved by APHIS, the importer may use an alternative PEQF, provided it is approved by the Animal and Plant Health Inspection Service during the 42 days following the date the importer signs the cooperative-service agreement. If a PEQF closes down or loses its ''approved'' status for any reason, APHIS may approve a replacement following the method specified in this paragraph (a)(4).

(5) Permission to place ruminants in the foreign PEQF shall be given to any person who has received permission to import ruminants through the Harry S Truman Animal Import Center, unless the Administrator determines that sufficient grounds exist whereby such person may be denied such permission.

(6) Fees charged by the owner or operator for the use of such facility shall be provided in private agreements between the owner or operator of the facility and the owners of the ruminants proposed for importation. Such fees shall be nondiscriminatory and reasonable as determined by the Administrator.

(7) Approval of any approved PEQF may be withdrawn at any time by the Administrator, upon his or her determination that any requirement of this section is not being met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action and afforded opportunity to present his or her views thereon in accord with rules of practice adopted by the Administrator. Upon withdrawal of approval, the operator, upon request, shall be afforded opportunity for a hearing with respect to the merits or validity of such action; but such withdrawal or refusal shall continue in effect unless otherwise ordered by the Administrator. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Standards for approval of pre-embarkation quarantine facilities*—(1) *Location.* (i) The PEQF must be in a region isolated from ruminants, swine, and poultry. It must be located near the point of embarkation: A dock, if the ruminants will travel by ocean vessel; an airport, if the ruminants will travel by plane.

(ii) The ruminants' route from the PEQF to the point of embarkation must be limited to regions free of ruminants, swine, and poultry.

(iii) The facility must be so situated that there will be no contact between ruminants held in the facility with any other species of animals.

(iv) The facility must be so situated that it will be free from contact with water and waste effluents from local livestock or poultry. Water and waste effluents from the facility must be disposed of in a manner determined by the Administrator to be adequate to ensure no exposure to local livestock or poultry.

(2) *Building.* (i) The exterior of the building must be of durable low maintenance, waterproof type construction that will withstand repeated cleaning and disinfecting.

(ii) Roofs must be watertight. The styling and configuration of the roof of the ruminant holding building must provide for optimum air circulation throughout the facility.

(iii) The interior finish of the building must be durable, washable, and of low maintenance type construction. The floor must be concrete with no cracks or crevices.

(iv) Mesh double screens must protect all open regions, so that insects cannot gain access to the ruminant holding region. If the ruminants are removed from the double-screened building before export to the HSTAIC, or if the United States Department of Agriculture Veterinarian in Charge of the quarantine operation determines that insects capable of transmitting communicable animal diseases are entering the ruminant holding region, APHIS will require implementation of a program of insect vector control. This vector control program will involve treating ruminants, building interiors, and environs with United States Environmental Protection Agency-registered pesticides. The pesticides must be used in the manner prescribed on the United States Environmental Protection Agency-approved label, and in accordance with the requirements of the government of the country in which the PEQF is located.

(v) Stalls, pens, and runways must be constructed of sufficient height and strength to confine and restrain all ruminants simultaneously for daily veterinary examinations.

(vi) At least 70-foot-candle lighting must be provided in the inspection region. A minimum light of 30-foot-candle must be available in all other regions of the facility.

(vii) A dipping vat of a concrete pit type with inspection chute, holding pen, dripping pen, and post-drip region similar to USDA Extension Plan 5940, revised, must be provided.[12]

USDA, will send each importer copies of Exhibits A and B along with the cooperative-services agreement.

[12] Copies of USDA Extension Plan 5940, revised, may be obtained from the Import-Export Animals Staff, National Center for Import and Export, Animal and Plant Health Inspection Service, United States Department of Agriculture, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

(viii) The waste management system must be carefully designed to meet all applicable sanitation and quarantine requirements and the existing environmental standards of the country in which the pre-embarkation quarantine facility is located.

(3) *Fencing.* (i) The outer perimeter of all facilities must be surrounded by a fence that must be of sufficiently small mesh as to preclude the entrance of small farm animals, including dogs, and of such height and strength as to prevent entrance of larger animals. This fence must be located at least 200 feet from the building in which quarantined ruminants are to be held, except that, in an urban or industrial region the location of the fence may be less than 200 feet as determined by the Administrator, if such action will not increase the risk that communicable diseases of livestock or poultry will be disseminated from the facility.

(ii) In regions affected by cattle fever ticks, all such facilities must be double fenced with the inner perimeter fence located at least 15 feet from the outer perimeter fence. When double fencing is required, the space between the outer and inner perimeter fences must be kept free from all foliage at all times.

(iii) The outer fence of the facility must be posted with signs in appropriate language, which shall convey the following: Restricted Region—Keep Out, Quarantine Region—Keep Out, or Registered Quarantine Region—Keep Out.

(4) *Feed.* The animal feed supply in the PEQF must consist only of feed obtained from a region that is classified as Risk Class RN, R1, or R2 for foot-and-mouth disease, and for any other exotic disease necessitating the quarantine or that could jeopardize the quarantine.

(5) *Other requirements.* (i) Access into the quarantine area must be through a single door that must lead into a walk-through shower area with clothes change areas located on either side of the shower and adjacent thereto.

(ii) Toilet and lavatory facilities as determined by the Administrator to be adequate to preclude transmission of livestock or poultry disease agents from the facility must be located within the ruminant holding areas.

(iii) A sufficient supply of clean clothing, including towels and footwear, as determined by the Administrator to be adequate to prevent the transmission of livestock or poultry disease agents from the facility, must be maintained within the quarantine area.

(iv) A continuous supply of hot and cold running water, including potable water for personnel, must be provided.

(v) If lunch is to be eaten within the facility, a lunch room must be provided and all food entered into the facility must be approved by the supervising United States government veterinarian.

(vi) A separate room containing the equipment for preparation and packaging of laboratory specimens with adequate office space, as determined by the Administrator, to perform his or her duties must be provided for the supervising veterinary official. All records, equipment, and other materials used in the facility must be maintained within the quarantine facility for the entire quarantine period.

(vii) A separate area situated apart from the ruminant holding area must be provided for necropsies, and a means for the removal of the carcasses of dead ruminants must be provided without breaking quarantine security.

(viii) A ruminant receiving area and a chute or stocks for restraint during examination and veterinary inspection, as determined to be appropriate by the Administrator, to permit examination of the ruminant, must be provided.

(ix) Feed must be stored in such a manner that replenishment during the quarantine period does not require transporting vehicles to enter the quarantine area.

(x) Equipment necessary for the care, cleaning, feeding, waste disposal, and handling of the ruminants must be provided and maintained within the quarantine area.

(xi) Additional requirements as to security, physical plant and facilities, and sanitation may be imposed by the Administrator, in each specific case in order to assure that the quarantine of the ruminants in a facility will be adequate to enable determination of their health status, prevent the spread of disease among ruminants in quarantine, and prevent escape of animal disease agents from the facility.

Subpart E—Swine

Sec.

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Subpart E—Swine

§ 93.500 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Adjacent regions. Any defined geographic land area identifiable by geological, political or surveyed boundaries that shares common boundaries with, or is proximate to any region of a different risk class, as determined by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Affected animals. Animals currently infected or infested with, or exposed to, a communicable disease agent, or that are not known to be infected, infested, or exposed but that because of information, proximity, location, season, or lack of surveillance data could reasonably be expected to be infected, infested, or exposed to a communicable disease agent.

Affected premises or region. A premises or region where a communicable disease agent is known to exist; that is adjacent to or proximate to any known infected or infested premises or region so that airborne, vector, or mechanical transmission of the disease agent could occur; or that, because of lack of surveillance data, could reasonably be expected to be infected, infested, or exposed to a communicable disease agent.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animals. All species of the animal kingdom including: Cattle, sheep, goats, other ruminants, swine, horses, asses, mules, zebras, dogs, and poultry that are susceptible to communicable diseases of livestock or capable of being carriers of those diseases or their arthropod vectors.

APHIS representative. Any individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

Approved brucellosis test. Any test recognized as an official brucellosis test in the United States according to § 78.1 of this chapter, or a test recognized as an equivalent test by the Administrator and that is recognized as an official test in a country exporting animals to the United States.

Approved pseudorabies test. Any test recognized as an official pseudorabies test in the United States according to § 85.1 of this chapter, or a test recognized as an equivalent test by the Administrator and that is recognized as an official test in a country exporting to the United States.

Approved tests for restricted diseases or agents. Diagnostic tests or procedures that are determined by the Administrator to be scientifically valid to diagnose a restricted animal disease.

Authorized veterinarian. A veterinarian accredited, employed or authorized by the National Veterinary Services of the country to carry out the required inspection and certification services.

Border definitions. See § 92.1 of this chapter.

Case. An individual animal affected by a communicable disease agent. Depending on the disease condition, this may be an animal with clinical signs, or an animal with serological or pathological evidence of infection, or an infested animal.

Cattle. Animals of the bovine species.

Communicable disease. Any contagious or infectious disease of animals. It can be transmitted either directly or indirectly to a susceptible animal from an infected animal, vector, inanimate reservoir, or other source.

Contagious disease. Any communicable disease transmitted from one infected animal to another by direct contact or by feed, water, aerosol, or contaminated objects.

Department. The United States Department of Agriculture (USDA).

Driven. Moved (animals) from one place to another by walking under their own power and being herded and guided by persons or trained animals.

Ectoparasites. Acarid (mites, ticks) or insect members of the Phylum Arthropoda that spend all or part of their life cycle on the exterior of avian, reptilian or mammalian hosts and that are known or suspected to be the vectors of communicable disease agents, or are the cause of disease or irritation in animals or birds.

Equivalent test. A serologic, microbiologic, chemical, or physical test approved for use in a region exporting livestock or livestock products to the United States and recognized by the Administrator as providing results equal to a test approved by the United States Department of Agriculture. Recognition of a test as an ''equivalent test'' will be made by the Administrator after he or she reviews scientific data that shows that the results of the test are equal to the USDA-approved test.

Exposed. (1) An animal or means of conveyance that has been in contact with or that can reasonably be expected to have been in contact with an animal, feed, water, air, soil, tools, or other objects, insects, or ectoparasites infected or contaminated with a communicable disease agent, as determined by the Administrator.

(2) A region or premises where an animal, feed, water, air, soil, tools or other objects, insects, or ectoparasites contaminated with a communicable disease agent are or have been present within the known incubation period of the disease agent.

(i) *Direct exposure:* Exposure by coming into direct contact with an infected animal, or with feed, water, air, soil, tools, or other objects, that have been contaminated by discharges from an infected animal.

(ii) *Indirect exposure:* Exposure by coming into contact with vector insects or ectoparasites, or objects that have been contaminated other than by discharges from an infected animal.

Herd. (1) A group of animals under common ownership or supervision that are maintained and intermingle on one or more parts of a single premises (farm, ranch, feedlot, etc.); or

(2) A group of animals under common ownership or supervision maintained on geographically separated premises but that have been interchanged between the different premises or have been otherwise intermingled.

Identification. (1) *Permanent identification:* Brands, tattoos, or electronic identification that cannot be readily removed or altered.

(2) *Semi-permanent identification:* Identification such as metal or plastic ear tags that may remain on an animal permanently but can be easily altered, lost or removed.

(3) *Non-permanent identification:* Identification such as temporary ear tags, chain tags, back tags, or tail tags.

(4) *Temporary identification:* Lot identification if lots are not mixed, or the origin of all lots in a mixed lot.

Immediate slaughter. Consignment directly from the port of entry to a recognized slaughtering establishment [1] and slaughter thereat within two weeks from the date of entry.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Inspector. An employee of the Animal and Plant Health Inspection Service authorized to perform duties required under this subpart.

Livestock. Domesticated species of cattle, swine, sheep, goats, llamas, horses, or poultry that normally and historically have been kept and raised on farms. Livestock also includes bison and cervidae or other species kept in captivity for producing food or fiber, or for other commercial purposes.

Moved directly. Moved (shipped, transported, or otherwise moved) without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs.

Official seal. A serially numbered, metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, or a serially numbered, self-locking button which can be used for this purpose.

Operator. Any person operating an approved quarantine facility.

Permitted treatment. A treatment authorized by the Administrator to be used in the official treatment of animals for control or removal of ectoparasites.

Persons. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Port Veterinarian. A veterinarian employed by APHIS to perform duties required under this part at a port of entry.

Post-importation quarantines. Quarantines applied in the importing region at a facility specially designated as an import quarantine facility.

[1] The name of recognized slaughtering establishments approved under this part may be obtained from the Area Veterinarian in Charge (AVIC), Veterinary Services, Animal and Plant Health Inspection Service, for the State of destination of the shipment. AVIC telephone numbers can be found in the local telephone book.

Pre-embarkation quarantines. Quarantines applied in the exporting region. May be on the premises of origin, a separate quarantine facility, a border station, or other facility used to hold animals while in transit.

Quarantine. Confinement of all susceptible animals, animal products, feed, farm machinery, other equipment, means of conveyance, and any other potentially contaminated objects to a premises or area where infection or infestation with a specific restricted agent has been found or is suspected to exist.

Recognized slaughtering establishment. An establishment[2] where slaughtering operations are regularly carried on under Federal or State inspection and that has been approved by APHIS to receive animals for slaughter under this part.

Region. Any defined geographic land region identifiable by geological, political or surveyed boundaries.

Restricted agent. A livestock communicable disease agent, vector, or host of an agent not known to exist in the United States or that is subject to a Federal or cooperative Federal/State control or eradication program within the United States. Restricted agents are listed in § 92.2 of this chapter.

Risk Class regions. Exporting regions designated by the Administrator according to the results of a risk assessment as defined in § 92.1 of this chapter, and determined by criteria as set forth in § 92.3 of this chapter are incorporated herein and are applicable to this part.

Ruminants. All animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.

Shipping container. For the purposes of § 93.402, any container of a type specially adapted for use in transporting any article on the means of conveyance involved.

Susceptible animals. Species of ruminants or other animals that can become infected with a specific disease agent.

Trail. Move animals from one place to another by having them walk under their own power, and by leading them by ropes or other devices tied to the animal and guided by persons or trained animals.

Transported. Moved or shipped from one place to another by any means of conveyance, such as airplane, ship, boat, barge, truck, train, cart, or other vehicle.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

Vector-borne disease. A disease transmitted indirectly to an animal through an intermediate arthropod vector, including ticks or insects.

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State or area concerned.

Zoological park. A zoo, park, garden or other place, maintained under the surveillance of a licensed Doctor of Veterinary Medicine, for the exhibition of live animals, pigeons or birds, for the purpose of public recreation or education.

§ 93.501 General prohibitions; exceptions.

(a) No swine subject to the provisions of this part may be imported into the United States except in accordance with the regulations in this part;[3] nor may any such swine be handled or moved after physical entry into the United States before final release from quarantine or any other form of governmental detention except in compliance with such regulations; *Provided That,* except as prohibited by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), the Administrator may upon request in specific cases permit swine to be brought into or through the United States under such conditions as he or she may prescribe, when he or she determines in the specific case that such action will not endanger the livestock or poultry of the United States.

(b) Except for swine prohibited entry by section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), the provisions in this part relating to swine shall not apply to healthy swine in transit through the United States, if they are not known to be infected with or exposed, within 60 days preceding the date of export from the region of origin, to communicable diseases of swine: and, if an import permit[4] has been obtained under § 93.504 of this chapter and all conditions therein are observed; and if the following conditions are met:

(1)(i) The swine are maintained under continuous confinement in transit through the United States aboard an aircraft, ocean vessel, or other means of conveyance; or

(ii) The swine are unloaded, in the course of such transit, into a swine holding facility that is provided by the carrier or its agent and that has been approved in advance by the Administrator in accordance with paragraph (c) of this section as adequate to prevent the spread within the United States of any livestock disease, and the swine are maintained there under continuous confinement until loaded aboard a means of conveyance for transportation from the United States and are maintained under continuous confinement aboard such means of conveyance until it leaves the United States; the import permit will specify any additional conditions necessary to assure that the transit of the swine through the United States can be made without endangering the livestock or poultry of the United States, and that Department inspectors may inspect the swine on board such means of conveyance or in such holding facility as provided in section 5 of the Act of July 2, 1962 (21 U.S.C. 134d) to ascertain whether the requirements of this paragraph are met, and dispose of them in accordance with section 2 of the Act of July 2, 1962 (21 U.S.C. 134a) if such conditions are not met; and

(2) The carrier or its agent executes and furnishes to the collector of U.S. Customs at the first port of arrival a declaration stating that the swine will be retained aboard such means of conveyance or in an approved holding facility during transshipment as required by paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(c) Provisions for the approval of facilities required in this paragraph are:

(1) They must be sufficiently isolated to prevent direct or indirect contact with all other animals and birds while in the United States;

(2) They must be so constructed that they provide adequate protection against environmental conditions and can be adequately cleaned, washed and disinfected;

(3) They must provide for disposal of swine carcasses, manure, bedding, waste and any related shipping materials in a manner that will prevent dissemination of disease;

(4) They must have provisions for adequate sources of feed and water and for attendants for the care and feeding of swine in the facility;

(5) They must comply with additional requirements as may be imposed by the

[2] See footnote 1 in § 93.500.

[3] Importations of certain animals from various countries are absolutely prohibited under part 94 because of specified diseases.

[4] Such permit may be obtained from the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

Administrator if deemed applicable for a particular shipment; and

(6) They must also comply with all applicable local, State and Federal requirements for environmental quality and with the provisions of the Animal Welfare Regulations in chapter I of this title, as applicable.

§ 93.502 Inspection of certain aircraft and other means of conveyance and shipping containers thereon; unloading, cleaning, and disinfection requirements.

(a) *Inspection.* All aircraft and other means of conveyance (including shipping containers thereon) moving into the United States from any foreign country are subject to inspection without a warrant by properly identified and designated APHIS inspectors to determine whether they are carrying any animal, carcass, product or article regulated or subject to disposal under any law or regulation administered by the Secretary of Agriculture for prevention of the introduction or dissemination of any communicable animal disease (21 U.S.C. 134d).

(b) *Unloading requirements.* Whenever, in the course of any such inspection at any port in the United States, the APHIS inspector has reason to believe that the means of conveyance or container is contaminated with material of animal (including poultry) origin, such as, but not limited to, meat, organs, glands, extracts, secretions, fat, bones, blood, lymph, urine, or manure, so as to present a danger of the spread of any communicable animal disease, the inspector may require the unloading of the means of conveyance and the emptying of the container if he or she deems it necessary to enable him or her to determine whether the means of conveyance or container is in fact so contaminated. The principal operator of the means of conveyance and his or her agent in charge of the means of conveyance must comply with any such requirement under the immediate supervision of, and in the time and manner prescribed by, the inspector.

(c) *Cleaning and disinfection.* Whenever, upon inspection under this section, an inspector determines that a means of conveyance or shipping container is contaminated with material of animal origin so as to present a danger of the spread of any communicable animal disease, he or she shall notify the principal operator of the means of conveyance or his or her agent in charge, of such determination and the requirements under this section. The person so notified must cause the cleaning and disinfection of such means of conveyance and container under the immediate supervision of, and in the time and manner prescribed by, the inspector.

§ 93.503 Ports designated for the importation of swine.

(a) *Air and ocean ports.* The following ports have APHIS inspection and quarantine facilities necessary for quarantine stations and all swine must be entered into the United States only through these stations, except as otherwise provided in this section: Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York.

(b) *Canadian border ports.* The following land border ports are designated as having the necessary inspection facilities for the entry of swine from Canada: Eastport, Idaho; Houlton and Jackman, Maine; Detroit, Port Huron, and Sault Ste. Marie, Michigan; Baudette, Minnesota; Opheim, Raymond, and Sweetgrass, Montana; Alexandria Bay, Buffalo, and Champlain, New York; Dunseith, Pembina, and Portal, North Dakota; Derby Line and Highgate Springs, Vermont; Blaine, Lynden, Oroville, and Sumas, Washington.

(c) *Mexican border ports.* The following land border ports are designated as having the necessary inspection facilities for the entry of swine from Mexico: Brownsville, Hidalgo, Laredo, Eagle Pass, Del Rio, Presidio, and El Paso, Texas; Douglas, Naco, Nogales, Sasabe, and San Luis, Arizona; Calexico and San Ysidro, California; and Antelope Wells, and Columbus, New Mexico.

(d) *Special ports.* Charlotte Amalie, St. Thomas, and Christiansted, St. Croix, in the United States Virgin Islands, are hereby designated as quarantine stations for the entry of swine from the British Virgin Islands into the United States Virgin Islands for immediate slaughter.

(e) *Limited ports.* The following ports are designated as having inspection facilities for the entry of swine and swine products such as swine test specimens that do not appear to require restraint and holding inspection facilities: Anchorage and Fairbanks, Alaska; San Diego, California; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; and Seattle, Spokane, and Tacoma, Washington.

(f) *Designation of other ports.* The Secretary of the Treasury has approved the designation as quarantine stations of the ports specified in this section. In special cases, other ports may be designated as quarantine stations under this section by the Administrator, with the concurrence of the Secretary of the Treasury.

§ 93.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) *Application for import permit; reservation required.* (1) To import swine and swine test specimens for diagnostic screening purposes from any part of the world, the importer must first apply for and obtain from APHIS an import permit. Swine imported through land border ports from regions classified as Risk Class RN for foot-and-mouth disease, rinderpest, hog cholera, African swine fever, and swine vesicular disease are exempt from import permit requirements. The application must specify the name and address of the importer; the species, breed, number or quantity of swine or swine test specimens to be imported; the purpose of the importation; individual swine identification that includes a description of the swine, name, age, markings if any, registration number if any, and tattoo or eartag; the region of origin; the name and address of the exporter; the port of embarkation in the foreign country; the mode of transportation, route of travel, and the port of entry in the United States; the proposed date of arrival of the swine or swine test specimens to be imported; and the name of the person to whom the swine or swine test specimens will be delivered and the location of the place in the United States to which delivery will be made from the port of entry. Additional information may be required in the form of certificates concerning specific disease agents to which the swine are susceptible, as well as vaccinations or other precautionary treatments to which the swine or swine test specimens have been subjected. Notice of any such requirements will be given to the applicant in each case.[5]

(2) An application for permit to import swine and/or swine test specimens may be denied because of: Communicable disease conditions in the region of origin, or in a region where the shipment has been or will be held or through which the shipment has been or will be transported; deficiencies in the regulatory programs for the control or eradication of animal diseases and the unavailability of veterinary services in the above mentioned regions; the

[5] 5 See §§ 93.505, 93.506, and 93.515 for additional requirements for the importation of swine.

importer's failure to provide satisfactory evidence concerning the origin, history, and health status of the swine; the lack of satisfactory information necessary to determine that the importation will not be likely to transmit any communicable disease to livestock or poultry of the United States; or any other circumstances that the Administrator believes require such denial to prevent the dissemination of any communicable disease of livestock or poultry into the United States.

(3)(i) The importer or importer's agent must pay or ensure payment of a reservation fee for each lot of swine to be quarantined in a facility maintained by USDA. For swine, the reservation fee shall be 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge.

(ii) At the time the importer or the importer's agent requests a reservation of quarantine space, the importer or importer's agent must pay the reservation fee by check or U.S. money order or ensure payment of the reservation fee by an irrevocable letter of credit from a commercial bank (the effective date on such letter of credit must run to 30 days after the date the swine are scheduled to be released from quarantine); except that anyone who issues a check to the Department for a reservation fee that is returned because of insufficient funds shall be denied any further request for reservation of a quarantine space until the outstanding amount is paid.

(iii) Any reservation fee paid by check or U.S. money order shall be applied against the expenses incurred for services received by the importer or importer's agent in connection with the quarantine for which the reservation was made. Any part of the reservation fee that remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation was made, shall be returned to the individual who paid the reservation fee. If the reservation fee is ensured by a letter of credit, the Department will draw against the letter of credit unless payment for services received by the importer or importer's agent in connection with the quarantine is otherwise made at least 3 days prior to the expiration date of the letter of credit.

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the lot of swine for which the reservation was made: Except that a reservation fee shall not be forfeited if:

(A) Written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility[6] during regular business hours (8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays) no later than 15 days prior to the beginning of the time of importation of the swine as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 15 day period shall not include Saturdays, Sundays, or holidays); or

(B) The Administrator determines that services, other than provided by carriers, necessary for the importation of the swine within the requested period are unavailable because of unforeseen circumstances as determined by the Administrator (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

(v) If the reservation fee was ensured by a letter of credit and the fee is to be forfeited under paragraph (a)(3)(iv) of this section, the Department will draw against the letter of credit unless the reservation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

(vi) When a reservation is canceled in accordance with paragraph (a)(3)(iv)(A) of this section and the provisions of paragraph (a)(3)(iv)(B) of this section do not apply, a $40.00 cancellation fee shall be charged. If a reservation fee was paid, the cancellation fee shall be deducted from any reservation fee returned to the importer or the importer's agent. If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

(b) *Import Permit.* When an import permit is issued, the original and two copies will be sent to the importer. It shall be the responsibility of the importer to forward the original permit and one copy to the shipper in the country of origin, and it shall also be the responsibility of the importer to ensure that the shipper presents the copy of the import permit to the carrier and makes proper arrangements for the original permit to accompany the shipment to the specified U.S. port of entry for presentation to the collector of customs. All swine and all swine test specimens for diagnostic screening purposes for which an import permit has been issued for importation into the United States will be received at the specified port of entry within the time prescribed in the import permit. That time shall not exceed 14 days from the first day that the permit is effective for all permits relevant to the shipment or shipments. All swine and swine test specimens for which an import permit is required by this subpart will not be eligible for entry into the United States if an import permit has not been issued; if the swine or swine test specimens are unaccompanied by such an import permit; if shipment is from any port other than the one designated in the import permit; if arrival in the United States is at any port other than the one designated in the import permit; if the swine or swine test specimens imported are different from those described in the import permit; if the swine or swine test specimens are not handled as outlined in the application for the import permit and as specified in the permit issued; or if ruminants or swine other than those covered by the import permits are aboard the transporting carrier.

§ 93.505 Certificate of export and other requirements for swine.

(a) All swine imported or offered for importation from any part of the world, except for swine that are imported for immediate slaughter from regions that are classified as Risk Class RN for all restricted agent(s) of swine, and except as provided in paragraphs (c) and (d) of this section,[7] must be accompanied by a certificate of export signed by an authorized veterinarian and endorsed by the National Veterinary Services of the country of export who certifies that the veterinarian signing and issuing the certificate is authorized to do so and who certifies that:

(1) The swine originate from premises that are not known to have been affected with any communicable diseases of swine during the previous 60 days;

(2) The swine originate from premises that are not known to have been affected with restricted ectoparasites of swine during the last previous days;

(3) During transportation to the port of embarkation there was no direct or indirect exposure to any potential carrier animals from any region affected with restricted agents that affect swine;

(4) While en route to the port of entry, the swine were not trailed or driven

[6] The addresses of USDA quarantine facilities may be found in telephone directories listing the facilities or by contacting the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

[7] See § 93.515 for additional requirements for swine imported from specific risk class regions.

through any Risk Class R3, R4 or RU region for any tick-borne restricted agents; and

(5) While en route to the port of entry, the swine were not trailed, driven, transported, or otherwise moved through any Risk Class R3, R4 or RU region for any restricted insect-transmitted agents during a time of year when the insect vectors were active;

(6) The swine were inspected on the day of embarkation and found to be free of restricted ectoparasites as listed in § 92.2 of this chapter, or were treated with one of the permitted treatments in § 72.13(b) of this chapter within 10 to 14 days of embarkation. If treated, the pesticide, active ingredient, concentration, and date applied must be recorded on the certificate of export; and

(7) The swine were transported to the United States only in means of conveyance or vehicles that were cleaned and disinfected prior to use.

(b) Prior to entry into the United States, the swine must be identified in accordance with § 71.19 of this chapter.

(c) Swine that are from a region classified as RN for all restricted diseases of swine and that are to be transported in-bond through the United States for immediate export, shall be inspected at the border port of entry and, when accompanied by an import permit obtained under § 93.504 and when all conditions therein are observed, shall be allowed entry into the United States and shall be otherwise handled in accordance with § 93.501(b).

(d) Swine originating in the United States and transported directly through a region classified as RN for all restricted diseases of swine, may reenter the United States without foreign health or test certificates when accompanied by copies of the United States export health certificates properly issued and endorsed in accordance with the regulations in part 91 of this chapter: *Provided,* That, to qualify for reentry into the United States, the date, time, port of entry, and signature of the port veterinarian of the foreign country that inspected the swine for entry into the foreign country shall be recorded on the United States health certificate, or a paper containing such information shall be attached to the certificate that accompanies the swine. In all cases, it shall be determined by the veterinary inspector at the United States port of entry that the swine are the identical swine covered by said certificate.

(e) If the swine are unaccompanied by the certificate of export as required by paragraph (a) of this section, or if such swine are found upon inspection at the port of entry to be affected with or to have been exposed to a communicable disease, they shall be refused entry and shall be handled thereafter in accordance with the provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103), or quarantined, or otherwise disposed of as the Administrator may direct.

§ 93.506 Permit, certificate, declaration and other documents for swine.

(a) The export certificates, import permits, declarations, and affidavits required by the regulations in this part must be presented by the importer or his or her agent to the collector of customs at the port of entry, upon arrival of the swine at such port, for the use of the veterinary inspector at the port of entry.

(b) For all swine imported or offered for importation, the importer or his or her agent must first present two copies of a declaration that lists the port of entry, the name and address of the importer, the name and address of the broker, the origin of the swine, the number, breed, species, and purpose of the importation, the name of the person to whom the swine will be delivered, and the street address of the place to which such delivery will be made.

§ 93.507 Inspection at the port of entry.

Inspection shall be made at the port of entry of all swine imported from any part of the world. All swine found to be free from communicable disease and not to have been exposed thereto within 60 days prior to their exportation to the United States shall be admitted subject to the other provisions in this part; all other swine shall be refused entry. Swine refused entry, unless exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, shall be disposed of as the Administrator may direct, in accordance with provisions of section 2 of the Act of July 2, 1962 (21 U.S.C. 134a), or the provisions of section 8 of the Act of August 30, 1890 (21 U.S.C. 103). Such portions of the transporting vessel, and of its cargo, that have been exposed to any such swine or their emanations, must be disinfected in such manner as may be considered necessary by the inspector in charge at the port of entry, to prevent the introduction or spread of livestock or poultry disease, before the cargo is allowed to land.

§ 93.508 Articles accompanying swine.

No litter or manure, fodder or other aliment, nor any equipment such as boxes, buckets, ropes, chains, blankets, or other things used for or about swine governed by the regulations in this part, may be landed from any conveyance except under such restrictions as the inspector in charge at the port of entry shall direct.

§ 93.509 Movement from conveyances to quarantine station.

Platforms and chutes used for handling imported swine must be cleaned and disinfected under APHIS supervision after being so used. The said swine must not be moved over any highways nor allowed to come in contact with other swine, but must be transferred from the conveyance to the quarantine grounds only in boats, cars, or other vehicles approved by the inspector in charge at the port of entry. Such cars, boats, or vehicles must be cleaned and disinfected under APHIS supervision immediately after such use, by the carrier moving the same. The railway cars so used must be either cars reserved for this exclusive use or box cars not otherwise employed in the transportation of animals or their fresh products. When movement of the aforesaid swine upon or across a public highway is unavoidable, it shall under such careful supervision and restrictions as the inspector in charge at the port of entry may direct.

§ 93.510 Swine quarantine facilities.

(a) *Privately operated quarantine facilities.* The importer, or his or her agent, of swine subject to quarantine under the regulations in this part must arrange for acceptable transportation to the privately operated quarantine facility and for the care, feed, and handling of the swine from the time of unloading at the quarantine port to the time of release from quarantine. Such arrangements shall be agreed to in advance by the Administrator. All expenses resulting therefrom or incident thereto shall be the responsibility of the importer; APHIS assumes no responsibility with respect thereto. The quarantine facility must be suitable for the quarantine of such swine and must be approved by the Administrator prior to the issuance of any import permit. The facilities occupied by swine must be kept clean and sanitary. If for any cause the care, feed, or handling of swine, or the sanitation of the facilities, is neglected, in the opinion of the inspector assigned to supervise the quarantine, such services may be furnished by APHIS in the same manner as though arrangements had been made for such services as provided by paragraph (b) of this section, and/or the swine may be disposed of as the Administrator may direct, including sale in accordance with the procedure described in paragraph (b) of this

section. The importer, or his or her agent, must request in writing such inspection and other services as may be required, and shall waive all claim against the United States and APHIS or any employee of APHIS for damages that may arise from such services. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When it is found necessary to extend the usual minimum quarantine period, the importer, or his or her agent, shall be so advised in writing and must pay for such additional quarantine and other services required. Payment for all services received by the importer, or his or her agent, in connection with each separate lot of swine must be made by certified check or U.S. money order prior to release of the swine. If such payment is not made, the swine may be sold in accordance with the procedure described in paragraph (b) of this section, or otherwise disposed of as directed by the Administrator.

(b) *Quarantine facilities maintained by APHIS.* The importer, or his or her agent, of swine subject to quarantine under the regulations in this part must arrange for acceptable transportation to the quarantine facility, and for the care, feed, and handling of the swine from the time they arrive at the quarantine facility, and for the care, feed, and handling of the swine from the time they arrive at the quarantine port to the time of release from quarantine. Such arrangements shall be agreed to in advance by the Administrator. The importer or his or her agent must request in writing such inspection and other services as may be required, and shall waive all claim against the United States and APHIS or any employee of APHIS, for damages that may arise from such services. All expenses resulting therefrom or incident thereto shall be the responsibility of the importer; APHIS assumes no responsibility with respect thereto. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When it is found necessary to extend the usual minimum quarantine period, the importer, or his or her agent, shall be so advised in writing and shall pay for such additional quarantine and other services required. Payment for services received by the importer, or his or her agent, in connection with each separate lot of swine must be made by certified check or U.S. money order prior to release of the swine. If such payment is not made, the swine may be sold in accordance with the procedure described in this paragraph, or otherwise disposed of as directed by the Administrator. When payment is not made and the swine are to be sold to recover payment for services received, the importer, or his or her agent, will be notified by the inspector that if said charges are not immediately paid or satisfactory arrangements made for payment, the swine will be sold at public sale to pay the expense of care, feed, and handling during that period. The sale will be held after the expiration of the quarantine period, at such time and place as may be designated by the General Services Administration of the Federal Government or other designated selling agent. The proceeds of the sale, after deducting the charges for care, feed, and handling of the swine and other expenses, including the expense of the sale, shall be held in a Special Deposit Account in the United States Treasury for 6 months from the date of sale. If not claimed by the importer, or his or her agent, within 6 months from the date of sale, the amount so held shall be transferred from the Special Deposit Account to the General Fund Account in the United States Treasury.

(c) Amounts collected from the importer, or his or her agent, for service rendered shall be deposited so as to be available for defraying the expenses involved in this service.

§ 93.511 Quarantine stations, visiting restricted; sales prohibited.

Visitors shall not be admitted to the quarantine enclosure during any time that swine are in quarantine, except that an importer (or his or her accredited agent or veterinarian) may be admitted to the yards and buildings containing his or her quarantined swine at such intervals as may be deemed necessary, and under such reasonable conditions and restrictions as may be imposed, by the inspector in charge of the quarantine station. On the last day of the quarantine period, owners, officers or registry societies, and others having official business or whose services may be necessary in the removal of the swine may be admitted upon written permission from the said inspector. No exhibition or sale shall be allowed within the quarantine grounds.

§ 93.512 Milk from quarantined swine.

Milk or cream from swine quarantined under the provisions of this part may not be used by any person other than those in charge of such swine, nor be fed to any animals other than those within the same enclosure, without permission of the inspector in charge of the quarantine station and subject to such restrictions as he or she may consider necessary to each instance. No milk or cream may be removed from the quarantine premises except in compliance with all State and local regulations.

§ 93.513 Manure from quarantined swine.

No manure may be removed from the quarantine premises until the release of the swine producing the manure.

§ 93.514 Appearance of disease among swine in quarantine.

(a) If any restricted agent or other communicable disease appears among swine during the pre-embarkation or post-importation quarantine period, special precautions shall be taken to prevent spread of the infection to other animals in the quarantine station or to those outside the grounds. Affected swine in post-importation quarantine shall be disposed of as the Administrator may direct, depending upon the nature of the disease.

(b) During the post-importation quarantine period, the Administrator may require additional testing of the test positive animal(s) and/or test negative animals to determine if the animals will be eligible for importation into the United States.

§ 93.515 Requirements for importation of live swine from various risk class regions.

Swine may be imported from any regions of the world only if they meet the requirements of this section, and all other applicable requirements of this part.[8]

(a) *Regions classified as Risk Class RN for all restricted agents affecting swine.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class RN for all restricted agents of swine must certify that the swine to be imported have only been on premises located in regions classified as Risk Class RN for the specific restricted agent, and that they meet all other requirements of this part.

(b) *B. suis.* Swine imported for immediate slaughter from regions classified as Risk Class R1 or R2 for *B. Suis,* or from regions classified as R3 if from herds that would meet the criteria for validated brucellosis-free herds under § 78.1 of this chapter, are exempt from *B. suis* testing and quarantine requirements. Such swine must be consigned from the port of entry to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. Such swine must be moved from the port of entry in conveyances sealed with seals of the United States Government, applied and removed by an APHIS representative, or

[8] 8 See §§ 93.504, 03.505, and 93.506.

an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as Risk Class R1 for B. suis.* In addition to the export certificate requirements of § 93.505, the certificate of export for live non-neutered swine over 6 months of age from regions that are classified as Risk Class R1 for *B. suis* must certify that the swine to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for *B. suis;* and

(ii) Have not been vaccinated with any live brucella vaccine.

(2) *Regions classified as Risk Class R2 or (for swine from validated swine brucellosis-free herds) regions classified as Risk Class R3 for B. suis.*

(i) In addition to the export certificate requirements of § 93.505, the certificate of export for live non-neutered swine over 6 months of age from regions that are classified as Risk Class R2, or from regions classified as R3 for *B. suis* if from a validated brucellosis-free herd,[9] must certify that the swine to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1, or R2, or (if the swine are from validated brucellosis-free herds in Risk Class R3 regions) regions that are classified as Risk Class R3 for B. suis;

(B) Have not been vaccinated with any live brucellosis vaccine; and

(C) Had a negative result to an approved test for brucellosis no less than 30 days nor more than 60 days prior to export; and

(ii) The swine must be detained at the port of entry or animal import center until tested with negative results under the supervision of the port veterinarian for *B. suis* with negative results.

(3) *Regions classified as Risk Class R3 (if the swine are not from validated-free swine brucellosis herds), R4, and RU for B. suis.* Herds in regions classified as Risk Class R3 for *B. suis* that do not meet the criteria set forth in § 78.1 of this chapter for a brucellosis validated-free herd, and herds from regions classified as Risk Class R4 or RU must undergo a pre-embarkation complete herd test of all test eligible animals. If no test-positive animals are found the animals may then be imported according to the requirements in paragraph (b)(2) of this section. If test-positive animals are found, the animals are not eligible for export until the herd has completed a herd cleanup plan as stated in part 78 of this chapter. After the herd has completed a herd cleanup plan, the animals may be imported under paragraph (b)(2) of this section.

(c) *Pseudorabies virus.* Swine imported for immediate slaughter from any region of the world are exempt from pseudorabies virus testing and quarantine requirements. Such swine must be consigned from the port of entry to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. Such swine must be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as Risk Class R1 for pseudorabies virus.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R1 for pseudorabies virus must certify that the swine to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for pseudorabies virus; and

(ii) Have not been vaccinated with any pseudorabies vaccine.

(2) *Regions classified as Risk Class R2 and (if swine are from qualified pseudorabies-negative herds) regions classified as Risk Class R3 for pseudorabies virus.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions classified as Risk Class R2, and for live swine from qualified pseudorabies-negative herds[10] from regions classified as R3 for pseudorabies virus, must certify that the swine to be imported:

(i) Were born and resided only in regions classified as Risk Class RN, R1 or R2 for pseudorabies virus, or (if the swine are from qualified pseudorabies-negative herds in Risk Class R3 regions) regions that are classified as Risk Class R3;

(ii) Have not been vaccinated with any live pseudorabies vaccine; and

(iii) Have had a negative result to an approved test for pseudorabies within 30 days prior to the date of exportation.

(3) *Regions classified as Risk Class R3 (for herds that do not qualify as pseudorabies-negative herds), R4 or RU for pseudorabies virus.*

(i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine over 6 months of age from herds that do not qualify as pseudorabies-negative herds, from regions that are classified as Risk Class R3, or for live swine from any herd in regions classified as risk class R4, or RU for pseudorabies virus, must certify that the swine to be imported:

(A) Have not been vaccinated with any pseudorabies vaccine, other than an approved gene-altered vaccine as listed in part 85 of this chapter. If the swine are vaccinated, the date of vaccination and the type of vaccine used must be recorded on the certificate of export;

(B) Have had a negative result to an approved test for pseudorabies within 30 days before exportation; and

(C) Have undergone a 30-day pre-embarkation quarantine.

(ii) The swine must undergo a 15-day minimum post-importation quarantine in a facility designated and approved by the Administrator.

(iii) During the post-importation quarantine, the swine must be tested with negative results using an approved test. This test must be administered a minimum of 30 days after the test administered in the region of origin.

(d) *Restricted ectoparasites*—(1) *Regions classified as Risk Class R1 and R2 for restricted ectoparasites.* (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R1 or R2 for restricted ectoparasites must certify that the swine to be imported resided for the previous 60 days only in regions classified as Risk Class RN, R1, or R2 for restricted ectoparasites.

(ii) All imported swine will be inspected at the port of entry for any ectoparasites, and given a precautionary treatment. If found to be infested with any ectoparasites, the swine will be refused entry until treated with one of the permitted treatments listed in § 72.13(b) of this chapter, and retreated 10 to 14 days after the initial treatment.

(2) *Regions classified as Risk Class R3, R4, or RU for restricted ectoparasites.* (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions classified as Risk Class R3, R4 or RU for restricted ectoparasites must certify that the swine to be imported:

(A) Were treated for ectoparasites with an approved treatment 10 to 14 days prior to export. If quarantine in a pre-embarkation facility is required, the swine were treated immediately prior to entering a pre-embarkation facility; and

(B) Were inspected while at the pre-embarkation facility and found to be free of any ectoparasites.

(ii) The imported swine will be inspected at the port of entry for any ectoparasites, and given a precautionary

[9] To be considered as validated brucellosis-free, a herd must meet the standards set forth in § 78.1 of this chapter.

[10] To be considered as qualified pseudorabies-negative, a herd must meet the standards set forth in § 85.1 of this chapter.

treatment. If found to be infested with any ectoparasites, the swine will be refused entry until treated with one of the permitted treatments listed in § 72.13(b) of this chapter, then retreated 10 to 14 days after the initial treatment.

(e) *Foot and mouth disease (FMD), rinderpest (RP), African swine fever (ASF), hog cholera (classical swine fever) (HC), and swine vesicular disease (SVD).* Swine imported for immediate slaughter that are born and raised in regions classified as Risk Class R1 or R2 for FMD, RP, ASF, HC and/or SVD are exempt from the test and quarantine requirements in this paragraph. The swine must be consigned from the port of entry to a recognized slaughtering establishment and there slaughtered within 2 weeks from the date of entry. The swine must be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1) *Regions classified as R1 for FMD, RP, ASF, HC, and/or SVD.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions classified as Risk Class R1 for FMD, RP, ASF, HC, and/or SVD must certify that the swine to be imported:

(i) Were born and resided only in regions classified as Risk Class RN or R1 for FMD, RP, ASF, HC, and SVD;

(ii) Have not been vaccinated for FMD, RP, ASF, HC, and/or SVD; and

(iii) Have had a negative result to an approved serological test for FMD, RP, ASF, HC, and/or SVD within 30 days prior to exportation.

(2) *Regions classified as Risk Class R2 for FMD, RP, ASF, HC, and/or SVD.*

(i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions classified as Risk Class R2 for FMD, RP, ASF, HC, and/or SVD must certify that the swine to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1 or R2 for FMD, RP, ASF, HC, and/or SVD;

(B) Have not been vaccinated for FMD, RP, ASF, HC, or SVD;

(C) Have undergone a 30-day pre-embarkation quarantine. For swine from regions classified as R2 for African swine fever, the pre-embarkation quarantine must be conducted in a vector-proof facility approved by the Administrator; and

(D) Have had a negative result to an approved serological test for FMD, RP, ASF, HC, and/or SVD within 30 days prior to exportation.

(ii) The imported swine must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) The swine must have a negative result to an approved serological test for FMD, RP, ASF, HC, and/or SVD during the post-importation quarantine period.

(3) *Regions classified as Risk Class R3 for FMD, RP, ASF, HC, and/or SVD.*

(i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions classified as Risk Class R3 for FMD, RP, HC, and/or SVD must certify that the swine to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1, R2 or R3 for FMD, RP, ASF, HC, and/or SVD;

(B) Have not been vaccinated for FMD, RP, ASF, HC, or SVD;

(C) Have not been on any premises affected with FMD, RP, ASF, HC, or SVD virus during the 12 months prior to export;

(D) Have not been on any premises located within 25 miles (40 km) of any premises affected with R3 for FMD, RP, ASF, HC, and/or SVD virus in the 90 days prior to export;

(E) for at least 60 days prior to export, have undergone pre-embarkation quarantine from all animals not part of the group to be imported, under USDA supervision in a facility approved by the USDA according to § 93.517; and

(F) During pre-embarkation quarantine, have had negative results to two tests conducted no sooner than 15 days apart, for R3 for FMD, RP, ASF, HC, and/or SVD, using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(ii) The imported swine must be quarantined at the Harry S Truman Animal Import Center for at least 60 days without sentinel animals, during which time the swine must be re-tested at least once with negative results for FMD, RP, ASF, HC, and/or SVD, using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(4) *Regions classified as R4 or RU for FMD, RP, ASF, HC, and/or SVD.*

(i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R4 or RU for FMD, RP, ASF, HC, and/or SVD must certify that the swine to be imported:

(A) Have not been vaccinated for FMD, RP, ASF, HC, and/or SVD;

(B) Have not been on any premises affected with FMD, RP, ASF, HC, or SVD during the 12 months prior to export;

(C) Have not been on a premises located with 25 miles (40 km) of any premises affected with FMD, RP, ASF, HC, or SVD in the 90 days prior to export;

(D) Have undergone pre-embarkation quarantine, for at least 60 days, from all animals not part of the group to be imported, under USDA supervision in a facility approved by APHIS under § 93.517; and

(E) During pre-embarkation quarantine, have negative results to two tests conducted no sooner than 15 days apart for FMD, RP, ASF, HC, and/or SVD, using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(ii) The imported swine must be quarantined with sentinel animals at HSTAIC for at least 90 days, during which time the swine must be re-tested for FMD, RP, ASF, HC, and/or SVD at least twice with negative results using an approved serological test. If indicated, oesophageal-pharyngeal fluid samples will be taken for further testing.

(5) *Wild swine from any Risk Class R3, R4, or RU regions for foot-and-mouth disease, rinderpest, hog cholera, swine vesicular disease, or African swine fever.* (i) Wild swine originating in the regions that are classified as Risk Class R3, R4, or RU for foot-and-mouth disease, hog cholera, rinderpest, African swine fever, and/or swine vesicular disease may be carriers of such restricted agents, even though the swine do not show clinical evidence of the diseases. In view of these circumstances and in order to prevent the introduction and dissemination of communicable diseases affecting livestock and protect the livestock of the United States, import permits for the importation of wild swine will be issued only if such swine are intended for exhibition purposes in a zoological park previously approved by the Administrator, in accordance with the standards specified in paragraph (e)(5)(ii) of this section, and if the operator of such approved zoological park and the importer, if such operator and importer are different parties, has or have entered into the agreement set forth in paragraph (e)(5)(iv) of this section with APHIS for the maintenance and handling of such wild swine in the manner specified in the agreement to prevent the introduction and dissemination of communicable disease. The New York port of entry is the only port at which facilities are available that are adequate for the quarantining of wild swine. Accordingly, permits issued for the

importation of such wild swine will require that the swine be imported through the port of New York and be quarantined at that port. The Administrator may cancel such a permit when he or she finds that any provision of this section or any other provision of the regulations has not been or is not being complied with.

(ii) Approval of a zoological park for the receipt and maintenance of imported wild swine as described in this paragraph (e)(5)(ii) shall be on the basis of an inspection, by an authorized representative of the Department, of the physical facilities of the establishment and its methods of operation. Standards for acceptable physical facilities shall include satisfactory pens, cages, or enclosures in which the swine can be maintained so as not to be in contact with the general public and free from contact with domestic livestock; natural or established drainage from the zoological park that will avoid contamination of land areas where domestic livestock are kept or with which domestic livestock may otherwise come in contact; provision for the disposition of manure, other wastes, and dead swine within the zoological park; and other reasonable facilities considered necessary to prevent the dissemination of disease agents from the zoological park. The operator of the zoological park must have available the services of a full-time or part-time veterinarian, or a veterinarian on a retainer basis, who must make periodic examinations of all swine maintained at the zoological park for evidence of disease; who must make a post-mortem examination of each animal that dies; and who must make a prompt report of suspected cases of contagious or communicable disease agents to appropriate State or Federal livestock sanitary officials.

(iii) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date the swine enters the park. If an APHIS veterinarian determines that the swine shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that the swine does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the swine's manure and other wastes may safely be disposed of outside the zoological park.

(iv) Prior to the issuance of an import permit under this section, the operator of the approved zoological park to which the wild swine are to be consigned, and the importer of the wild swine, if such operator and importer are different parties, must execute an agreement covering wild each swine or group of wild swine for which the import permit is requested. The agreement shall be in the following form:

Agreement for the Importation, Quarantine and Exhibition of Certain Wild Ruminants and Wild Swine

_____, operator(s) of the zoological park known as _____ (Name) located at _____ (City and state), and _____ (Importer) hereby request a permit for the importation of _____ (Number and kinds of animals) for exhibition purposes at the said zoological park, said animals originating in a Risk Class R3, R4, or RU region for rinderpest or foot-and-mouth disease, and being subject to restrictions under regulations contained in part 93, title 9, Code of Federal Regulations.

In making this request, it is understood and agreed that:

1. The animals for which an import permit is requested will be held in isolation at a port of embarkation in the region of origin, approved by the Administrator as a port having facilities that are adequate for maintaining wild animals in isolation from all other animals and having veterinary supervision by officials of the country of origin of the animals. Such animals will be held in such isolation for not less than 60 days under the supervision of the veterinary service of the country in which the region of origin is located to determine whether the animals show any clinical evidence of restricted agents or other communicable disease and to assure that the animals will not have been exposed to such a disease within the 60 days prior to their exportation from that region.

2. Shipment will be made directly from such port of embarkation to the port of New York as the port of entry into the United States. If shipment is made by ocean vessel, the animals will not be unloaded in any foreign port en route. If shipment is made by air, the animals will not be unloaded at any port or other place of landing except at a port approved by the Administrator as a port not located in a region classified as R3, R4, or RU for rinderpest or foot-and-mouth disease, or as a port in such a region having facilities and inspection approved by the Administrator as adequate for maintaining wild animals in isolation from all other animals.

3. No ruminants or swine will be aboard the transporting vehicle, vessel or aircraft, except those for which an import permit has been issued.

4. The animals will be quarantined for not less than 30 days in the Department's Animal Import Center in Newburgh, New York.

5. Upon release from quarantine, the animals will be delivered to the zoological park named in this agreement to become the property of the park, and they will not be sold, exchanged or removed from the premises without the prior consent of APHIS.

(Signature of importer) Subscribed and sworn to before me this ____ day of _____, 19 ____.

_____

(Title or designation)

_____

(Name of zoological park) By _____
(Signature of officer of zoological park)

_____

(Title of officer) Subscribed and sworn to before me this ____ day of _____, 19 ____.

_____

(Title or designation)

(f) *Japanese encephalitis virus (JEV) and Getah virus*—(1) *Regions classified as Risk Class R1 for JEV and/or Getah virus.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions classified as Risk Class R1 for JEV and/or Getah virus must certify that the swine to be imported:

(i) Have resided for at least 60 days immediately prior to export only on premises located in regions classified as Risk Class RN or R1 for JEV and/or Getah virus;

(ii) Have not been vaccinated for JEV or Getah virus; and

(iii) Have had a negative result to an approved serological test for Japanese encephalitis and/or Getah within 30 days prior to export.

(2) *Regions classified as Risk Class R2 for JEV and/or Getah virus.* (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R2 for JEV and/or Getah virus must certify that the swine to be imported:

(A) Have resided for at least 60 days immediately prior to their pre-embarkation quarantine only on premises located in regions classified as Risk Class RN, R1, or R2 for JEV and/or Getah virus;

(B) Have not been vaccinated for JEV or Getah virus;

(C) Have undergone a 30 day pre-embarkation quarantine. The pre-embarkation quarantine must be in a vector-proof facility approved by the Administrator and the National Veterinary Services of the country of export if during a time of year when the insect vectors are active; and

(D) Have had a negative result to an approved serological test for JEV and/or Getah during the pre-embarkation quarantine.

(ii) The imported swine must undergo a minimum 15 day post-importation quarantine in a facility designated and approved by the Administrator.

(3) *Regions classified as Risk Class R3, R4, or RU for JEV and/or Getah virus.*

(i) In addition to the export certificate requirements of § 93.505, the certificate

of export for live swine from regions that are classified as Risk Class R3, R4, or RU for JEV and/or Getah virus must certify that the swine to be imported:

(A) Have undergone pre-embarkation quarantine for at least 60 days immediately prior to export, in a vector-proof facility approved by the Administrator if during a time of year when the insect vectors are active;

(B) Have not been vaccinated for Japanese encephalitis or Getah virus; and

(C) Have been tested twice, within 60 days prior to export and at least 30 days apart, with negative results using a serological test approved by the Administrator for JEV and/or Getah virus.

(ii) The imported swine must be quarantined at a post-importation quarantine facility designated and approved by the Administrator for at least 15 days if imported during a season of the year when vectors are not active or at least 60 days if imported during a season of the year when vectors are active in the United States.

(iii) During the post-importation quarantine period, the swine must be tested with negative results for JEV and/or Getah virus, using approved serological tests.

(g)*Mycobacterium bovis (M. bovis).*Any swine responding to an approved test for*M. bovis* shall be refused entry into the United States. Non-responders may be eligible for entry based on their status as determined by part 77 of this chapter. Swine imported for immediate slaughter are exempt from the*M. bovis* testing and quarantine requirements. Such swine must be consigned from the port of entry to a recognized slaughtering establishment and there slaughtered within 2 weeks from the date of entry. Such swine must be moved from the port of entry in conveyances closed with official seals of the United States Government applied and removed by an APHIS representative, or an individual authorized for this purpose by an APHIS representative.

(1)*Regions classified as Risk Class R1 for M. bovis.*In addition to the export certificate requirements of § 93.505, the certificate of export for live swine over 6 months of age from regions that are classified as Risk Class R1 for*M. bovis,*must certify that the swine to be imported were born and resided only in foreign regions that are classified as Risk Class RN or R1 for*M. bovis*;

(2)*Regions classified as Risk Class R2 for M. bovis.*(i) In addition to the export certificate requirements of § 93.505, the certificate of export for such swine must certify that the swine to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1, or R2 for*M. bovis*; and

(B) That all boars and intact females have had a negative result to an approved test for*M. bovis*within 60 days prior to export.

(ii) All boars and intact females must be detained at the port of entry or post-importation quarantine a minimum of 72 hours until tested for *M. bovis* with negative results.

(3)*Regions classified as Risk Class R3 for M. Bovis.*(i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as R3 for*M. bovis*must certify that the swine to be imported:

(A) Have never been on any premises while animals affected with*M. bovis*have been present on those same premises;

(B) Were born and resided only in regions classified as Risk Class RN, R1, R2, or R3 for *M. bovis*;

(C) Have had a negative result to an approved test for *M. bovis* no less than 60 days nor more than 90 days prior to export; and

(D) For boars and intact females, the herd of origin has had a negative result to an approved test for *M. bovis* no less than 4 months nor more than 12 months prior to the date of export.

(ii) All boars and intact females must be detained at the port of entry or post-importation quarantine facility a minimum of 72 hours until tested with negative results for *M. bovis*.

(4) *Regions classified as R4 and RU for M. bovis.* (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine over 6 months of age from regions that are classified as Risk Class R4 or RU for *M. bovis* must certify that the swine to be imported:

(A) Have never been on any premises while animals affected with *M. bovis* have been present on those same premises;

(B) Have had a negative result to an approved test for *M. bovis* 60 to 90 days prior to export;

(C) Originate from herds in which the entire herd has had a negative result to an approved test for *M. bovis* no less than 4 months nor more than 12 months prior to the date of exportation; and

(D) For boars and intact females, have undergone at least 60 days of pre-embarkation quarantine prior to export.

(ii) Boars and intact females must be quarantined after being imported for a minimum of 30 days at a post-importation quarantine facility designated and approved by the Administrator, until tested for *M. bovis* with negative results.

(h) *Teschen disease virus*—(1) *Regions classified as Risk Class R1 or R2 for Teschen disease virus*. In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from foreign regions that are classified as Risk Class R1 or R2 for Teschen disease virus must certify that the swine to be imported:

(i) Were born and resided only in regions classified as Risk Class RN, R1 or R2 for Teschen disease virus;

(ii) Have not been vaccinated with any Teschen disease vaccine; and

(iii) Had a negative result to an approved test for Teschen disease within 30 days of the date of exportation.

(2) *Regions classified as Risk Class R3 for Teschen disease virus*. (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R3 for Teschen disease virus must certify that the swine to be imported:

(A) Were born and resided only in regions classified as Risk Class RN, R1, R2 or R3 for Teschen disease virus;

(B) Have not been vaccinated with any Teschen disease vaccine; and

(C) Meet one of the following requirements:

(*1*) Have had a negative result with an approved test for Teschen disease 30 to 60 days before exportation;

(*2*) Originated from herds in which the entire herd over 6 months of age, has had negative results to an approved test for Teschen disease within 12 months prior to the date of exportation; or

(*3*) Were quarantined at least 30 days prior to export.

(ii) Swine must be quarantined after being imported for at least 15 days at a post-importation quarantine station approved by the Administrator.

(iii) During the post-importation quarantine, the imported swine must have negative results to an approved serological test for Teschen disease virus.

(3) *Regions classified as Risk Class R4 and RU for Teschen disease virus*. (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified Risk Class R4 or RU for Teschen disease virus must certify that the swine to be imported:

(A) Have not been vaccinated with any Teschen disease vaccine;

(B) Originate from herds in which the entire herd over 6 months of age has had a negative result to an approved test for Teschen disease within 60 to 180 days prior to the date of exportation;

(C) Were quarantined for at least 60 days prior to export; and

(D) During pre-embarkation quarantine period, have had negative results to an approved test for Teschen disease 30 to 60 days prior to the date of export.

(ii) The swine must be quarantined after being imported for at least 30 days at a post-importation quarantine facility.

(iii) During the post-importation quarantine the imported swine must have two negative results not less than 30 days apart to an approved test for Teschen disease.

(i) *African (Salivarian or Tsetse transmitted) Trypanosomes*—(1) *Regions classified as Risk Class R1 and R2 for African trypanosomes.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R1 and R2 for African trypanosomes must certify that the swine to be imported:

(i) Have resided only on premises located in regions classified as Risk Class RN, R1 and R2 for trypanosomes and tsetse flies (*Glossina* spp.) for their entire life;

(ii) Have not been vaccinated for trypanosomes; and

(iii) Have had a negative result to an approved serological test for African trypanosomes within 30 days prior to entry into the United States.

(2) *Regions classified as Risk Class R3, R4, and RU for African Trypanosomes.* (i) In addition to the export certificate requirements of § 93.505, the certificate of export for swine from regions classified as Risk Class R3, R4, and RU for African trypanosomes and Tsetse flies (*Glossina* spp.) must certify that the swine to be imported:

(A) Originated from premises that have not had trypanosomiasis diagnosed during the previous 24 months;

(B) Were quarantined and isolated at least 60 days prior to export in a vector-proof facility approved by the administrator;

(C) Have not been vaccinated for trypanosomes; and

(D) During the pre-embarkation quarantine period, had negative results to an approved serological test for trypanosomes.

(ii) The imported swine must be quarantined for at least 30 days at a post-importation quarantine facility designated and approved by the Administrator.

(iii) During the post-embarkation quarantine period the swine will be retested at least once for trypanosomes using approved serological tests.

(j) *Vesicular Stomatitis virus (VSV)*—(1) *Regions classified as Risk Class R1 for VSV.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine from regions that are classified as Risk Class R1 for VSV must certify that the swine to be imported:

(i) Have resided for at least 60 days prior to export only on premises located in Risk Class RN or R1 regions for VSV; and

(ii) Have not been vaccinated for VSV.

(2) *Regions classified as Risk Class R2 for VSV.* In addition to the export certificate requirements of § 93.505, the certificate of export for live swine imported from regions that are classified as Risk Class R2 for VSV must certify that the swine to be imported:

(i) Have resided for at least 30 days prior to export only on premises located in Risk Class RN, R1, or R2 regions for VSV;

(ii) Have not been vaccinated with any live attenuated vaccines for VSV; and

(iii) Have not been vaccinated with inactivated vaccines for VSV within 60 days prior to export.

(2) *Regions classified as Risk Class R3, R4, and RU regions for VSV.* (i) In addition to the export certificate requirements of § 93.505, the certificate of export for live swine imported from regions that are classified as Risk Class R3, R4, and/or RU for VSV must certify that the swine to be imported:

(A) Have not been vaccinated with any live attenuated vaccines for VSV;

(B) Have not been vaccinated with inactivated vaccines for VSV within 60 days prior to export;

(C) Have not been located on any premises where VSV has occurred during the 60 days prior to export; and

(D) If exported during a season of the year when insect vectors were active:

(*1*) Were quarantined and isolated from all animals not part of the shipment for at least 30 days prior to export, in a vector-proof facility approved by the Administrator; and

(*2*) During the pre-embarkation quarantine period, had negative results to an approved serological test for VSV within 14 days prior to export.

(ii) If imported during a season of the year when insect vectors are active within the United States, the imported swine:

(A) Must be quarantined for at least 15 days at a post-importation quarantine facility designated and approved by the Administrator; and

(B) During the post-importation quarantine period, must have negative results to an approved serological test for VSV.

§ 93.516 Importation of swine through the Harry S Truman Animal Import Center (HSTAIC).

(a) *Exclusive right to use HSTAIC.* The Animal and Plant Health Inspection Service will enter into a cooperative-service agreement with only one importer for each importation through the Harry S Truman Animal Import Center (HSTAIC). Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list. An importer granted the exclusive right to use HSTAIC may include in his or her allotted number, animals of the same species belonging to other persons interested in importing animals through HSTAIC, except that llamas and alpacas may be included in the same importation. However, APHIS will deal exclusively with the importer in whose name the application for use of HSTAIC was submitted. The Animal and Plant Health Inspection Service will hold this importer solely responsible for all costs (excepting capital expenditures at HSTAIC) incurred during the animal qualification process. The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable. HSTAIC can accommodate a finite number of animals at one time, but the maximum allowed for a particular importation will vary, depending on the size of the species. The Animal and Plant Health Inspection Service will specify this figure in the cooperative-service agreement, reproduced in paragraph (d) of this section.

(b) *Scheduling.* Applications from prospective users of HSTAIC are processed according to the following system:

(1)(i) *All applications for use of HSTAIC.* To qualify to use HSTAIC, an importer must submit a completed application,[11] providing estimates when exact information as required on the application form is unavailable.

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day that HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, and ending either with the day that APHIS receives the signed cooperative-service agreement or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

(2)(i) During the first seven days of December[12], APHIS will hold a lottery, randomly drawing the names of applicants in an order that will determine the order in which they will be offered use of HSTAIC for an importation during the next calendar year. To be included in the annual December lottery, applications must reach the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 of that year.

(ii) One application is required for each importation proposed. Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery.

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b) (1) and (2) of this section), and whose deposits have reached APHIS at least 7 calendar days prior to the date of the lottery, will be drawn during the December lottery. The order in which names appear on the priority list will correspond to that established by the lottery. If the person first offered the right to use HSTAIC does not ensure receipt of the cooperative-service agreement by the Import-Export Animals Staff, Veterinary Services, within 30 days of receiving the cooperative-service agreement, APHIS will void that offer, and make an offer to the applicant next on the priority list. The Animal and Plant Health Inspection Service will limit importations to one per importer for the period encompassing the calendar year for which the lottery is held and the following two calendar years, except when no other lottery participants are prepared to use HSTAIC during the time it would be available in those years. The priority list established during the December lottery will remain in effect during the calendar year following the lottery, and will take precedence over any applications received after October 15th. Applications received after October 15th will be added to the priority list, with precedence established by the order in which the Import-Export Animals Staff, Veterinary Services, receives them.

(5) If the Import-Export Animals Staff, Veterinary Services, does not receive more than one application between October 1st and October 15th for the December lottery, the December lottery for that year will be canceled, and APHIS will grant the exclusive right to use HSTAIC for an importation during the next calendar year in the order applications are received.

(6) The Secretary of Agriculture may grant priority over other applications to an application from an agency of the United States Government, if for an importation potentially of value to the general public, and if received before July 15 of the year preceding the proposed importation.[13] However, an agency of the United States Government must submit its application in accordance with this section, except that, an agency of the United States Government must enter into an interagency agreement with APHIS for a deposit of $32,000 by certified check or money order, payable in U.S. funds. HSTAIC importations by agencies of the United States government will be limited to one per year, except when HSTAIC is available and the Import-Export Animals Staff, Veterinary Services, has received no other applications for its use during that year.

(c) *Responsibilities of the applicant selected.* By certified mail, return receipt requested, APHIS will send a cooperative-service agreement to the applicant being offered the exclusive right to use HSTAIC, as provided in paragraph (d) of this section. The applicant must, within 30 days of receipt, sign and ensure that the Import-Export Animals Staff, Veterinary Services, receives the cooperative-service agreement. The cooperative-service agreement must be accompanied by a certified check or money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. For importations requiring use of a pre-embarkation quarantine facility, physical plans for the facility, including site-specific blueprints and location, must be included when the cooperative-service agreement is returned to the Import-Export Animals Staff, Veterinary Services.

(1) An importer interested in animals ineligible for importation because officials in the exporting country or region will not allow APHIS to provide the services prescribed in the cooperative-service agreement, may, upon notification of this ineligibility

[11] Application forms are available from, and must be submitted to Veterinary Services, Animal and Plant Health Inspection Service, Import/Export Animals, National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

[12] The Animal and Plant Health Inspection Service will publish a notice announcing the exact date in the Federal Register at least 30 days in advance of the December drawing.

[13] If the Secretary grants priority to an application from an agency of the United States Government, the Animal and Plant Health Inspection Service will publish a notice in the Federal Register prior to October 1 of the year preceding the proposed importation.

from APHIS, propose to substitute animals available from another location. If this importer has not returned the signed cooperative-service agreement within the 30 days specified in the cooperative-service agreement, APHIS will return any portion of the importer's deposit that has not been expended. In that case, the applicant next in priority will be offered the exclusive right to use HSTAIC, in accordance with the procedures in this section.

(2) The importer may not abrogate his/her responsibility for costs incurred after the signing of the cooperative-service agreement, regardless of any occurrences that prevent the importation from proceeding as planned.

(3) The importer signing the cooperative-service agreement returned to the APHIS is responsible for paying all costs, excluding capital expenditures at HSTAIC, incurred in qualifying the specified animals for importation through HSTAIC. A partial list of costs for which the importer must assume responsibility includes: expenses for preparing and maintaining HSTAIC in readiness for the importation; expenses for sentinel animals in the United States, when required, and for tested animals prevented, for any reason, from moving from HSTAIC elsewhere within the United States; laboratory tests; medical treatment; official travel by APHIS personnel, including per diem expenses in the country from which animals are being exported, when required; courier services to transport test samples to the Foreign Animal Disease Diagnostic Laboratory, when required; salaries of HSTAIC personnel; all supplies for animals care, maintenance, and testing during the quarantine and in the post-quarantine cleaning and disinfection of HSTAIC; utilities and overhead, including support staff, during the quarantine and post-quarantine cleanup.

(4) Capital expenditures at HSTAIC constitute the only costs for which the importer will not be held responsible.

(5) For costs incurred during any stage of the importation through HSTAIC—that is, costs not calculated into the amount collected from the importer in accordance with the cooperative-service agreement—APHIS will bill the importer at a later date. Payment will be due upon receipt of the bill.

(6) The Animal and Plant Health Inspection Service will return to the importer any part of the money remitted with the cooperative-service agreement set forth in paragraph (d) of this section that is not used to cover the non-capital costs of the importation through HSTAIC.

(d) *Cooperative-Service Agreement.* Each importer being granted the right to use HSTAIC must sign, and comply with, the cooperative-service agreement with APHIS. A sample cooperative-service agreement for importers other than agencies of the United States government is reproduced in this paragraph. (Agencies of the United States government being granted the right to use HSTAIC must enter into an interagency agreement with APHIS.) The amount of money the importer must advance, left blank in the following sample, will depend on figures unique to a particular importation. This amount will be specified in the cooperative-service agreement the importer receives.

Cooperative-Services Agreement Between (Name of Importer) and the United States Department of Agriculture, Animal and Plant Health Inspection Service

The importer, _____, wishes to qualify animals for importation into the United States. The United States Department of Agriculture, Animal and Plant Health Inspection Service, administers the Harry S Truman Animal Import Center (HSTAIC), a facility through which the importer may import animals into the United States.

To effect this importation, both parties agree to the following terms:

The importer agrees:

1. To have this cooperative-service agreement in the office of the Animal and Plant Health Inspection Service's Import-Export Animals Staff, Veterinary Services, within 30 days of the date of receipt, evidenced by the postal return-receipt.

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

3. To limit to _____ the number of animals, species _____ transported to HSTAIC for an importation scheduled to begin on or about _____ and to end with the animals' release from HSTAIC, scheduled for _____.

4. To assume liability for all costs (except capital expenditures at HSTAIC) attributable to preparing and maintaining HSTAIC in readiness for the importation, and to qualifying animals for and through quarantine in the pre-embarkation quarantine facility (PEQF), when quarantine in a PEQF is required, and in HSTAIC for importation into the United States. (A partial list of these costs would include expenses for sentinel animals in the United States and for tested animals prevented, for any reason, from moving from HSTAIC elsewhere within the United States; laboratory tests; medical treatment; official travel by Animal and Plant Health Inspection Service personnel, including per diem expenses in the country from which the animals are being exported; courier services to transport test samples to the Foreign Animal Disease Diagnostic Laboratory; salaries of HSTAIC personnel; all supplies for animal care, maintenance, and testing during the quarantine and in the post-quarantine cleaning and disinfection of HSTAIC; utilities and overhead, including support staff, during the quarantine and post-quarantine cleanup.)

5. To obtain from foreign government officials authorizations granting Animal and Plant Health Inspection Service personnel free access to the PEQF, when quarantine in a PEQF is required, and permits for export.

6. To secure from animal carriers permission for Animal and Plant Health Inspection Service personnel to accompany the animals to the PEQF, when quarantine in a PEQF is required, and from the PEQF to HSTAIC.

7. To maintain and operate the PEQF, when quarantine in a PEQF is required, in compliance with 9 CFR 92.431 of the Code of Federal Regulations.

8. To accept as final the findings of the Administrator, Animal and Plant Health Inspection Service, on the animals' eligibility to enter the PEQF, when quarantine in a PEQF is required, to enter HSTAIC, and to be released from HSTAIC.

9. To follow procedures prescribed by the Animal and Plant Health Inspection Service, appropriate to the disease and pest status of the quarantined animals. (When quarantine in a PEQF is required, the presence in the PEQF of even one animal either exposed to, or infected with, rinderpest, foot-and-mouth disease, hog cholera, African swine fever, swine vesicular disease, or certain other contagious, exotic diseases, automatically disqualifies all animals in the PEQF from entering HSTAIC. The presence in HSTAIC of even one animal either exposed to, or infected with, one of the diseases referred to in this paragraph, automatically disqualifies all animals in HSTAIC from moving anywhere within the United States after the period in quarantine.)

10. To assume responsibility for disposal of quarantined animals that do not qualify to move into or within the United States. (In the case of animals disqualified while quarantined in HSTAIC, the Animal and Plant Health Inspection Service will stipulate the conditions under which the disqualified animals in HSTAIC must be destroyed. The importer must, within 10 days of notification from the Animal and Plant Health Inspection Service, remove from the PEQF or HSTAIC, animals untreatable or treated for, but not cured of, a communicable disease other than foot-and-mouth disease or any of certain other exotic diseases. Animals removed from HSTAIC must be moved out of the United States or be destroyed under conditions stipulated by the Animal and Plant Health Inspection Service.)

11. To assume responsibility for all costs the Animal and Plant Health Inspection Service incurs during this importation, excluding capital expenditures at HSTAIC.

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

The Animal and Plant Health Inspection Service Agrees:

1. To provide the personnel required to perform inspections, laboratory procedures, and examinations, and to provide on-site supervision of the isolation, quarantine, care and handling of animals on premises of origin, in the PEQF when quarantine in a PEQF is required, and in HSTAIC.

2. To inform the importer of any quarantined animals in the PEQF or in HSTAIC that fail to qualify for entry into the United States, and to inform the importer that he/she must assume responsibility for their disposal.

3. To finance capital expenditures at HSTAIC without charging the importer.

4. To account for all money disbursed from the amount remitted, and to provide the importer with a complete written accounting upon termination of this cooperative-service agreement.

5. To refund to the importer any part of the money remitted with this cooperative-service agreement that is not used to cover the non-capital costs of the importation through HSTAIC.

Both parties agree:

1. That this cooperative-service agreement is effective upon signature by both parties.

2. That this cooperative-service agreement will not be signed by the Administrator if the Import-Export Animals Staff, Veterinary Services, Animal and Plant Health Inspection Service, has not received this signed cooperative-service agreement, including the specified remittance for the amount due, by 4:30 p.m. on the thirtieth calendar-day after the date on the United States Postal Service's return receipt, evidencing its receipt by the importer.

3. That this cooperative-service agreement will not be signed by the Administrator if the cooperative-service agreement is not accompanied by the physical plans for the PEQF, including its location and site-specific blueprints (except when quarantine in a PEQF is not required).

4. That this cooperative-service agreement will be voided if the Administrator, Animal and Plant Health Inspection Service, determines that the importer has not completed arrangements with the responsible officials in the exporting country by 4:30 p.m. on the date 42 calendar-days after the importer's signing of this cooperative-service agreement.

5. That, if both parties agree, this cooperative-service agreement may be amended in writing.

6. That either party may terminate this cooperative-service agreement upon giving 30 days written notice to the other party, but premature termination will not relieve the importer of responsibility for costs incurred, as provided in this cooperative-services agreement, nor will it relieve the Animal and Plant Health Inspection Service of responsibility for providing the importer with a complete written accounting of money disbursed from the amounts remitted.

7. That during the performance of this cooperative-service agreement, the importer agrees to be bound by the Equal Employment Opportunity and Nondiscrimination provisions set forth in Exhibit A and the Nonsegregation of Facilities provisions set forth in Exhibit B,[1] which are attached to and made part of this cooperative-service agreement.

8. That no member of, or delegate to, Congress may participate in, or benefit from, this cooperative-service agreement.

_____

Date

_____

Importer

_____

Date

_____

Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture.

§ 93.517 Pre-embarkation quarantine facility; criteria and standards for approval.

Criteria for establishment of a pre-embarkation quarantine facility outside the United States for the purpose of importing swine into the United States that are eligible for importation only through the Harry S Truman Animal Import Center are as follows:

(a) *Establishment.* (1) The Administrator may enter into an agreement with one or more parties for the establishment of such a facility pursuant to the standards in paragraph (b) of this section.

(2) To qualify for designation as a pre-embarkation quarantine facility (PEQF) for a specifically authorized importation, the facility must meet the requirements of paragraph (b) of this section.

(3) All costs associated with the establishment and operation of such a pre-embarkation quarantine facility shall be borne by the owner or operator of such facility.

(4) The Animal and Plant Health Inspection Service requires that the importer submit the physical plans for the PEQF for which he or she is requesting approval. The physical plans must include location of the facility and site-specific blueprints. The importer must send these physical plans, due with the cooperative-service agreement as provided in § 93.526(d), to the Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 4700 River Road Unit 39, Riverdale, MD 20737–1231. The Animal and Plant Health Inspection Service will, after reviewing the importer's physical plans and conducting an on-site inspection, approve a PEQF found to meet the requirements of this section. Approval of a PEQF will expire at the end of the specifically authorized quarantine. Subsequent importers granted use of HSTAIC and proposing to use one of the existing PEQFs must apply for approval as if for a new facility. No more than one PEQF will receive approval for a specific HSTAIC importation. If the PEQF specified in the signed cooperative-service agreement, as provided in § 93.526(d), is not approved by APHIS, the importer may use an alternative PEQF, provided it is approved by APHIS during the 42 days following the date the importer signs the cooperative-service agreement. If a PEQF closes down or loses its ''approved'' status for any reason, APHIS may approve a replacement following the method specified in this paragraph (a)(4).

(5) Permission to place swine in the foreign PEQF shall be given to any person who has received permission to import swine through the Harry S Truman Animal Import Center, unless the Administrator determines that sufficient grounds exist whereby such person may be denied such permission.

(6) Fees charged by the owner or operator for the use of such facility shall be provided in private agreements between the owner or operator of the facility and the owners of the swine proposed for importation. Such fees shall be nondiscriminatory and reasonable as determined by the Administrator.

(7) Approval of any approved PEQF may be withdrawn at any time by the Administrator, upon his or her determination that any requirement of this section is not being met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed actions and will be afforded opportunity to present his or her views thereon, in accord with rules of practice adopted by the Administrator. Upon withdrawal of approval, the operator, upon request, shall be afforded opportunity for a hearing with respect to the merits or validity of such action; but such withdrawal or refusal shall continue in effect unless otherwise ordered by the Administrator. Rules of practice concerning the hearing shall be adopted by the Administrator.

(b) *Standards for approval of pre-embarkation quarantine facilities—*

(1) *Location.* (i) The PEQF must be in an area isolated from ruminants, swine, and poultry. It must be located near the point of embarkation: A dock, if the

[1] Import-Export Animal Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, will send each importer copies of Exhibits A and B along with the cooperative-services agreement.

swine will travel by ocean vessel; an airport, if the swine will travel by plane.

(ii) The swine's route from the PEQF to the point of embarkation must be limited to regions free of ruminants, swine, and poultry.

(iii) The facility must be so situated that there will be no contact between swine held in the facility with any other species of animals.

(iv) The facility must be so situated that it will be free from contact with water and waste effluents from local livestock or poultry. Water and waste effluents from the facility must be disposed of in a manner determined by the Administrator to be adequate to insure no exposure to local livestock or poultry.

(2) *Building.* (i) The exterior of the building must be of durable low-maintenance, waterproof type construction that will withstand repeated cleaning and disinfecting.

(ii) Roofs must be watertight. The styling and configuration of the roof of the swine holding building must provide for optimum air circulation throughout the facility.

(iii) The interior finish of the building must be durable, washable, and of low maintenance type construction. The floor must be concrete with no cracks or crevices.

(iv) Mesh double screens must protect all open areas, so that insects cannot gain access to the swine holding area. If the swine are removed from the double-screened building before export to the HSTAIC, or if the United States Department of Agriculture Veterinarian in Charge of the quarantine operation determines that insects capable of transmitting communicable animal disease agents are entering the swine holding area, APHIS will require implementation of a program of insect vector control. This vector control program will involve treating swine, building interiors, and environs with United States Environmental Protection Agency-registered pesticides. The pesticides must be used in the manner prescribed on the United States Environmental Protection Agency-approved label, and in accordance with the requirements of the government of the country in which the PEQF is located.

(v) Stalls, pens, and runways must be constructed of sufficient height and strength to confine and restrain all swine simultaneously for daily veterinary examinations.

(vi) At least 70-foot-candle lighting must be provided in the inspection area. A minimum light of 30-foot-candle must be available in all other areas of the facility.

(vii) A dipping vat of a concrete pit type with inspection chute, holding pen, dripping pen, and post-drip area similar to USDA Extension Plan 5940, revised, must be provided.[14]

(viii) The waste management system must be carefully designed to meet all applicable sanitation and quarantine requirements and the existing environmental standards of the country in which the pre-embarkation quarantine facility is located.

(3) *Fencing.* (i) The outer perimeter of all facilities must be surrounded by a fence that must be of sufficiently small mesh as to preclude the entrance of small farm animals, including dogs, and of such height and strength as to prevent entrance of larger animals. This fence must be located at least 200 feet from the building in which quarantined swine are to be held, except that, in an urban or industrial area the location of the fence may be less than 200 feet as determined by the Administrator, if such action will not increase the risk that communicable disease agents of livestock or poultry will be disseminated from the facility.

(ii) In regions affected by cattle fever ticks all such facilities must be double fenced, with the inner perimeter fence located at least 15 feet from the outer perimeter fence. When double fencing is required, the space between the outer and inner perimeter fences must be kept free from all foliage at all times.

(iii) The outer fence of the facility must be posted with signs in appropriate language, which must convey the following: Restricted Area—Keep Out, Quarantine Area—Keep Out, or Registered Quarantine Area—Keep Out.

(4) *Feed.* The animal feed supply in the PEQF must consist only of feed obtained from a country or region that is classified as Risk Class RN, R1, or R2 for foot-and-mouth disease, and for any other exotic disease necessitating the quarantine or that could jeopardize the quarantine.

(5) *Other requirements.* (i) Access into the quarantine area must be through a single door that must lead into a walk-through shower area with clothes change areas located on either side of the shower and adjacent thereto.

(ii) Toilet and lavatory facilities as determined by the Administrator to be adequate to preclude transmission of livestock or poultry disease agents from the facility must be located within the swine holding areas.

(iii) A sufficient supply of clean clothing, including towels and footwear, as determined by the Administrator to be adequate to prevent the transmission of livestock or poultry disease agents from the facility, must be maintained within the quarantine area.

(iv) A continuous supply of hot and cold running water, including potable water for personnel, must be provided.

(v) If lunch is to be eaten within the facility, a lunch room must be provided and all food entered into the facility must be approved by the supervising United States government veterinarian.

(vi) A separate room containing the equipment for preparation and packaging of laboratory specimens with adequate office space, as determined by the Administrator, to perform his or her duties must be provided for the supervising veterinary official. All records, equipment, and other materials used in the facility, must be maintained within the quarantine facility for the entire quarantine period.

(vii) A separate area situated apart from the swine holding area must be provided for necropsies and a means for the removal of the carcasses of dead swine must be provided without breaking quarantine security.

(viii) A swine receiving area and a chute or stocks for restraint during examination and veterinary inspection, as determined to be appropriate by the Administrator to permit examination of the swine, must be provided.

(ix) Feed must be stored in such a manner that replenishment during the quarantine period does not require transporting vehicles to enter the quarantine area.

(x) Equipment necessary for the care, cleaning, feeding, waste disposal, and handling of the swine must be provided and maintained within the quarantine area.

(xi) Additional requirements as to security, physical plant and facilities, and sanitation may be imposed by the Administrator in each specific case in order to assure that the quarantine of the swine in such facility will be adequate to enable determination of their health status, prevent the spread of disease among swine in quarantine, and prevent escape of animal disease agents from the facility.

Subpart H—Elephants, Hippopotami, Rhinoceroses, and Tapirs

50. In subpart H, § 93.800 would be amended by revising the introductory text and the definitions of *Accredited veterinarian, Administrator,* and *United States,* to read as follows:

[14] Copies of USDA Extension Plan 5940, revised, may be obtained from the Import/Export Animals Staff, National Center for Import and Export, Animal and Plant Health Inspection Service, United States Department of Agriculture, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

§ 93.800 Definitions.

Whenever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

* * * * *

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

* * * * *

51. Part 94 would be revised to read as follows:

PART 94—IMPORTATION OF MEAT AND UNPROCESSED PRODUCTS FROM ANIMALS

Sec.

94.0 Definitions.
94.1 Importation of fresh, chilled, or frozen meat from ruminants or swine.
94.2 Additional conditions for importation of fresh, chilled, or frozen meat from ruminants and swine.
94.3. Fresh, chilled, or frozen products (other than meat) and milk and milk products of ruminants and swine.
94.4 Organs, glands, extracts, or secretions of ruminants or swine.
94.5 Importation of cured or cooked meat of ruminants or swine into the United States from regions classified as Risk Class R3, R4, or RU for foot and-mouth disease, rinderpest, African swine fever, swine vesicular disease, and/or hog cholera.
94.6 Regulation of certain garbage.
94.7 Carcasses, or parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from countries where Exotic Newcastle disease (VVND) or *S. enteritidis* is considered to exist.
94.8 Disposal of meats ineligible for importation.
94.9 Meat and other animal products; in-transit movement and handling.
94.10 Milk and milk products.
94.11 Dry-cured pork products from regions classified as Risk Class R3, R4, or RU for foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease.
94.12 Ruminant meat and edible products from ruminants that have been in regions classified as Risk Class R3, R4, or RU for bovine spongiform encephalopathy.
94.13 Movement of meat and meat products.
94.14 Seizure, quarantine, and disposal of meat and meat products.
94.15 Cancellation of compliance agreements.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.0 Definitions.

As used in this part, the following terms shall have the meanings set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service, United States Department of Agriculture.

APHIS representative. Any individual employed by the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is authorized to perform the services required by this part.

Approved facility. A facility approved by the Administrator, upon his or her determination that it has equipment and uses procedures that are adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate government official as currently complying with the applicable laws for environmental protection.

Approved sewage system. A sewage system approved by the Administrator, upon his or her determination that the system is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surfaces or into lagoons or other stationary waters, and otherwise is adequate to prevent the dissemination of plant pests and livestock or poultry diseases, and that it is certified by an appropriate government official as currently complying with the applicable laws for environmental protection.

Authorized inspector. Any employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other individual who is authorized by the Administrator to enforce this part.

Birds. All members of the class Aves (other than poultry or game birds).

Carrier. For the purposes of § 94.6, this term means the principal operator of a means of conveyance.

Cervid. All species of deer, elk, and moose.

Cold spot. The area in a flexible plastic cooking tube or other type of container loaded with meat product, or the areas at various points along the belt in an oven chamber, slowest to reach the required temperature during the cooking process. The cold spot(s) for each container is experimentally determined before the cooking process begins and, once identified, remains constant.

Contact. Known or potential commingling of products of animals during processing or storage, or while being transported from any point to any other point. Contact includes simultaneous processing in the same facility, or storage or shipment in the same room, locker, or container, but not necessarily the same storage facility or conveyance, as long as security measures provided are determined to be adequate by an authorized APHIS representative.

Container. A receptacle, sometimes refrigerated, that is designed to be filled with cargo, sealed, and then moved, without unsealing or unloading, aboard a variety of different transporting means of conveyance.

Continental United States. The 49 States located on the continent of North America and the District of Columbia.

Department. The United States Department of Agriculture (USDA).

Directly. Without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs.

Exotic Newcastle disease (VVND). The velogenic, viscerotropic form of Newcastle disease.

Flock of origin. The flock in which the eggs were produced.

Food Safety and Inspection Service (FSIS). The Food Safety and Inspection Service of the United States Department of Agriculture.

FSIS inspector. An individual authorized by the Administrator, FSIS, to perform the function involved.

Game birds. Migratory birds, including certain ducks, geese, pigeons, and doves (''migratory'' refers to seasonal flight to and from the United States); and free-flying quail, wild grouse, and wild pheasants (as opposed to those that are commercial, domestic, or pen-raised).

House. A structure, enclosed by walls and a roof, in which poultry are raised.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Incineration. Reduction to ash by burning.

Indicator piece. A cube or slice of meat to be used for the pink juice test, required to meet minimum size specifications.

Operator. The operator responsible for the day-to-day operations of a facility.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pink juice test. Determination of whether meat has been thoroughly cooked by observation of whether the flesh and juices have lost all red and pink color.

Port of arrival. Any place in the United States at which a product or article arrives, unless the product or article remains on the means of conveyance on which it arrived within the territorial limits of the United States.

Poultry. Chickens, turkeys, swans, partridges, guinea fowl, pea fowl; nonmigratory ducks, geese, pigeons, and doves; commercial, domestic, or pen-raised grouse, pheasants, and quail.

Premises of origin. The premises where the flock or herd of origin is kept.

Region. Any defined geographic land region identifiable by geological, political or surveyed boundaries.

Region of origin. For meat and meat products, the region in which the animal from which the meat or meat product was derived was raised and slaughtered; and for eggs, the region in which the eggs were laid. In those cases where the animal was raised in one region and slaughtered in another, the region of origin is the region with the classification of greater disease risk.

Restricted agents. Livestock disease agents, vectors, or hosts of those agents not known to exist in the United States or that are subject to control or eradication programs within the United States. Restricted agents are listed in § 92.2 of this chapter.

Risk Class regions. Foreign exporting regions designated by APHIS according to the results of a risk assessment as defined in § 92.1 of this chapter and determined by criteria set forth in § 92.3 of this chapter are incorporated herein and are applicable to this part.

Ruminants. All animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas and giraffes.

Salmonella enteritidis. Salmonella enteritidis serotype enteritidis, an organism that causes salmonellosis.

Salmonella enteritidis, phage-type 4. A virulent type of Salmonella enteritidis serotype enteritidis.

Salmonellosis. An infectious disease caused by species of Salmonella bacteria.

Sentinel bird. A chicken that has been raised in an environment free of pathogens that cause communicable diseases of poultry and that has not been infected with, exposed to, or immunized with any strain of virus that causes Newcastle disease.

Shelf-stable. The condition achieved in a product, by application of heat alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product under nonrefrigerated conditions (over 50 °F or 10 °C).

Sterilization. For purposes of § 94.6, this term means the cooking of regulated garbage at 212 °F. (100 °C.) for 30 minutes.

Swine. The domestic hog and all varieties of wild hogs.

Temperature indicator device (TID). A precalibrated temperature-measuring instrument containing a chemical compound activated at a specific temperature (the melting point of the chemical compound) identical to the processing temperature that must be reached by the meat being cooked.

Territories or possessions. For § 94.6, territories or possessions means Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and all other territories or possessions of the United States.

Thoroughly cooked. Heated sufficiently to inactivate any pathogen that may be present, as indicated by the required TID or pink juice test.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and, for the purposes of this part other than § 94.6, all other territories or possessions of the United States.

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

Wild swine. Any swine that are allowed to roam outside an enclosure.

§ 94.1 Importation of fresh, chilled, or frozen meat from ruminants or swine.

(a) Importation of fresh, chilled, or frozen meat from ruminants or swine in regions that are classified as Risk Class R4 or RU for rinderpest or foot-and-mouth disease is prohibited.

(b) Importation of fresh, chilled, or frozen meat from swine in regions that are classified as Risk Class R3, R4 or RU for hog cholera, African swine fever, or swine vesicular disease is prohibited.

(c) Importation of fresh, chilled, or frozen meat from ruminants from regions that are classified as Risk Class R4 or RU for bovine spongiform encephalopathy is prohibited.

(d) Fresh, chilled, or frozen meat from ruminants or swine raised and slaughtered in regions classified as Risk Class RN or R1 for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, African swine fever, hog cholera, and/or swine vesicular disease may be imported into the United States provided:

(1) The authorized official of the exporting country certifies on the foreign meat inspection certificate that the shipment originated from regions that are classified as Risk Class RN or R1 for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease in ruminants or swine;

(2) The authorized official of the exporting country certifies on the foreign meat inspection certificate that the meat has not been in contact with meat from regions that are classified as Risk Class R2, R3, R4, or RU for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, African swine fever, hog cholera, and/or swine vesicular disease.

(e) Fresh, chilled, or frozen meat from ruminants or swine raised and slaughtered in regions that are classified as Risk Class R2 for foot-and-mouth disease or rinderpest may be imported into the United States provided that the authorized official of the exporting country certifies on the foreign meat inspection certificate that:

(1) Each shipment originates from regions that are classified as Risk Class RN, R1, or R2 for foot-and-mouth disease or rinderpest in ruminants or swine;

(2) The meat has not been in contact with meat from regions that are classified as Risk Class R3, R4 or RU for foot-and-mouth disease or rinderpest in ruminants or swine;

(3) The meat originates from premises where foot-and-mouth disease or rinderpest has not been present during the lifetime of any ruminants or swine slaughtered for export;

(4) The meat originates from premises located in regions where foot-and-mouth disease or rinderpest has not

been diagnosed within the previous 12 months;

(5) The meat originates from premises on which ruminants or swine have not been vaccinated with modified or attenuated live viruses for foot-and-mouth disease at any time during the lifetime of any of the ruminants or swine slaughtered for export;

(6) The meat originates from ruminants or swine that have not been vaccinated for rinderpest, African swine fever, hog cholera or swine vesicular disease at any time during the lifetime of any of the ruminants or swine slaughtered for export;

(7) The meat comes from carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and have reached a maximum pH of 6.0 in the loin muscle at the end of the maturation period. Any carcass in which the pH does not reach a maximum of 6.0 may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still does not reach a maximum pH of 6.0 after 60 hours, the meat from the carcass may not be exported to the United States; and

(8) All bone, blood clots, and lymphoid tissue have been removed from the meat.

(f) Fresh, chilled, or frozen meat from swine raised and slaughtered in regions that are classified as Risk Class R2 for African swine fever, hog cholera, and/or swine vesicular disease may be imported into the United States provided that the authorized official of the exporting country certifies that:

(1) Each shipment originates from regions that are classified as Risk Class RN, R1, or R2 for African swine fever, hog cholera, and/or swine vesicular disease in swine;

(2) The meat has not been in contact with meat from regions that are classified as Risk Class R3, R4 or RU for African swine fever, hog cholera, and/or swine vesicular disease;

(3) The meat originates from premises where African swine fever, hog cholera, and/or swine vesicular disease has not been present during the lifetime of swine slaughtered for export;

(4) The meat originates from premises located in regions where African swine fever, hog cholera, and/or swine vesicular disease has not been diagnosed within the previous 12 months;

(5) The meat originates from premises on which ruminants or swine have not been vaccinated with modified or attenuated live viruses for foot-and-mouth disease at any time during the lifetime of any of the swine slaughtered for export;

(6) The meat originates from swine that have not been vaccinated for rinderpest, African swine fever, hog cholera or swine vesicular disease at any time during the lifetime of any of the swine slaughtered for export; and

(7) All bone, blood clots, and lymphoid tissue have been removed from the meat.

(g) Fresh, chilled, or frozen meat from ruminants or swine raised and slaughtered in regions that are classified as Risk Class R3 for foot-and-mouth disease and/or rinderpest may be imported into the United States, provided the authorized official of the exporting country certifies that:

(1) Each shipment originates from a region that is classified as Risk Class RN, R1, R2 or R3 for foot-and-mouth disease and/or rinderpest in ruminants or swine;

(2) The meat has not been in contact with meat from regions that are classified as Risk Class R4 or RU for foot-and-mouth disease and/or rinderpest;

(3) The meat originates from premises where foot-and-mouth disease and rinderpest have not been present during the lifetime of any ruminants or swine slaughtered for export;

(4) The meat originates from premises where foot-and-mouth disease and/or rinderpest has not been diagnosed within 15 statute miles (25 kilometers) within the previous 12 months;

(5) The meat originates from premises on which ruminants or swine have not been vaccinated with modified or attenuated live viruses for foot-and-mouth disease at any time during the lifetime of any of the ruminants or swine slaughtered for export;

(6) The meat originates from ruminants or swine that have not been vaccinated for rinderpest, African swine fever, hog cholera or swine vesicular disease at any time during the lifetime of any of the ruminants or swine slaughtered for export;

(7) The meat comes from carcasses that have been allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that have reached a maximum pH of 6.0 in the loin muscle at the end of the maturation period. Any carcasses in which the pH did not reach a maximum of 6.0 may be allowed to maturate an additional 24 hours and be retested, and if the carcass still does not reach a maximum pH of 6.0 after 60 hours, the meat from the carcass may not be exported to the United States;

(8) The meat has all bone, blood clots, and lymphoid tissue removed; and

(9) The meat was held at no more than 40 °F (4 °C) for a minimum of 14 days before export, during which time the premises of origin of all animals in the shipment remained free of foot-and-mouth disease, rinderpest, African swine fever, hog cholera, and swine vesicular disease.

(h) Fresh, chilled, or frozen meat from cattle from regions that are classified as Risk Class R2 or R3 for bovine spongiform encephalopathy may be imported into the United States provided the authorized official of the exporting country certifies that:

(1) Each shipment originates from a region that is classified as Risk Class RN, R1, R2, or R3 for bovine spongiform encephalopathy;

(2) The meat has not been in contact with meat from regions that are classified as Risk Class R4 or RU for bovine spongiform encephalopathy;

(3) The meat originates from premises where, for at least 10 years, bovine spongiform encephalopathy has not been known to be present;

(4) The meat originates from premises where protein of ruminant origin has not been fed to ruminants during the lifetime of any animals currently living on the premise;

(5) The meat is from cattle that have not been in any region that is classified as Risk Class R3, R4, or RU for bovine spongiform encephalopathy during any period of time when the region permitted the use of ruminant protein in ruminant feed; and

(6) The cattle were examined prior to slaughter by a veterinarian employed by the national government of the country in which the ruminants were slaughtered, and were found not to display any signs indicative of a neurological disorder.

(i) Fresh, chilled or frozen meat derived from animals in the family Cervidae (cervids) from regions that are classified as Risk Class R2, R3, or R4 for bovine spongiform encephalopathy may be imported into the United States, provided the authorized official of the exporting country certifies that:

(1) The meat was derived either from wild cervidae, or from farm-raised cervidae that have never been fed ruminant protein;

(2) All bones and visually identifiable lymphatic tissue and nerve tissue have been removed from the meat;

(3) The meat is from cervidae that have not been in any region that is classified as Risk Class R3, R4, or RU for bovine spongiform encephalopathy, during a period of time when the region permitted the use of ruminant protein in ruminant feed; and

(4) The cervidae were examined prior to slaughter by a veterinarian employed by the national government of the

country in which the ruminants were slaughtered, and were found not to display any signs indicative of a neurological disorder.

§ 94.2 Additional conditions for importation of fresh, chilled, or frozen meat from ruminants and swine.

All fresh, chilled, or frozen meat permitted to be imported may be imported into the United States only under the conditions of § 94.1 and the following conditions:

(a) The meat is accompanied by the foreign meat inspection certificate required by § 327.4 of this title and, upon arrival of the meat in the United States, the foreign meat inspection certificate is presented to an authorized inspector at the port of arrival;

(b) The meat is placed in the transporting means of conveyance in a hold or compartment, or, if the meat is containerized, in a container, that was sealed in the region of origin by an official of the country of origin with serially numbered seals approved by the Administrator of APHIS, so as to prevent contact of the meat with any other cargo, handling of the meat after the hold, compartment, or container is sealed, and the loading of any cargo into and the removal of any cargo from the sealed hold, compartment, or container en route to the United States;

(c) If any foreign official breaks a seal applied in the region of origin in order to inspect the meat, he or she must then reseal the hold, compartment, or container with a new serially numbered seal; and, if any member of a ship's crew breaks a seal, the serial number of the seal, the location of the seal, and the reason for breaking the seal must be recorded in the ship's log;

(d) The serial numbers of the seals used to seal the hold, compartment, or container must be recorded on the foreign meat inspection certificate that must accompany the meat;

(e) Upon arrival of the means of conveyance in the United States port of arrival, the seals are found by an APHIS representative to be intact, and the representative finds that there is no evidence indicating that any seal has been tampered with; Provided that, if the representative finds that any seal has been broken or has a different number than is recorded on the foreign meat inspection certificate, then the meat may remain eligible for entry into the United States only if APHIS personnel are available to inspect the hold, compartment, or container, the packages of meat, and all accompanying documentation; and the importer furnishes additional documentation (either copies of pages from the ship's log signed by the officer-in-charge, or certification from a foreign government that the original seal was removed and the new seal was applied by officials of that government) that demonstrates to the satisfaction of the Administrator that the meat was not contaminated or exposed to contamination during movement from the region of origin to the United States; and

(f) The meat is found by an authorized inspector to be as represented on the foreign meat inspection certificate.

§ 94.3 Fresh, chilled, or frozen products (other than meat) and milk and milk products of ruminants and swine.

(a) The importation of fresh, chilled, or frozen products (other than meat, and milk and milk products) derived from ruminants or swine, originating in, shipped from, or transiting any region that is classified as Risk Class R3, R4 or RU for rinderpest or foot-and-mouth disease is prohibited, except as provided in § 94.4 and parts 95 and 96 of this chapter.

(b) The importation of milk and milk products of ruminants and swine originating in, shipped from, or transiting any region that is classified as Risk Class R3, R4 or RU for rinderpest, foot-and-mouth disease, or *Brucella melitensis* is prohibited, except as provided in § 94.10.

§ 94.4 Organs, glands, extracts, or secretions of ruminants or swine.

The importation of fresh, chilled, or frozen organs, glands, extracts, or secretions derived from ruminants or swine, from any region of origin classified as Risk Class R3, R4 or RU regions for foot-and-mouth disease, rinderpest, African swine fever, hog cholera, swine vesicular disease, bovine spongiform encephalopathy, or *Brucella melitensis* is prohibited, except for pharmaceutical or biological purposes under conditions prescribed by the Administrator in each instance.

§ 94.5 Importation of cured or cooked meat of ruminants or swine into the United States from regions classified as Risk Class R3, R4 or RU for foot-and-mouth disease, rinderpest, African swine fever, swine vesicular disease, and/or hog cholera.

(a) Cured meats derived from ruminants or swine, except dry-cured pork,[1] or cooked meat[2] may be imported into the United States from regions or origin that are classified as Risk Class R3, R4 or RU for foot-and-mouth disease, rinderpest, African swine fever, swine vesicular disease, and/or hog cholera only under the following conditions and the applicable conditions of paragraph (b), (c), (e), (f), (h), or (i) of this section:

(1) All cured or cooked meat and meat products prepared under this section must be prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and § 327.2 of this title. A foreign meat inspection certificate required by § 327.4 of this title shall be issued by an official of the national government of the country of origin who is authorized to issue the certificate, who further certifies on the same foreign meat inspection certificate that the conditions of this section have been fulfilled; and

(2) Upon arrival of the cured or cooked meat or meat products in the United States, the accompanying foreign meat inspection certificate must be presented to an authorized inspector at the port of arrival.

(b) The importation of cured meats derived from ruminants or swine from any region of origin that is classified as Risk Class R3, R4, or RU for foot-and-mouth disease or rinderpest is prohibited, unless the requirements of paragraph (a) of this section and the following conditions have been met:[3]

(1) All bones have been completely removed in the region of origin;

(2) The meat has been held in an unfrozen, fresh condition for at least 3 days immediately following the slaughter of the animals from which it was derived;

(3) The meat has been thoroughly cured and fully dried in such a manner that it may be stored and handled without refrigeration, as in the case of salami and other summer sausages, tasajo, xarque, or jerked beef, bouillon cubes, dried beef, and Westphalia, Italian and similar type hams. The term ''fully dried'' as used in this paragraph (b)(3) means dried to the extent that the water-protein ratio in the wettest portion of the product does not exceed 2.25 to 1; and

(4) Laboratory analysis of samples to determine the water-protein ratios will not be made in the case of all shipments of cured and dried meats. However, in any case in which the inspector is uncertain whether the meat complies with the requirements of paragraph (b)(3) of this section, he or she will send a sample of the meat representative of the wettest portion to the Meat

[1] See § 94.11 for importation requirements regarding dry-cured pork products.

[2] This does not include any meat that has been sterilized by heat in hermetically sealed containers.

[3] See also other provisions of this part (including § 94.11) and parts 92, 95, and 96 of this chapter, and part 327 of this title for other prohibitions and restrictions upon importation of swine and swine products.

Inspection Division for analysis of the water-protein ratio. Pending such analysis, the meat shall not be released or removed from the port of arrival.

(c) The importation of cooked meat from ruminants or swine originating in any region classified as Risk Class R3, R4, or RU for foot-and-mouth disease or rinderpest is prohibited unless the requirements of paragraph (a) of this section and the following conditions have been met:

(1) The cooked meat is boneless and has been thoroughly cooked;

(2) The cooked meat has been prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in § 327.2 of this title; that meets all other applicable requirements of the Federal Meat Inspection Act and regulations thereunder (9 CFR Chapter III); and that has been approved by the Administrator in accordance with paragraph (d) of this section;

(3) Canned product (canned meat), as defined in § 318.300(d) of this title, is exempt from the requirements in this section;

(4) *Ground meat cooked in an oven.* The ground meat must be shaped into patties no larger than 5 inches in diameter and 1-inch thick. Each patty must weigh no more than 115 grams, with fat content no greater than 30 percent. These patties must be broiled at 210 °C (410 °F) for at least 133 seconds, then cooked in moist heat (steam heat) in a continuous, belt-fed oven for not less than 20 minutes, to yield an internal exit temperature of at least 99.7 °C, (211.5 °F) as measured by temperature indicator devices (TID's) placed in temperature monitor patties positioned, before the belt starts moving through the oven, on each of the predetermined cold spots along the oven belt. TID's approved by the Administrator as activating at the appropriate temperature must be placed on the front, last, and predetermined interior rows on the belt at the beginning of each processing run;

(5) *Meat cooked in plastic.* The ground meat, cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) must weigh no more than 5 kilograms, and must be loaded into a flexible cooking tube constructed of plastic film or other material approved by the Food Safety and Inspection Service, U.S. Department of Agriculture. The meat must be cooked in boiling water or in a steam-fed oven to reach a minimum internal temperature of 79.4 °C at the cold spot after cooking for at least 1.75 hours. Thoroughness of cooking must be determined by the TID registering at least 79.4 °C at the cold spot, or by the pink juice test, as follows:

(i) *Cubes of meat.* At least 50 percent of meat pieces per tube must be 3.8 centimeters or larger in each dimension after cooking or, if more than 50 percent of meat pieces per tube are smaller than 3.8 centimeters in any dimension after cooking and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 centimeters or larger in each dimension after cooking) must have been placed at the cold spot of the tube.

(ii) *Slices of meat.* At least 50 percent of the slices of meat must be 3.8 centimeters or larger in each dimension after cooking or, if more than 50 percent of meat pieces are smaller than 3.8 centimeters in any dimension after cooking, and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 centimeters or larger in each dimension after cooking) must be placed at the cold spot of the tube.

(iii) *Anatomical cuts of meat.* An indicator piece removed from an anatomical cut of meat after cooking must be removed from the center of the cut, farthest from all exterior points and must be 3.8 centimeters or larger in each dimension for performance of the pink juice test;

(6) Any TID used in accordance with § 94.5 (c)(4) or (c)(5) must remain in the meat, as originally inserted, and must accompany the cooked meat whose temperature it has gauged when that meat is shipped to the United States; and

(7) The cooked meat must be inspected by an FSIS inspector at a port of arrival in a defrost facility approved by the Administrator[4] and the meat must be found to be thoroughly cooked.

(i) Request for approval of any defrost facility must be made to the Administrator. The Administrator will approve a defrost facility only under the following conditions:

(A) The defrost facility must have equipment and procedures that permit FSIS inspectors to determine whether meat is thoroughly cooked;

(B) The defrost facility must be located at a port of arrival; and

(C) The defrost facility must be approved by FSIS.[5]

(ii) The Administrator may deny approval of any defrost facility if the Administrator determines that the defrost facility does not meet the conditions for approval. If approval is denied, the operator of the defrost facility will be informed of the reasons for denial and be given an opportunity to respond. The operator will be afforded an opportunity for a hearing with respect to any disputed issues of fact. The hearing will be conducted in accordance with rules of practice that will be adopted for the proceeding.

(iii) The Administrator may withdraw approval of any defrost facility as follows:

(A) When the operator of the defrost facility notifies the Administrator in writing that the defrost facility no longer performs the required services; or

(B) When the Administrator determines that the defrost facility does not meet the conditions for approval. Before the Administrator withdraws approval from any defrost facility, the operator of the defrost facility will be informed of the reasons for the proposed withdrawal and given an opportunity to respond. The operator will be afforded a hearing with respect to any disputed issues of fact. The hearing will be conducted in accordance with rules of practice that will be adopted for the proceeding. If approval of a defrost facility is withdrawn, the Administrator will remove its name from the list of approved defrost facilities.

(d) *Meat processing establishment; standards.* (1) Before the Administrator will approve a meat processing establishment for export shipment of cooked meat to the United States, the Administrator must determine:

(i) That the meat processing establishment has furnished APHIS with a description of the process used to inactivate rinderpest or foot-and-mouth disease virus that may be present in meat intended for export to the United States, and with blueprints of the facilities where this meat is cooked and packaged;

(ii) That an APHIS representative has inspected the establishment and found that it meets the standards set forth in paragraph (d)(2) of this section;

(iii) That the operator of the establishment has signed a cooperative service agreement with APHIS, stating:

(A) That all cooked meat processed for importation into the United States will be processed in accordance with the requirements of this part;

[4] The names and addresses of approved defrost facilities and conditions for approval may be obtained from the National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

[5] Conditions for the approval of any defrost facility by the Food Safety and Inspection Service, United States Department of Agriculture, may be obtained from the Import Inspection Division, International Programs, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250.

(B) That a full-time, salaried meat inspection official of the National Government of the exporting country will supervise the processing (including certification of the cold spot) and examination of the product, and certify that it has been processed in accordance with this section; and

(C) That APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, and will be given full access to inspect the establishment and its records; and

(iv) That the operator of the establishment has entered into a trust fund agreement with APHIS and is current in paying all costs for an APHIS representative to inspect the establishment for initial evaluation, and periodically thereafter, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, before the APHIS representative's site inspection, the operator of the processing establishment must deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS representative, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be issued to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(2) *Establishment.* An APHIS representative will conduct an on-site evaluation, and subsequent inspections, as provided in § 94.5(d)(1), to determine whether the following conditions are met:

(i) The facilities used for processing cooked meat in the meat processing establishment are separate from the facilities used for processing raw meat (precooking, boning, preparation, and curing), with only the through-the-wall cooking system through which the meat product is delivered at the end of the cooking cycle connecting them; and there is at all times a positive air flow from the cooked to the raw product side;

(ii) The cooking equipment has the capacity to cook all meat pieces in accordance with § 94.5(c)(4) or (c)(5);

(iii) Workers who process cooked meat are at all times kept separate from workers who process raw meat, and have for their exclusive use: A separate entrance, dining area, toilets, lavatories with cold and hot water, soap, disinfectants, paper towels, clothes hampers and waste baskets for disposal, and changing rooms stocked with the clean clothing and rubber boots into which all persons must change upon entering the establishment. Workers and all other persons entering the establishment must wash their hands and change into the clean clothing and boots provided in the changing rooms before entering the cooking facilities, and must leave this clothing for laundering and disinfecting before exiting from the establishment, regardless of the amount of time spent inside or away from the establishment; and

(iv) Original records identifying the slaughtering facility from which the meat was obtained and the date the meat entered the meat processing establishment, and original certification (including temperature recording charts and graphs), must be kept for all cooked meat by the full-time salaried meat inspection official of the National Government of the exporting country assigned to the establishment, and must be retained for 2 years.

(e) Importation of cured meats derived from swine from any region of origin that is classified as Risk Class R3, R4, or RU for hog cholera is prohibited, unless the requirements of paragraph (a) of this section and the following conditions have been met and are certified to by the authorized official of the exporting country on the foreign meat inspection certificate: [6]

(1) All bones have been completely removed in the region of origin;

(2) The meat has been held in an unfrozen, fresh condition for at least 3 days immediately following the slaughter of the animals from which it was derived; and

(3) The meat has been thoroughly cured and fully dried for a period of not less than 90 days so that the product is shelf stable without refrigeration: *Provided, That* the period of curing and drying may be 45 days if the pork or pork product is accompanied to the processing establishment by a certificate of an official of the national government of a Risk Class RN, R1, or R2 region that specifies that:

(i) The pork involved originated in a region that is classified as Risk Class RN, R1, or R2, and the pork or pork product was consigned to a processing establishment in _____ (name of a region classified as Risk Class R3, R4, or RU for hog cholera), in a closed container sealed by the national veterinary authorities of the region classified as Risk Class RN, R1, or R2 for hog cholera by seals of a serially numbered type approved by the Administrator; and

(ii) The numbers of the seals used were entered on the meat inspection certificate of the region that is classified as Risk Class RN, R1, or R2 for hog cholera that accompanied the shipment from such region: And, *provided further,* that the certification [7] required by paragraph (e) of this section also states that: The container seals specified in paragraph (e)(3)(i) of this section were found intact and free of any evidence of tampering, by a national veterinary inspector upon arrival at the processing establishment; and the processing establishment from which the pork or pork product is shipped to the United States does not receive or process any live swine; and uses only pork or pork products that originate in regions that are classified as Risk Class RN, R1 or R2 for hog cholera; and processes all such pork or pork products in accordance with this section.

(f) Importation of cured meats derived from swine from any region of origin that is classified as Risk Class R3, R4, or RU for swine vesicular disease is prohibited, unless the requirements of paragraph (a) of this section and the following conditions have been met and are certified to by the authorized official of the exporting country on the foreign meat inspection certificate: [8]

(1) All bones have been completely removed in the region of origin; and

(2) Such pork or pork products either are consigned directly from the port of entry in the United States to a meat processing establishment operating under Federal meat inspection and approved by the Administrator,[9] for heating to an internal temperature of 166 °F (74.4 °C); or

(3) Such pork or pork product, if it is from a region of origin designated as a Risk Class RN, R1, or R2 for swine

[6] The certification required may be placed on the foreign meat inspection certificate prescribed by § 327.4 of this title, or may be contained in a separate document.

[7] See footnote 6 in § 94.5(e).

[8] See footnote 6 § 94.5(e).

[9] The names and addresses of approved establishments may be obtained from, and request for approval of any establishment may be made to the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Establishments will be approved only if the Administrator determines that the imported articles will be so handled at the establishments as to prevent the introduction and dissemination of livestock or poultry diseases into the United States. Approval of any establishment may be refused, suspended, or withdrawn only after the operator thereof has been given notice of the proposed action and has had an opportunity to present his or her views thereon, in accordance with rules of practice adopted by the Administrator.

vesicular disease has been cured and dried and is in compliance with the following requirements:

(i) Such pork or pork product is accompanied from the Risk Class RN, R1 or R2 region of origin to the Risk Class R3, R4 or RU region by a certificate signed by an official of the National Government of the Risk Class RN, R1 or R2 region of origin specifying that the pork or pork product involved originated in that region and that the pork or pork product was consigned to a processing establishment in (_____) (name of a region listed as a Risk Class R3, R4 or RU region for swine vesicular disease), in a closed container sealed by the national veterinary authorities of the Risk Class RN, R1, or R2 region of origin by seals of a serially numbered type approved by the Administrator. The numbers of these seals must be entered on this certificate; and

(ii) The certification required by paragraph (f)(3)(i) of this section must also state that:

(A) The container seals were found intact and free of any evidence of tampering upon arrival at the processing establishment in the Risk Class R3, R4 or RU region, by a national veterinary inspector of the country in which the region is located;

(B) The processing establishment from which the pork or pork product was shipped to the United States does not receive or process any live swine, and uses only pork or pork products that are from regions of origin that are classified as Risk Class RN, R1, or R2 for swine vesicular disease; and

(C) Such establishment processes all such pork or pork products in accordance with this section.

(g) Small amounts of pork or pork products subject to the restrictions of this section, may, in specific cases, be imported for purposes of examination, testing, or analysis, if the importer applies for and receives written approval for such importation from the Administrator, authorizing such importation. Approval will be granted only when the Administrator determines that the articles have been processed by heat in a manner so that such importation will not endanger the livestock of the United States.

(h) Importation of cooked meat from swine from any region of origin that is classified as Risk Class R3, R4, or RU for hog cholera and/or swine vesicular disease is prohibited unless the requirements of paragraph (a) of this section and the following conditions have been met and are certified to by the authorized official of the exporting country on the foreign meat inspection certificate [10]:

(1) Such pork and pork product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produced a fully sterilized product that is shelf-stable without refrigeration; or

(2) Such pork or pork product is in compliance with the following requirements:

(i) All bones have been completely removed in the region of origin; and

(ii) Such pork or pork product has received heat treatment in a commercially accepted manner used for perishable canned pork products that produces an internal temperature of 156° F.

(i) Importation of cooked meat from swine originating in any region that is classified as Risk Class R3, R4, or RU for African swine fever is prohibited, unless the requirements of paragraph (a) of this section and the following conditions have been met and are certified to by the authorized official of the exporting country on the foreign meat inspection certificate:

(1) Such pork or pork product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produced a fully-sterilized product that is shelf-stable without refrigeration; or

(2) Such pork or pork product is not otherwise prohibited importation under this part and is consigned directly from the port of arrival in the United States to a meat processing establishment operating under Federal meat inspection, and approved by the Administrator, for further processing of such pork or pork product by heat; or

(3) Such pork or pork product meets the following conditions:

(i) It was derived from pork or pork products that originated from swine raised and slaughtered in a region that is classified as Risk Class RN, R1 or R2 for African swine fever, which were handled in the following manner:

(A) The swine were shipped from the region of origin to a processing establishment [11] in region that is classified as Risk Class RN, R1 or R2 for African swine fever, and were shipped in a closed container sealed with serially numbered seals applied by an official of the national government of the country of origin;

(B) The swine were accompanied from the foreign region of origin to such processing establishment by a certificate signed by an official of the national government of the country of origin specifying the region of origin, the processing establishment to which the pork was consigned, and the numbers of the seals applied;

(C) The swine were taken out of the container at such processing establishment only after an official of the national government of the country where such processing establishment is located determined that the seals were intact and free of any evidence of tampering, and had so stated by the certification referred to in paragraph (i)(3)(i)(B) of this section;

(D) All bones were completely removed from the pork or pork product;

(E) The pork or pork product was heated by other than a flash-heating method at the foreign processing establishment referred to in paragraph (i)(3)(i)(A) of this section, to an internal temperature of at least 69° C. (156° F.) throughout (this must have occurred after the bones had been removed); and

(F) The processing establishment referred to in paragraph (i)(3)(i)(A) of this section:

(*1*) Does not receive or process any live swine, uses only pork or pork products that originate in regions that are classified as Risk Class RN, R1 or R2 for African swine fever, and processes pork or pork products only in accordance with paragraphs (i)(3)(i) and (i)(3)(ii) of this section;

(*2*) Is operated by persons who have entered into a valid written compliance agreement with APHIS whereby such persons have agreed to maintain on file at the establishment for at least 2 years copies of the certifications referred to in paragraph (i)(3)(i)(B) of this section, and to allow APHIS personnel to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section; and

(*3*) Is operated by persons who have entered into a trust fund agreement executed by such persons and APHIS; pursuant to the trust fund agreement the establishment is current in paying the cost for APHIS personnel to inspect the establishment (it is anticipated that such inspections will occur once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds);

[10] See footnote 6 in § 94.5(e).

[11] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR part 301), including requirements that the pork or pork products be prepared only in approved establishments.

and, in addition, the establishment has on deposit with APHIS, an unobligated amount equal to the cost for APHIS personnel to conduct one inspection; and

(ii) The pork or pork product was processed at only one processing establishment in a region classified as Risk Class R3, R4, or RU.

§ 94.6 Regulation of certain garbage.

(a) *Garbage.* For purposes of this section, garbage means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse, galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers' or crews' quarters, dining rooms, or any other areas on the means of conveyance. For purposes of this subpart, garbage also means meals and other food that were available for consumption by passengers and crew on an aircraft but were not consumed. Not all garbage is regulated for the purposes of this section. Garbage regulated for the purposes of this section is defined as ''regulated garbage'' in paragraphs (b), (c), and (d) of this section.

(b) *Garbage regulated because of movements outside the United States or Canada.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if, when the garbage is on or removed from the means of conveyance, the means of conveyance has been in any port or area outside the United States and Canada within the previous 2-year period. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (b) of this section if the following conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an APHIS inspector stating the following:

(A) That the means of conveyance had first been cleared of all garbage and of the following: All meats and meat products, whatever the region of origin, except meats that are shelf-stable; all fresh and condensed milk and cream from regions classified as Risk Class R3, R4, or RU for foot-and-mouth-disease; all fresh fruits and vegetables; and all eggs; and the items cleared from the means of conveyance as prescribed by this paragraph (b)(1)(i)(A) have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section.

(B) That the means of conveyance had been cleaned and disinfected in the presence of the inspector; and

(ii) Since being cleaned and disinfected, the means of conveyance has not been in a country other than the United States or Canada.

(2) *Exception 2.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (b) of this section if the following two conditions are met:

(i) The aircraft had been cleared of all garbage and all stores; and the items cleared from the aircraft as prescribed by this paragraph (b)(2)(i) have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section.

(ii) After the garbage and stores referred to in paragraph (b)(2)(i) of this section were removed, the aircraft has not been in a country other than the United States or Canada.

(c) *Garbage regulated because of certain movements to or from Hawaii, territories, or possessions.* For purposes of this section, garbage on or removed from a means of conveyance is regulated garbage, if the means of conveyance has moved during the previous one-year period, either directly or indirectly, to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession. There are, however, two exceptions to this provision. These exceptions are as follows:

(1) *Exception 1.* Garbage on or removed from a means of conveyance other than an aircraft is exempt from requirements under paragraph (c) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The means of conveyance is accompanied by a certificate from an APHIS inspector, stating that the means of conveyance has been cleared of all garbage and all fresh fruits and vegetables; and the items cleared from the means of conveyance as prescribed by this paragraph (c)(1)(i) have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section; and

(ii) After being cleared of the garbage and stores referred to in paragraph (c)(1)(i) of this section, the means of conveyance has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(2) *Exception 2.* Garbage on or removed from an aircraft is exempt from requirements under paragraph (c) of this section if the following two conditions are met when the garbage is on or removed from the means of conveyance:

(i) The aircraft had been cleared of all garbage and all fresh fruits and vegetables; and the items cleared from the aircraft as prescribed by this paragraph (c)(2)(ii) have been disposed of according to the procedures for disposing of regulated garbage, as specified in paragraph (f)(1) of this section; and

(ii) After the garbage and stores referred to in paragraph (c)(2)(i) of this section were removed, the aircraft has not moved to the continental United States from any territory or possession or from Hawaii; to any territory or possession from any other territory or possession or from Hawaii; or to Hawaii from any territory or possession.

(d) Garbage that is commingled with regulated garbage is also regulated garbage.

(e) *Restrictions on regulated garbage.* (1) Regulated garbage may not be on or removed from a means of conveyance, or be disposed of, unless in accordance with the provisions of this part.

(2) Regulated garbage is subject to general surveillance for compliance with this section by APHIS inspectors, and to such disposal measures as authorized by section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), section 10 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 164a), section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and section 306 of the Act of July 17, 1930, as amended (19 U.S.C. 1306), to prevent the dissemination of plant pests and livestock or poultry diseases.

(f)(1) All regulated garbage must be contained in tight, leak-proof covered receptacles during storage on board a means of conveyance while in the territorial waters, or while otherwise within the territory of the United States. All such receptacles must be contained inside the guard rail if on a watercraft. Such regulated garbage shall not be unloaded from such means of conveyance in the United States unless such regulated garbage is removed in tight, leak-proof receptacles under the direction of an APHIS inspector to an approved facility for incineration, sterilization, or grinding into an

approved sewage system, under supervision by such an inspector, or such regulated garbage is removed for other handling in such manner and under such supervision as may, upon request in specific cases, be approved by the Administrator as complying with the applicable laws for environmental protection and as adequate to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases.

(2) Application for approval of a facility or sewage system may be made in writing by the authorized representative of any carrier or by the official having jurisdiction over the port or place of arrival of the means of conveyance, to the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must be endorsed by the operator of the facility or sewage system. Approval will be granted if the Administrator determines that the requirements set forth in this section are met. Approval may be denied or withdrawn at any time, if the Administrator determines that such requirements are not met, after notice of the proposed denial or withdrawal of the approval and the reasons therefor, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the operator of the facility or sewage system and to the applicant for approval. However, approval may also be withdrawn without such prior procedure in any case in which the public health, interest or safety requires immediate action, and in such case, the operator of the facility or sewage system and the applicant for approval shall promptly thereafter be given notice of the withdrawal and the reasons therefor and an opportunity to show cause why the approval should be reinstated.

(g) APHIS will cooperate with other Federal, State, and local agencies responsible for enforcing other statutes and regulations governing disposal of regulated garbage to the end that such disposal shall be adequate to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection. The inspectors, in maintaining surveillance over regulated garbage movements and disposal, shall coordinate their activities with the activities of representatives of the Environmental Protection Agency and other Federal, State, and local agencies also having jurisdiction over such regulated garbage.

(h) *Compliance agreement and cancellation.* (1) Any person engaged in the business of handling or disposing of regulated garbage must first enter into an agreement with APHIS. Compliance agreement forms (PPQ Form 519) are available without charge from local USDA, APHIS, Plant Protection and Quarantine Offices, which are listed in telephone directories.

(2) A person who enters into a compliance agreement, and employees or agents of that person, must comply with the following conditions and any supplemental conditions that shall be listed in the compliance agreement, as deemed by the Administrator to be necessary to prevent the dissemination into or within the United States of plant pests and livestock or poultry diseases:

(i) Comply with the provisions of this section;

(ii) Allow APHIS inspectors access to all records maintained by the person regarding handling or disposal of regulated garbage, and to all areas where handling or disposal of regulated garbage occurs;

(iii) Remove regulated garbage from a means of conveyance only in tight, leak-proof receptacles;

(iv) Move the receptacles of regulated garbage only to a facility approved in accordance with paragraph (f)(2) of this section; and

(v) At the approved facility, dispose of the regulated garbage only through incineration, sterilization, grinding into a sewage system approved in accordance with paragraph (f)(2) of this section, or in any other manner approved by the Administrator and described in the compliance agreement.

(3) Approval for a compliance agreement may be denied at any time if the Administrator determines that the requirements set forth in this section are not met, after notice of, and the reasons for, the proposed denial of the approval, and an opportunity to demonstrate or achieve compliance with such requirements, has been afforded to the compliance agreement applicant.

(4) Any compliance agreement may be canceled in writing by the Administrator whenever it is found that the person who has entered into the compliance agreement has failed to comply with this section. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflicts as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator. This administrative remedy must be exhausted before a person can file suit in court challenging the cancellation of a compliance agreement.

(5) Where a compliance agreement is denied or canceled, an APHIS inspector may allow the regulated garbage to be unloaded from a means of conveyance and disposed of at an approved facility in accordance with paragraph (f)(1) of this section.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 94.7 Carcasses, or parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from countries where Exotic Newcastle disease (VVND) or S. enteritidis is considered to exist.

(a) *Countries where Exotic Newcastle disease (VVND) is considered to exist.* (1) Exotic Newcastle disease (VVND) is considered to exist in all countries of the world except those listed in paragraph (a)(2) of this section.

(2) The following countries are considered to be free of Exotic Newcastle disease (VVND): Australia, Canada, Chile, Denmark, Fiji, Finland, Great Britain (England, Scotland, Wales, and the Isle of Man), Iceland, New Zealand, Northern Ireland, Norway, Republic of Ireland, Sweden, and Switzerland.

(b) *Countries where S. enteritidis, phage-type 4, is considered to exist.* (1) *S. enteritidis,* phage-type 4, is considered to exist in all countries of the world except those listed in paragraph (b)(2) of this section.

(2) The following countries are considered to be free of *S. enteritidis,* phage-type 4: Canada.

(c) *Carcasses, and parts or products of carcasses, from countries where VVND is considered to exist.* Carcasses, and parts or products of carcasses, of poultry, game birds, or other birds may be imported only in accordance with this section if they: are of poultry, game birds, or other birds that were raised or slaughtered in any country where VVND is considered to exist (see paragraph (a) of this section); are imported from any country where VVND is considered to exist; or are moved into or through any country where VVND is considered to exist at any time before importation or during shipment to the United States.

(1) Carcasses of game birds may be imported if eviscerated, with heads and feet removed. Viscera, heads, and feet removed from game birds are ineligible for entry into the United States.

(2) Carcasses, or parts or products of carcasses, of poultry, game birds, and other birds may be imported for consignment to any museum, educational institution or other establishment that has provided the Administrator with evidence that it has the equipment, facilities, and capabilities to store, handle, process, or disinfect such articles so as to prevent the introduction or dissemination of viscerotropic velogenic Newcastle disease into the United States, and that is approved by the Administrator.[12]

(3) Carcasses, or parts or products of carcasses, of poultry, game birds, and other birds, may be imported if packed in hermetically sealed containers and if cooked by a commercial method after such packing to produce articles that are shelf-stable without refrigeration.

(4) Carcasses, or parts or products of carcasses, of poultry, game birds, and other birds may be imported if thoroughly cooked, and if, upon inspection by a representative of the United States Department of Agriculture at the port of arrival, the carcasses or parts or products thereof have a thoroughly cooked appearance throughout.

(5) Carcasses or parts or products of carcasses, of poultry, game birds, and other birds that do not otherwise qualify for importation under paragraph (c) of this section may be imported only if the importer applies to, and is granted a permit by the Administrator authorizing such importation. Permission will be given only when the Administrator determines that such importation will not constitute a risk of introduction or dissemination of viscerotropic velogenic Newcastle disease into the United States. Application for a permit may be made in accordance with paragraph (e) of this section.

(d) *Eggs (other than hatching eggs) from countries where VVND or S. enteritidis is considered to exist.* Eggs (other than hatching eggs[13]) from poultry, game birds, or other birds may be imported only in accordance with this section if they: Are laid by poultry, game birds, or other birds that were raised in any country where VVND or *S. enteritidis,* phage-type 4, is considered to exist (see paragraphs (a) and (b) of this section); are imported from any country where VVND or *S. enteritidis,* phage-type 4, is considered to exist; or are moved into or through any country where VVND or *S. enteritidis,* phage-type 4, is considered to exist at any time before importation or during shipment to the United States.

(1) *With a certificate.* The eggs may be imported if they are accompanied by a certificate signed by a salaried veterinarian of the national government of the country of origin and:

(i) The eggs are imported in cases marked with the identity of the flock of origin and sealed with the seal of the national government of the country of origin.

(ii) The certificate accompanying the eggs is presented to an authorized inspector when the eggs reach the port of arrival in the United States.

(iii) The certificate identifies the flock of origin and shows the country of origin, the port of embarkation, the port of arrival, the name and address of the exporter and importer, the total number of eggs, and cases of eggs, shipped with the certificate, and the date the certificate was signed.

(iv) The certificate states that the eggs qualify for importation in accordance with this section.

(v) No more than 90 days before the certificate was signed, a salaried veterinary officer of the national government of the country of origin inspected the flock of origin and found no evidence of communicable diseases of poultry.

(vi) The eggs were washed, to remove foreign material from the surface of the shells, and sanitized on the premises of origin with a hypochlorite solution of from 100 ppm to 200 ppm available chlorine.

(vii) The eggs were packed on the premises of origin in previously unused cases.

(viii) Before leaving the premises of origin, the cases in which the eggs were packed were sealed with a seal of the national government of the country of origin by the salaried veterinarian who signed the certificate.

(ix) And, if the eggs were laid in any country where VVND is considered to exist (see paragraph (a) of this section):

(A) No VVND occurred on the premises of origin or on adjoining premises during the 90 days before the certificate was signed.

(B) There is no evidence that the flock of origin was exposed to VVND during the 90 days before the certificate was signed.

(C) The eggs are from a flock of origin found free of VVND in one of the following ways:

(*1*) Sentinel birds[14] were present in the flock of origin for at least 60 days before the certificate was signed. There was at least 1 sentinel bird per 1,000 poultry, with at least 30 sentinel birds per house. The sentinel birds remained free of clinical and immunological evidence of VVND as demonstrated by negative hemagglutination inhibition tests conducted on blood samples drawn at 10-day intervals by a salaried veterinary officer of the national government of the country of origin. The tests were conducted in a laboratory located in the country of origin, and the laboratory was approved to conduct the tests by the national government of that country; or

(*2*) Once every week, beginning at least 60 days before the certificate was signed, a salaried veterinary officer of the national government of the country of origin collected carcasses of all poultry that died during that week, and the carcasses were examined for VVND using the embryonated egg inoculation technique. Once a month, beginning at least 60 days before the certificate was signed, a salaried veterinary officer of the national government of the country of origin collected tracheal and cloacal swabs from not less than 10 percent of the poultry in the flock, and the swabs were tested for VVND. All examinations and tests were conducted in a laboratory located in the country of origin, and the laboratory was approved to conduct the tests and examinations by the national government of that country. All results were negative for VVND.

(x) And, if the eggs were laid in any country where *S. enteritidis,* phage-type 4 is considered to exist (see paragraph (b) of this section):

(A) No salmonellosis caused by *S. enteritidis* occurred on the premises of origin or on adjoining premises during the 90 days before the certificate was signed.

(B) There is no evidence that the flock of origin was exposed to *S. enteritidis* during the 90 days before the certificate was signed.

(C) The eggs are from a flock of origin found free of *S. enteritidis* as follows:

(*1*) At least 60 days before the certificate was signed, a veterinary medical officer of the national government of the country of origin took a blood specimen from a representative sample of at least 300 poultry in each house, or, if any house contained fewer than 300 poultry, from all the poultry in that house. The blood specimens were tested for *S. enteritidis* with *Salmonella pullorum* or *S. enteritidis* antigen using a tube or plate test. The tests were

[12] The names and addresses of approved establishments may be obtained from, and requests for approval may be made to the National Center for Import and Export, 4700 River Road Unit 39, Riverdale, Maryland 20737–1231.

[13] The requirements for importing hatching eggs are contained in part 93 of this chapter.

[14] For information on sources of sentinel birds, contact the Operational Support Staff, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 33, Riverdale, MD 20737–1228.

conducted in a laboratory located in the country of origin, and the laboratory was approved to conduct the tests by the national government of that country.

(*2*) Beginning the week after the flock was tested and found negative as required in paragraph (d)(1)(x)(C)(*1*) of this section, and continuing once a week thereafter, a salaried veterinarian of the national government of the country of origin collected 25 carcasses, or 10 percent of the carcasses, whichever was greater, of all the poultry that died in each house during the previous week. The carcasses were bacteriologically examined and found negative for *S. enteritidis.* The examinations were conducted in a laboratory located in the country of origin, and the laboratory was approved to conduct the examinations by the national government of that country.

(*3*) After the blood specimens were drawn as required in paragraph (d)(1)(x)(C)(*1*) of this section, no poultry were added to the flock of origin until a blood specimen from each was tested for *S. enteritidis* with *Salmonella pullorum* or *S. enteritidis* antigen using a plate or tube test, and the specimen was found negative. The tests were conducted in a laboratory located in the country of origin, and the laboratory was approved to conduct the tests by the national government of that country.

(2) *To an approved establishment for breaking and pasteurization.* The eggs may be imported if they are moved from the port of arrival in the United States, under seal of the United States Department of Agriculture, to an approved establishment [15] for breaking and pasteurization. Establishments will be approved when the Administrator determines that pasteurization and sanitation procedures for handling the eggs, and for disposing of egg shells, cases, and packing materials, are adequate to prevent the introduction of VVND or *S. enteritidis,* phage-type 4, into the United States.

(3) *For scientific, educational, or research purposes.* The eggs may be imported if they are imported for scientific, educational, or research purposes and the Administrator has determined that the importation can be made under conditions that will prevent the introduction of VVND or *S. enteritidis,* phage-type 4, into the United States. The eggs must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (e) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of VVND or *S. enteritidis,* phage-type 4, into the United States.

(4) *Other.* The eggs may be imported when the Administrator determines that the eggs have been cooked or processed or will be handled in a manner that will prevent the introduction of VVND or *S. enteritidis,* phage-type 4, into the United States. The eggs must be accompanied by a permit obtained from APHIS prior to the importation in accordance with paragraph (e) of this section, and they must be moved and handled as specified on the permit to prevent the introduction of VVND or *S. enteritidis,* phage-type 4, into the United States.

(e) To apply for a permit, contact the Administrator, c/o National Center for Import and Export, 4700 River Road, Unit 39, Riverdale, 20737–1231.

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§ 94.8 Disposal of meats ineligible for importation.

(a) Fresh, chilled, or frozen meats, prohibited importation under §§ 94.1 and 94.2, that come into the United States by ocean vessel and are offered for entry and refused admission into this country, shall be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), unless they are exported by the consignee within 48 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock or poultry diseases into the United States.

(b) Fresh, chilled, or frozen meats prohibited importation under §§ 94.1 and 94.2, that come into the United States aboard an airplane or railroad car and are refused entry into this country, shall be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), unless they are exported by the consignee within 24 hours, and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock or poultry diseases into the United States.

(c) Fresh, chilled, or frozen meats prohibited importation under §§ 94.1 and 94.2 that come into the United States by any means other than ocean vessel, airplane, or railroad car and are refused entry into this country, shall be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), unless they are exported by the consignee within 8 hours on the same means of conveyance and meanwhile are retained under such isolation and other safeguards as the Administrator may require to prevent the introduction or dissemination of livestock or poultry diseases into the United States.

(d) Fresh, chilled, or frozen meats, prohibited importation under §§ 94.1 and 94.2, that come into the United States by any means but are not offered for entry into this country; and other animals, meats, and other articles prohibited importation under other sections of this part that come into the United States by any means, whether they are offered for entry into this country or not, shall be immediately detained, removed, destroyed or otherwise disposed of as the Administrator may direct at any time in accordance with section 2 of the Act of February 2, 1903, as amended, or section 2 of the Act of July 2, 1962 (21 U.S.C. 111, 134a).

§ 94.9 Meat and other animal products; in-transit movement and handling.

(a) Any meat or other animal product that would be eligible for entry into the United States, as specified in the regulations in this part, may transit through the United States for immediate export if the following conditions are met:

(1) Notification of the transiting of such meat or other animal product is made by the importer to the Plant Protection and Quarantine Officer at the United States port of arrival prior to such transiting; and

(2) The meat or other animal product transited is contained in a sealed, leakproof carrier or container that must remain sealed while aboard the transporting carrier or other means of conveyance, or if the container or carrier in which the meat or other animal product is transported is offloaded in the United States for reshipment, it must remain sealed at all times.

(b) Meat or other animal products that are not otherwise eligible for entry into the United States in accordance with the regulations in this part may enter the United States through land border ports for transit through the United States and immediate export if the following conditions are met:

(1) The person desiring to move the meat or other animal products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). (An application for the

[15] The names and addresses of approved establishments may be obtained from, and requests for approval may be made to National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

permit may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, Maryland 20737–1231.)

(2) The meat or other animal products are sealed in the region of origin in a leakproof container with serially numbered seals approved by APHIS, and the container remains sealed during the entire time that it is in transit across the United States, from the point of arrival to its exportation.

(3) The person moving the meat or other animal products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the United States port of arrival prior to such transiting. The notification must include the following information regarding the meat or other animal products:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The meat and other animal products transit the United States under Customs bond and are exported from the United States within the time limit specified on the permit. Any meat and other animal products that have not been exported within the time limit specified on the permit or that have not been transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

(c) Meat and other animal products from regions listed as R1 or R2 regions for restricted agents of ruminants or swine, that are not otherwise eligible for importation, may transit the United States for immediate export, provided the requirements of paragraph (a) of this section are met.

(d) Any meat or other animal products not otherwise eligible for entry into the United States, as provided in this part and part 95 of this chapter, may transit the United States for immediate export if the following conditions are met:

(1) Notification of the transiting of such meat or other animal product is made by the importer to the Plant Protection and Quarantine officer at the United States port of arrival prior to such transiting;

(2) The meat or other animal product is contained in a sealed, leakproof carrier or container, which remains sealed while aboard the transporting carrier or other means of conveyance, or, if the container or carrier in which the meat or other animal product is transported is offloaded in the United States for reshipment, it remains sealed at all times;

(3) Such transit is limited to the maritime or airport port of arrival only, with no overland movement outside the airport terminal area or dock area of the maritime port; and

(4) The meat or other animal product is not held or stored for more than 24 hours at the maritime or airport port of arrival.

§ 94.10 Milk and milk products.

(a) The following milk products are exempt from the provisions of this part:

(1) Cheese, but not including cheese with liquid and not including cheese made with unpasteurized milk, and not including cheese containing any item that is regulated by other sections of this part, unless such item is independently eligible for importation into the United States under this part;

(2) Butter; and

(3) Butteroil.

(b) Milk and milk products originating in, or shipped from, any region classified as Risk Class R3, R4 or RU for rinderpest or foot-and-mouth disease may be imported into the United States if they are certified as having met the requirements of paragraphs (b) (1), (2), or (3) of this section:

(1) They are in a concentrated liquid form and have been processed by heat by a commercial method in a container hermetically sealed promptly after filling but before such heating, so as to be shelf stable without refrigeration.

(2) They are dry milk or dry milk products, including dry whole milk, nonfat dry milk, dried whey, dried buttermilk, and formulations that contain any such dry milk products, and are consigned directly to an approved establishment [16] for further processing in a manner approved by the Administrator as adequate to prevent the introduction or dissemination of livestock diseases into the United States. However, in specific cases, upon request by the importer to the Administrator, and with approval by the Administrator, they may be stored for a temporary period in an approved warehouse [16] under the supervision of an APHIS inspector pending movement to an approved establishment. Such products must be transported from the United States port of first arrival to an approved establishment or an approved warehouse, and from an approved warehouse to an approved establishment only under Department seals or seals of the U.S. Customs Service. Such seals may be broken only by such an inspector or other person authorized to do so by the Administrator. Such products may not be removed from the approved warehouse or approved establishment except upon special permission by the Administrator, and upon compliance with all the conditions and requirements specified by him or her for such movement in each specific case.

(3) Milk and milk products not exempted under paragraph (a) of this section and not of classes included within the provisions of paragraphs (b) (1) or (2) of this section may be imported if the importer first applies to and receives written permission from the Administrator authorizing such importation. Permission will be granted only when the Administrator determines that such action will not endanger the health of the livestock of the United States. Products subject to this provision include but are not limited to condensed milk, long-life milks such as sterilized milk, casein and caseinates, lactose, and lactalbumin.

(4) Small amounts of milk and milk products subject to the restrictions of this part may in specific cases be imported for purposes of examination, testing, or analysis, if the importer applies to and receives written approval for such importation from the Administrator. Approval will be granted only when the Administrator determines that such action will not

[16] The names and addresses of approved establishments or warehouses or information as to approved manner of processing, and request for approval of any such establishment, warehouse, or manner of processing may be made to the National Center for Import and Export Unit 40, 4700 River Road, Riverdale, MD 20737–1231. Any establishment or warehouse will be approved for the purpose of this section only if the operator has provided the Administrator with satisfactory evidence that the establishment or warehouse has the equipment, facilities, and capability to store, handle and process the imported dry milk or dry milk product subject to § 94.9(b)(2) in a manner which will prevent the introduction or dissemination of livestock diseases into the United States. Similarly, processing methods will be approved only if the Administrator determines they are adequate to prevent the introduction or dissemination of such diseases into the United States. Approval of any establishment or warehouse or processing method may be refused or withdrawn by the Administrator only after the operator thereof has been given notice of the proposed action and has had an opportunity to present his views thereon, and upon a determination by the Administrator that the conditions for approval are not met. Approval of an establishment or warehouse may also be withdrawn after such notice and opportunity if the Administrator determines that such imported dry milk or milk products have been stored, handled, or processed by the operator thereof other than at an approved establishment or warehouse or other than in an approved manner.

endanger the health of the livestock of the United States.

(c) Milk and milk products originating in and shipped from regions that are classified as Risk Class RN, R1, or R2 for rinderpest and foot-and-mouth disease, but that have entered a port or otherwise transited any region that is classified as Risk Class R3, R4 or RU for rinderpest or foot-and-mouth disease shall not be imported into the United States unless:

(1) The product was transported under serially numbered official seals applied at the point of origin of the shipment by an authorized representative of the country of such origin; except that, if any seal applied at the point of origin was broken by any foreign official to inspect the shipment, an authorized representative of that country applied a new serially numbered official seal to the hold, compartment, or container in which the milk or milk products were transported; and if any member of a ship's crew broke a seal, the serial number of the seal, the location of the seal, and the reason for breaking the seal were recorded in the ship's log.

(2) The numbers of such seals are listed on, or are on a list attached to, the bill of lading or similar document accompanying the shipment.

(3) Upon arrival of the carrier at the first United States port, an APHIS inspector determines that the seals are intact and that their numbers are in agreement with the numbers appearing on the accompanying document; Provided that, if the representative finds that any seal has been broken or has a different number than is recorded on the accompanying document, the milk or milk products may remain eligible for entry into the United States only if APHIS personnel are available to inspect the hold, compartment, or container, the cartons or other containers of milk or milk products, and all accompanying documentation; and also provided that the representative determines that such products meet all of the importation requirements, and the importer furnishes additional documentation (either copies of pages from the ship's log signed by the officer-in-charge, or certification from a foreign government that the original seal was removed and the new seal applied by officials of the government) that demonstrates to the satisfaction of the Administrator that the milk or milk products were not contaminated or exposed to contamination during movement from the region of origin to the United States.

(d) Milk and milk products from regions that are classified as Risk Class RN for disease agents affecting ruminants may be imported into the United States if accompanied by documentation indicating the region of origin of the milk or milk product, and if they are not otherwise prohibited importation under paragraph (c) of this section.

(e) Milk or milk products imported from a region classified as R1 or R2 for rinderpest and foot-and-mouth disease must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the country of export. The certificate must state that the milk was produced and processed in a region that is classified as RN, R1 or R2 for rinderpest and foot-and-mouth disease, or that the milk product was processed in a foreign region that is classified as RN, R1, or R2 for rinderpest and foot-and-mouth disease, from milk produced in a region classified as RN, R1, or R2 for rinderpest and foot-and-mouth disease. The certificate must name the region in which the milk was produced and the foreign region in which the milk or milk product was processed. Further, the certificate must state that, except for movement under seal as described in § 94.10(c), the milk or milk product has never been in a region that is classified as R3, R4, or RU for rinderpest or foot-and-mouth disease. Milk or milk products from a region that is classified as RN, R1, or R2 for rinderpest and foot-and-mouth disease, that were processed in whole or in part from milk or milk products from a foreign region classified as R3, R4, or RU, may be imported into the United States in accordance with § 94.10(b)(3).

(f) Milk or milk products from regions listed that are classified as Risk Class R3, R4 or RU for *Brucella melitensis* shall enter the United States only under the following conditions:

(1) The milk must be pasteurized according to the Food and Drug Administration requirements of 21 CFR 131.3;

(2) Milk and milk products, including cheese, must meet the Food and Drug Administration requirements of 21 CFR part 1210 and any other applicable regulations for imported milk;

(3) Milk products, including cheese, must be prepared from milk treated as described in paragraph (f)(1) of this section before being used to manufacture milk products; and

(4) Milk or milk products must be processed in a facility where only milk or milk products are processed as described in paragraph (f)(1) of this section.

§ 94.11 Dry-cured pork products from regions classified as Risk Class R3, R4, or RU for foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease.

A dry-cured ham, pork shoulder, or pork loin shall not be permitted importation into the United States from a region that is classified as Risk Class R3, R4, or RU for foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease unless it meets the following conditions:

(a) The ham, pork shoulder, or pork loin came from a region determined by the Administrator to have and to enforce laws requiring the immediate reporting to the national veterinary services of that region any premises found to have any animal infected with foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease;

(b) The ham, pork shoulder, or pork loin came from a swine that was not on any premises where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists or had existed within 60 days prior to slaughter;

(c) The ham, pork shoulder, or pork loin was accompanied from the slaughtering facility to the processing establishment by a numbered certificate issued by a person authorized by the government of the country of origin stating that the provisions of paragraph (b) of this section have been met;

(d) The ham, pork shoulder, or pork loin was processed as set forth in paragraph (h) of this section in only one processing establishment; [17]

(e) The ham, pork shoulder, or pork loin was processed in a processing establishment that, prior to the processing of any hams, pork shoulders, or pork loins in accordance with this section, was inspected by a veterinarian of APHIS and determined by the Administrator to be capable of meeting the provisions of this section for processing hams, pork shoulders, or pork loins for importation into the United States;

(f) The ham, pork shoulder, or pork loin was processed in a processing establishment for which the operator of the establishment has signed an agreement with APHIS within 12 months prior to receipt of the hams, pork shoulders, or pork loins for processing, stating that all hams, pork

[17] As a condition of entry into the United States, pork and pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations thereunder (9 CFR part 301), including requirements that the pork or pork products be prepared only in approved establishments.

shoulders, or pork loins processed for importation into the United States will be processed only in accordance with the provisions of this part;

(g) Workers who handle fresh pork in the processing establishment where the dry-cured ham, pork shoulder, or pork loin was processed are required to shower and put on a full set of clean clothes, or to wait 24 hours after handling fresh pork, before handling hams, pork shoulders, or pork loins that have progressed in the aging/curing process as follows:

(1) In the case of Italian-type hams processed in accordance with paragraph (h)(1) of this section, those that have progressed beyond the final wash stage;

(2) In the case of Serrano hams or Iberian hams or pork shoulders processed in accordance with paragraphs (h)(2), (h)(3), or (h)(4) of this section, those that have progressed beyond salting; and

(3) In the case of Iberian pork loins processed in accordance with paragraph (h)(5) of this section, those that have progressed beyond being placed in a casing; and

(h) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with this paragraph. Except for pork fat treated to at least 76 °C. (168.8 °F.), which may have been placed over the meat during curing, the dry-cured pork product must have had no contact with any other meat or animal product during processing:

(1) *Italian-type hams.* The ham was processed for a period of not less than 400 days in accordance with the following conditions: after slaughter the ham was held at a temperature of 0 to 3 °C. (3 to 34.7 °F.) for a minimum of 72 hours, during which time the ''aitch'' bone and the foot was removed and the blood vessels at the end of the femur were massaged to remove any remaining blood; thereafter the ham was covered with an amount of salt equal to 4 to 6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 5 to 7 days on racks in a chamber maintained at a temperature of 0 to 4 °C. (32 to 39.2 °F.) and at a relative humidity of 70 to 85 percent; thereafter the ham was covered with an amount of salt equal to 4 to 6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 21 days in a chamber maintained at a temperature of 0 to 4 °C. (32 to 39.2 °F.) and at a relative humidity of 70 to 85 percent; thereafter the salt was brushed off the ham; thereafter the ham was placed in a chamber maintained at a temperature of 1 to 6 °C. (33.8 to 42.8 °F.) and at a relative humidity of 65–80 percent for between 52 and 72 days; thereafter the ham was brushed and rinsed with water; thereafter the ham was placed in a chamber for 5–7 days at a temperature of 15 to 23 °C. (59 to 73.4 °F.) and a relative humidity of 55–85 percent; thereafter the ham was placed for curing in a chamber maintained for a minimum of 314 days at a temperature of 15 to 20 °C. (59 to 68 °F.) and at a relative humidity of 65–80 percent at the beginning and increased by 5 percent every 2½ months until a relative humidity of 85 percent was reached.

(2) *Serrano hams.* Serrano hams were processed as follows (190-day minimum curing process):

(i) If the ham is received frozen, it was thawed in a chamber with relative humidity between 70 and 80 percent, with room temperature maintained at 12 to 13 °C. (53.6 to 55.4 °F.) for the first 24 hours, then at 13 to 14 °C. (55.4 to 57.2 °F.) until the internal temperature of the ham reached 3 to 4 °C. (37.4 to 39.2 °F.), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood.

(ii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 to 4 °C. (32 to 39.2 °F.), with relative humidity between 75 and 95 percent, for a period no less than 0.65 days per kg., and no more than 2 days per kg., of the weight of the ham.

(iii) The ham was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The ham was placed in a chamber maintained at a temperature of 0 to 6 °C. (32 to 42.8 °F.), with a relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days.

(v) The ham was placed for curing in a chamber with a relative humidity of 60 to 80 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 6 to 16 °C. (42.8 to 60.8 °F.), maintained for a minimum of 45 days;

(B) A temperature of 16 to 24 °C. (60.8 to 75.2 °F.), maintained for a minimum of 35 days; and

(C) A temperature of 24 to 34 °C. (75.2 to 93.2 °F.), maintained for a minimum of 30 days.

(vi) Finally, with the relative humidity unchanged at 60 to 80 percent, the temperature was lowered to 12 to 20 °C. (53.6 to 68 °F.) and maintained at that level for a minimum of 35 days, until at least 190 days after the start of the curing process; Except that: In a region that is classified as R3, R4, or RU for swine vesicular disease, the ham must be maintained at that level an additional 370 days, until at least 560 days after the start of the curing process.

(3) *Iberian hams.* Iberian hams were processed as follows (365-day minimum curing process):

(i) If the ham was received frozen, it was thawed in a chamber with relative humidity between 70 and 80 percent, with room temperature maintained at 5.5 to 6.5 °C. (41.9 to 43.7 °F.) for the first 24 hours, then at 9.5 to 10.5 °C. (49.1 to 50.9 °F.) until the internal temperature of the ham reached 3 to 4 °C. (37.4 to 39.2 °F.), at which point the blood vessels at the end of the femur were massaged to remove any remaining blood.

(ii) The ham was covered in salt and placed in a chamber maintained at a temperature from 0 to 4 °C. (32 to 39.2 °F.), with relative humidity between 75 and 95 percent, and kept in the chamber for a period no less than 0.65 days per kg., and no more than 2 days per kg., of the weight of the ham.

(iii) The ham was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The ham was placed in a chamber maintained at a temperature of 0 to 6 °C. (32 to 42.8 °F.), with relative humidity of 70 to 95 percent, for no less than 40 and no more than 60 days.

(v) The ham was placed for curing in a chamber with a temperature of 6 to 16 °C. (42.8 to 60.8 °F.) and relative humidity of 60 to 80 percent for a minimum of 90 days.

(vi) The temperature was raised to 16 to 26 °C. (60.8 to 78.8 °F.) and the relative humidity reduced to 55 to 85 percent, for a minimum of 90 days.

(vii) Finally, with the relative humidity raised to 60 to 90 percent, the temperature was lowered to 12 to 22 °C. (53.6 to 71.6 °F.) and maintained at that level for a minimum of 115 days, until at least 365 days after the start of the curing process; Except that: In a region that is classified as R3, R4, or RU for swine vesicular disease, the ham must be maintained at that level an additional 195 days, until at least 560 days after the start of the curing process.

(4) *Iberian pork shoulders.* Iberian pork shoulders were processed as follows (240-day minimum curing process):

(i) If the pork shoulder was received frozen, it was thawed at a room temperature of 12 to 13 °C. (53.6 to 55.4 °F.), with the relative humidity between 75 and 85 percent, for approximately 24 hours, until the internal temperature reached 3 to 4 °C. (37.4 to 39.2 °F.), at which point the blood vessels in the scapular region were massaged to remove any remaining blood.

(ii) The pork shoulder was covered in salt and placed in a chamber maintained at a temperature of 0 to 4 °C. (32 to 39.2 °F.) with the relative humidity between 75 and 95 percent, for a period of no less than 0.65 days per kg., and no more than 2 days per kg., of the weight of the pork shoulder.

(iii) The pork shoulder was rinsed with water and/or brushed to remove any remaining surface salt.

(iv) The pork shoulder was placed in a chamber maintained at a temperature of 0 to 6 °C. (32 to 42.8 °F.) and a relative humidity of 70 to 95 percent for not less than 40 days and not more than 60 days.

(v) The pork shoulder was placed for curing in a chamber at a temperature of 6 to 16 °C. (42.8 to 60.8 °F.) and a relative humidity of 60 to 80 percent for a minimum of 90 days.

(vi) The temperature was raised to 16 to 26 °C. (60.8 to 78.8 °F.) and the relative humidity was changed to 55 to 85 percent, and those levels were maintained for a minimum of 90 days.

(vii) Finally, the temperature was reduced to 12 to 22 °C. (53.6 to 71.6 °F.) and the relative humidity was raised to 60 to 90 percent for a minimum of 45 days, until at least 240 days after the start of the curing process.

(5) *Iberian pork loins.* Iberian pork loins were processed as follows (130-day minimum curing process):

(i) If the pork loin was received frozen, it was thawed at a room temperature maintained at 11 to 12 °C. (51.8 to 53.6 °F.), with the relative humidity between 70 and 80 percent for the first 24 hours, then between 75 and 85 percent, until the loin's internal temperature reached 3 to 4 °C. (37.4 to 39.2 °F.), at which point the external fat, aponeurosis, and tendons were cleaned from the loin.

(ii) The pork loin was covered in a pickle preparation (25–30 grams of salt for each kilogram of pork loin) and placed in a chamber where it was maintained at a relative humidity of 75 to 95 percent and a temperature of 3 to 4 °C. (37.4 to 39.2 °F.) for 72 hours.

(iii) The pork loin was removed from the pickle preparation (25–30 grams of salt for each kilogram of pork loin), externally cleaned (brushed or rinsed), placed in an artificial casing, and fastened shut with a metal clip.

(iv) The pork loin was placed for curing in a chamber with a relative humidity of 60 to 90 percent and a temperature gradually raised in 3 phases, as follows:

(A) A temperature of 2 to 6 °C. (35.6 to 42.8 °F.), maintained for a minimum of 20 days;

(B) A temperature of 6 to 15 °C. (42.8 to 59.0 °F.), maintained for a minimum of 20 days;

(C) A temperature of 15 to 25 °C. (59.0 to 77.0 °F), maintained for a minimum of 40 days;

(v) Finally, with the relative humidity unchanged at 60 to 80 percent and the temperature lowered to 0 to 5 °C. (32.0 to 41.0 °F.), the pork loin was vacuum-packed and maintained under those conditions for a minimum of 15 days, until at least 130 days after the start of the curing process.

(i)(1) The ham, if it is Italian-type ham processed in accordance with paragraph (h)(1) of this section, bears a hot iron brand or an ink seal (with the identifying number of the slaughtering establishment) that was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country in which the region of origin is located bears a button seal (approved by the Administrator as being tamper-proof) on the hock that states the month and year the ham entered the processing establishment and a hot iron brand (with the identifying number of the processing establishment and the date salting began) that were placed thereon at the processing establishment immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin;

(2) The dry-cured ham, if it is processed in accordance with paragraphs (h)(2) or (h)(3) of this section, or the dry-cured pork shoulder, if it is processed in accordance with paragraph (h)(4) of this section, bears an ink seal (with the identifying number of the slaughtering establishment) that was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and an ink seal (with the identifying number of the processing establishment and the date the salting began) that was placed thereon at the processing establishment, immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin; or

(3) The dry-cured pork loin, if it is processed in accordance with paragraph (h)(5) of this section, is packaged with material that bears a seal of the government of the country of origin that was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, and bears a tamper-proof plastic tag, securely attached to the pork loin itself, that states the identifying number of the slaughtering establishment and the date the pork loin was placed in the pickle preparation under the supervision of a person authorized to supervise such activity by the veterinary service of the national government of the country of origin.

(j) The dry-cured ham, pork shoulder, or pork loin came from an establishment where a person authorized by the veterinary services of the national government of the country of origin to conduct activities under this paragraph maintained original records (which shall be kept for a minimum of 2 years) identifying the dry-cured ham, pork shoulder, or pork loin by the date it entered the processing establishment, by the slaughtering facility from which it came, and by the number of the certificate that accompanied the dry-cured ham, pork shoulder, or pork loin from the slaughtering facility to the processing establishment, and where such original records are maintained under lock and key by such person, with access to such original records restricted to officials of the government of the country of origin, officials of the United States government, and such person maintaining the records.

(k) The dry-cured ham, pork shoulder, or pork loin came from a processing establishment that allows the unannounced entry into the establishment of APHIS personnel, or other persons authorized by the Administrator, for the purpose of inspecting the establishment and records of the establishment.

(l) The dry-cured ham, pork shoulder, or pork loin was processed in accordance with one of the following criteria:

(1) The ham, if it is an Italian-type ham processed in accordance with paragraph (h)(1) of this section, was processed in a region that is classified as either an RN, R1, or R2 region for rinderpest, and which has, through the veterinary services of the country in which it is located, submitted to the Administrator a written statement stating that it conducts a program to authorize persons to supervise activities specified under this section;

(2) The Serrano ham, processed in accordance with paragraph (h)(2) of this section, and came from any breed of large, white swine, including but not limited to Landrace, Pietrain, Duroc,

Jersey, Hampshire, and Yorkshire breeds, and crosses of such breeds;

(3) The Iberian ham, processed in accordance with paragraph (h)(3) of this section, and came from a swine of the Iberico breed of pigs;

(4) The Iberian pork shoulder, processed in accordance with paragraph (h)(4) of this section, and came from a swine of the Iberico breed of pigs;

(5) The Iberian pork loin, if processed in accordance with paragraph (h)(5) of this section, and came from a swine of the Iberico breed of pigs.

(m) The dry-cured ham, pork shoulder, or pork loin came from a processing establishment that has entered into a trust fund agreement executed by the operator of the establishment or a representative of the establishment and APHIS, and that pursuant to the trust fund agreement is current in paying all costs for a veterinarian of APHIS to inspect the establishment (it is anticipated that such inspections will occur up to four times per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, the operator of the processing establishment must deposit with the Administrator an amount equal to the approximate costs for a veterinarian to inspect the establishment one time, including travel, salary, subsistence, administrative overhead and other incidental expenses (including an excess baggage provision up to 150 pounds), and as funds from that amount are obligated, bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level must be paid within 14 days of receipt of such bills.

(n) The dry-cured ham, pork shoulder, or pork loin is accompanied at the time of importation into the United States by a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating:

(1) That all the provisions of this section have been complied with, including paragraphs (h) and (l) of this section; and

(2) The paragraph of this section under which the dry-cured ham, pork shoulder, or pork loin was processed; and stating further that, if the product covered by the certificate:

(i) Is an Italian-type ham processed under paragraph (h)(1) of this section, it was processed for a minimum of 400 days;

(ii) Is a Serrano ham processed under paragraph (h)(2) of this section, it was:

(A) Processed for a minimum of 190 days in a region that is classified as either RN, R1, or R2 for swine vesicular disease, in a facility authorized by the veterinary services of the national government of the country in which the region of origin is located to process meat only from regions classified as either RN, R1, or R2 for swine vesicular disease; or

(B) Processed for a minimum of 560 days in any region, in a facility that may also process meat from regions that are classified as R3, R4, or RU for swine vesicular disease;

(iii) Is an Iberian ham processed under paragraph (h)(3) of this section, it was:

(A) Processed for a minimum of 365 days in a region that is classified as RN, R1, or R2 for swine vesicular disease, in a facility authorized by the veterinary services of the national government of the country in which the region is located to process only meat from countries that are classified as RN, R1, or R2 for swine vesicular disease; or

(B) Processed for a minimum of 560 days in any region, in a facility that may also process meat from regions that are classified as R3, R4, or RU for swine vesicular disease;

(iv) Is a dry-cured pork shoulder, it was processed in accordance with paragraph (h)(4) of this section for a minimum of 240 days; or

(v) Is a dry-cured pork loin, it was processed in accordance with paragraph (h)(5) of this section for a minimum of 130 days.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 94.12 Ruminant meat and edible products from ruminants that have been in regions classified as Risk Class R3, R4, or RU for bovine spongiform encephalopathy.

(a) *Gelatin*. The importation of gelatin derived from ruminants that have been in any region that is classified as Risk Class R3, R4 or RU for bovine spongiform encephalopathy is prohibited unless the following conditions have been met:

(1) The gelatin must be imported for use in human food, human pharmaceutical products, photography, or some other use that will not result in the gelatin coming in contact with ruminants in the United States.

(2) The person importing the gelatin must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS form 16–3.[18]

(3) The permit application must state the intended use of the gelatin and the name and address of the consignee in the United States.

(b) *Transit shipment of articles*. Fresh, chilled, or frozen meat, and edible products other than meat, that are prohibited importation into the United States from regions that are classified as Risk Class R3, R4 or RU for bovine spongiform encephalopathy may transit the United States for immediate export if the following conditions are met:

(1) The person moving the articles obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS form 16–3.

(2) The articles are sealed in leakproof containers bearing serial numbers during transit. Each container must remain sealed during the entire time that it is in the United States.

(3) The person moving the articles notifies, in writing, the Plant Protection and Quarantine Officer at both the place in the United States where the articles will arrive and the port of export prior to such transit. The notification must include the:

(i) United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors permit number;

(ii) Times and dates of arrival in the United States;

(iii) Times and dates of exportation from the United States;

(iv) Mode of transportation; and

(v) Serial numbers of the sealed containers.

(4) The articles transit the United States in Customs bond.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 94.13 Movement of meat and meat products.

Meat or meat products consigned from the port of arrival to an approved establishment under the provisions of this part (e.g., § 94.5 (f) and (i)) must be moved from the port of arrival to the approved establishment under Customs seals or seals of the Administrator, and must be otherwise handled as the Administrator may direct in order to guard against the introduction and dissemination of contagious diseases of livestock. Seals applied under this section may not be broken except by persons authorized to do so by the Administrator.

[18] VS form 16–3 may be obtained from National Center for Import and Export, 4700 River Road Unit 40, Riverdale, MD 20737–1231.

§ 94.14 Seizure, quarantine, and disposal of meat and meat products.

Meat or meat products imported into the United States from a region that is classified as Risk Class R3, R4, or RU for foot-and-mouth disease, rinderpest, African swine fever, bovine spongiform encephalopathy, hog cholera, and/or swine vesicular disease that do not meet the requirements specified in this part shall be seized, quarantined, and disposed of as the Administrator may direct in order to guard against the introduction and dissemination of the contagion of the disease.

§ 94.15 Cancellation of compliance agreements.

Any compliance agreement may be canceled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this section or any conditions imposed pursuant to such provisions. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

52. Part 95 would be revised to read as follows:

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

Sec.

95.1 Definitions.
95.2 Region of origin.
95.3 Prohibited animal byproducts.
95.4 Bone meal, blood meal, meat meal, offal, fat, glands, and serum from ruminants in regions classified as Risk Class R3, R4, or RU for bovine spongiform encephalopathy according to criteria in § 92.3 of this chapter.
95.5 Untanned hides and skins; requirements for unrestricted entry.
95.6 Untanned hides and skins; importations permitted subject to restrictions.
95.7 Wool, hair, and bristles; requirements for unrestricted entry.
95.8 Wool, hair, and bristles; importations permitted subject to restrictions.
95.9 Glue stock; requirements for unrestricted entry.
95.10 Glue stock; importations permitted subject to restrictions.
95.11 Bones, horns, and hoofs for trophies or museum; disinfected hoofs.
95.12 Bones, horns, and hoofs; importations permitted subject to restrictions.
95.13 Bone meal for use as fertilizer or as feed for domestic animals; requirements for entry.
95.14 Blood meal, tankage, meat meal, and similar products, for use as fertilizer or animal feed; requirements for entry.
95.15 Blood meal, blood albumin, intestines, and other animal byproducts for industrial use; requirements for unrestricted entry.
95.16 Blood meal, blood albumin, intestines, and other animal byproducts for industrial use; importations permitted subject to restrictions.
95.17 Glands, organs, ox gall, and like materials; requirements for unrestricted entry.
95.18 Glands, organs, ox gall, and like materials; importations permitted subject to restrictions.
95.19 Animal stomachs.
95.20 Animal manure.
95.21 Hay and straw; requirements for unrestricted entry.
95.22 Hay and straw; importations permitted subject to restrictions.
95.23 Previously used meat covers; importations permitted subject to restrictions.
95.24 Methods for disinfection of hides, skins, and other materials.
95.25 Transportation of restricted import products; placarding cars and marking billing; unloading enroute.
95.26 Railroad cars, trucks, boats, aircraft and other means of conveyance, equipment or containers, yards, and premises; cleaning and disinfection.
95.27 Regulations applicable to products from territorial possessions.
95.28 Hay or straw and similar material from tick-infested regions.

Authority: 21 U.S.C. 111, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 95.1 Definitions.

Whenever in the regulations in this part the following words, names, or terms are used they shall be construed, respectively, to mean:

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

Animal byproducts. Hides, skins, hair, wool, glue stock, bones, hoofs, horns, bone meal, hoof meal, horn meal, blood meal, meat meal, tankage, glands, organs, or other parts or products of ruminants and swine unsuitable for human consumption.

Approved chlorinating equipment. Equipment approved by the Administrator as effective for the disinfection of effluents against the contagions of foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

Approved establishment. An establishment approved by the Administrator for the receipt and handling of restricted import animal byproducts.

Approved sewerage system. A drainage system equipped and operated so as to carry and dispose of sewage without endangering livestock through the contamination of streams or fields and approved by the Administrator.

Approved warehouse. A warehouse having facilities approved by the Administrator for the handling and storage, apart from other merchandise, of restricted import products.

Blood meal. Dried blood of animals.

Bone meal. Ground animal bones and hoof meal and horn meal.

Department. The United States Department of Agriculture.

Glue stock. Fleshings, hide cuttings and parings, tendons, or other collagenous parts of animal carcasses.

Hay and straw. Dried grasses, clovers, legumes, and similar materials or stalks or stems of various grains, such as barley, oats, rice, rye, and wheat.

Inspector. An employee of the Animal and Plant Health Inspection Service authorized to perform duties required under this part.

Meat meal or tankage. The rendered and dried carcasses or parts of the carcasses of animals.

Region. Any defined geographic land region identifiable by geological, political or surveyed boundaries.

Risk Class Regions. Foreign exporting regions designated by APHIS according to the results of a risk assessment as defined in § 92.1 of this chapter, and determined by criteria as set forth in § 92.3 of this chapter are incorporated herein and are applicable to this part.

Shipped directly. Shipped (moved, transported, or otherwise shipped) without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs.

United States. All of the States of the United States, the District of Columbia,

Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 95.2 Region of origin.

No products or materials specified in the regulations in this part may be imported into the United States unless there be shown upon the commercial invoice, or in some other manner satisfactory to the Administrator, the name of the region of origin of such product or material: *Provided*, That the region of origin shall be construed to mean:

(a) In the case of an animal byproduct, the region in which such product was taken from an animal or animals; and

(b) In the case of other materials, the region in which such materials were produced.

§ 95.3 Prohibited animal byproducts.

The importation of any animal byproduct taken or removed from an animal affected with anthrax, foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, Lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, or swine vesicular disease is prohibited.

§ 95.4 Bone meal, blood meal, meat meal, offal, fat, glands, and serum from ruminants in regions classified as Risk Class R3, R4 or RU for bovine spongiform encephalopathy according to criteria in § 92.3 of this chapter.

(a) Except as provided in paragraphs (c) and (d) of this section, the importation of bone meal, blood meal, meat meal or tankage, offal, fat, and glands from ruminants that have been in any region classified as a Risk Class R3, R4, or RU region for bovine spongiform encephalopathy is prohibited.

(b) Except as provided in paragraphs (c) and (d) of this section, the importation of serum from ruminants that have been in any region classified as a Risk Class R3, R4, or RU region for bovine spongiform encephalopathy is prohibited, except that serum from ruminants may be imported for scientific, educational, or research purposes if the Administrator determines that the importation can be made under conditions that will prevent the introduction of bovine spongiform encephalopathy into the United States. Serum from ruminants imported in accordance with this paragraph must be accompanied by a permit issued by APHIS in accordance with § 104.3 of this chapter, and must be moved and handled as specified on the permit.

(c) *Articles for cosmetics.* The importation of collagen, collagen products, amniotic liquids or extracts, placental liquids or extracts, serum albumin, and serocolostrum, derived from ruminants that have been in any region classified as Risk Class R3, R4, or RU region bovine spongiform encephalopathy is prohibited unless the following conditions are met:

(1) The article is imported for use as an ingredient in cosmetics.

(2) The person importing the article obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS form 16–3.[1]

(3) The permit application states the intended use of the article and the name and address of the consignee in the United States.

(d) *Transit shipment of articles.* Articles that are prohibited importation into the United States in accordance with this section may transit the United States for immediate export if the following conditions are met:

(1) The person moving the articles obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS form 16–3.[1]

(2) The articles must be sealed in leakproof containers bearing serial numbers during transit. Each container must remain sealed with a Customs seal or seal of the Administrator during the entire time that it is in the United States, and must be otherwise handled as the Administrator may direct in order to guard against the introduction and dissemination of contagious diseases of livestock.

(3) The person moving the articles must notify, in writing, the Plant Protection and Quarantine Officer at both the place in the United States where the articles will arrive and the port of export prior to such transit. The notification must include the:

(i) United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors permit number;

(ii) Times and dates of arrival in the United States;

(iii) Times and dates of exportation from the United States;

(iv) Mode of transportation; and

(v) Serial numbers of the sealed containers.

(4) The articles must transit the United States in Customs bond.

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[1] VS form 16–3 may be obtained from the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

§ 95.5 Untanned hides and skins; requirements for unrestricted entry.

Untanned hides and/or skins of cattle, buffalo, sheep, goats, other ruminants, and swine that do not meet the conditions of requirements specified in any one of paragraphs (a) to (e) of this section may not be imported except subject to handling and treatment in accordance with § 95.6 after arrival at the port of entry:

(a) Hides or skins originating in and shipped directly from a region classified as a Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, or swine vesicular disease may be imported without further restriction.

(b) Hides or skins may be imported without other restriction if found upon inspection by an inspector, or by certificate of the shipper or importer satisfactory to said inspector, to be hard dried hides or skins.

(c) Abattoir hides or skins taken from animals slaughtered under national government inspection in a region[2] and in an abattoir in which is maintained an inspection service determined by the Administrator to be adequate to assure that they have been removed from animals found at time of slaughter to be free from anthrax, foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease, and to assure further the identity of such materials until loaded upon the transporting vessel, may be imported into the United States without other restriction if accompanied by a certificate bearing the seal of the proper department of such national government and signed by an official veterinary inspector of such region showing that the therein described hides or skins were taken from animals slaughtered in such specified abattoir and found free from anthrax, foot-and-mouth, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

(d) Hides or skins may be imported without other restriction if shown upon inspection by an inspector, or by certificate of the shipper or importer satisfactory to said inspector, to have been pickled in a solution of salt

[2] Names of regions of this character will be furnished upon request made to the National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231.

containing mineral acid and packed in barrels, casks, or tight cases while still wet with such solution.

(e) Hides or skins may be imported without other restriction if shown upon inspection by an inspector, or by certificate of the shipper or importer satisfactory to said inspector, to have been treated with lime in such manner and for such period as to have become dehaired and to have reached the stage of preparation for immediate manufacture into products ordinarily made from rawhide.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.6 Untanned hides and skins; importations permitted subject to restrictions.

Hides or skins imported or offered for importation into the United States that do not meet the conditions or requirements of § 95.5 shall be handled and treated in the following manner after arrival at the port of entry:

(a) They shall be consigned from the coast or border port of arrival to an approved establishment and shall be subject to disinfection by such method or methods as the Administrator may prescribe unless the said establishment discharges drainage into an approved sewerage system or has approved chlorinating equipment adequate for the proper disinfection of effluents: *provided, however,* that, upon permission of the Administrator, such hides or skins may be stored for a temporary period in approved warehouses under bond, and under the supervision of an inspector: *and provided further,* that in-transit or in-bond shipments of hides or skins may go forward under customs seals from a coast or border port of arrival, with the approval of an inspector at said port, to another port in the United States for consumption entry subject to the other provisions of this section.

(b) They must be moved from the coast or border port of arrival or, in case of in-transit or in-bond shipments, from the interior port to the approved establishment in cars or trucks or in vessel compartments with no other materials contained therein, sealed with seals of the Department, that may not be broken except by inspectors or other persons authorized by the Administrator to do so, or without sealing as aforesaid and with other freight when packed in tight cases or casks acceptable to the inspector in charge at the port of entry.

(c) They must be handled at the approved establishment under the direction of an inspector in a manner approved by the Administrator to guard against the dissemination of foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease. They may not be removed therefrom except upon special permission of the Administrator, and upon compliance with all the conditions and requirements of this section relative to the movement of the said hides and skins from the port of arrival to the said establishment.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.7 Wool, hair, and bristles; requirements for unrestricted entry.

Wool, hair, or bristles derived from ruminants and/or swine that do not meet the conditions or requirements specified in any one of paragraphs (a) to (d) of this section may not be imported except subject to handling and treatment in accordance with § 95.8 after their arrival at the port of entry: *provided, however,* that no bloodstained wool, hair, or bristles may be imported under any condition:

(a) Such wool, hair, or bristles may be imported without other restriction if originating in and shipped directly from a region classified as a Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

(b) Wool or hair clipped from live animals or pulled wool or hair may be imported without other restriction if the said wool or hair is reasonably free from animal manure in the form of dung locks or otherwise.

(c) Wool, hair, or bristles taken from sheep, goats, cattle, or swine, when such animals have been slaughtered under national government inspection in a region [3] and in an abattoir in which is maintained an inspection service determined by the Secretary of Agriculture to be adequate to assure that such materials have been removed from animals found at time of slaughter to be free from anthrax, foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease, and to assure further the identity of such materials until loaded upon the transporting vessel, may be imported without other restriction if accompanied by a certificate bearing the seal of the proper department of said national government and signed by an official veterinary inspector of such region showing that the therein described wool, hair, or bristles were taken from animals slaughtered in such specified abattoir and found free from anthrax, foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

(d) Wool, hair, or bristles that have been scoured, thoroughly washed, or dyed may be imported without other restriction.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.8 Wool, hair, and bristles; importations permitted subject to restrictions.

Wool, hair, or bristles imported into the United States that do not meet the conditions or requirements of § 95.7 must be handled and treated in the following manner after arrival at the port of entry:

(a) Such wool, hair, or bristles must be consigned from the coast or border port of arrival to an approved establishment: provided, however, that upon permission by the Administrator, such wool, hair, or bristles may be stored for a temporary period in approved warehouses under bond and under the supervision of an inspector: and provided further, that in-transit or in-bond shipments of wool, hair, or bristles may go forward under customs seals from a coast or border port of arrival, with the approval of an inspector at said port, to another port for consumption entry, subject to the other provisions of this section.

(b) Such wool, hair, or bristles must be moved from the coast or border port of arrival or, in the case of in-transit or in-bond shipments, from the interior port to the approved establishment in cars or trucks or in vessel compartments with no other materials contained therein, sealed with seals of the Department, that may not be broken except by inspectors or other persons authorized by the Administrator to do so, or without sealing as aforesaid and with other freight when packed in tight cases acceptable to an inspector.

(c) Such wool, hair, or bristles must be handled at the approved establishment under the direction of an inspector, in a manner approved by the Administrator to guard against the dissemination of foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease. Such products may not be removed therefrom except upon special permission of the Administrator, and upon compliance with all the conditions and

[3] See footnote 2 in § 95.5.

requirements of this section relative to the movement of the said wool, hair, or bristles from the port of arrival to the said establishment.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.9 Glue stock; requirements for unrestricted entry.

Glue stock that does not meet the conditions or requirements specified in any one of paragraphs (a) to (c) of this section may not be imported into the United States, except subject to handling and treatment in accordance with § 95.10 after arrival at the port of entry:

(a) Glue stock originating in and shipped directly from a region classified as a Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease may be imported without other restriction.

(b) Glue stock may be imported without other restriction if found upon inspection by an inspector, or by certificate of the shipper or importer satisfactory to said inspector, to have been properly treated by acidulation or by soaking in milk of lime or a lime paste; or to have been dried so as to render each piece of the hardness of a sun-dried hide.

(c) Glue stock taken from cattle, sheep, goats, or swine slaughtered under national government inspection in a region and in an abattoir in which is maintained an inspection service determined by the Secretary of Agriculture to be adequate to assure that such materials have been removed from animals found at time of slaughter to be free from anthrax, foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease, and to assure further the identity of such materials until loaded upon the transporting vessel, may be imported without other restriction if accompanied by a certificate bearing the seal of the proper department of said national government and signed by an official veterinary inspector of such country showing that the therein described glue stock was taken from animals slaughtered in such specified abattoir and found free from anthrax, foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.10 Glue stock; importations permitted subject to restrictions.

Glue stock imported into the United States that does not meet the conditions or requirements of § 95.9 must be handled and treated in the following manner after arrival at the port of entry:

(a) It must be consigned from the coast or border port of arrival to an approved establishment and shall be subject to disinfection by such method or methods as the Administrator may prescribe, unless the said establishment discharges drainage into an approved sewerage system or has an approved chlorinating equipment adequate for the proper disinfection of effluents: *Provided, however,* that upon permission by the Administrator, glue stock may be stored for a temporary period in approved warehouses under bond and under the supervision of an inspector: And provided further, that in-transit or in-bond shipments of glue stock may go forward under customs seals from a coast or border port of arrival with the approval of an inspector at said port to another port for consumption entry, subject, after arrival at the latter port, to the other provisions of this section.

(b) It must be moved from the coast or border port of arrival or, in case of in-transit or in-bond shipments, from the interior port to the approved establishment in cars or trucks or in vessel compartments with no other materials contained therein, sealed with seals of the Department, that may not be broken except by inspectors or other persons authorized by the Administrator to do so, or without sealing as aforesaid and with other freight when packed in tight cases or casks acceptable to an inspector at the port of entry.

(c) It must be handled at the approved establishment under the direction of an inspector in a manner approved by the Administrator to guard against the dissemination of foot-and-mouth disease and rinderpest. It may not be removed therefrom except upon special permission of the Administrator, and upon compliance with all the conditions and requirements of this section relative to the movement of the said glue stock from the port of arrival to the said establishment.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.11 Bones, horns, and hoofs for trophies or museum; disinfected hoofs.

(a) Clean, dry bones, horns, and hoofs, that are free from undried pieces of hide, flesh, and sinew and are imported as trophies or for consignment to museums may be imported without other restrictions.

(b) Clean, dry, hoofs disinfected in the country of origin may be imported without other restrictions if the following conditions are met:

(1) The hoofs have been disinfected using one of the following methods:

(i) Dry heat at 180 °F (82.3 °C) for 30 minutes;

(ii) Soaking in boiling water for 20 minutes;

(iii) Soaking in a 0.1 percent chlorine bleach solution for 2 hours;

(iv) Soaking in a 5 percent acetic acid solution for 2 hours; or

(v) Soaking in a 5 percent hydrogen peroxide solution for 2 hours.

(2) The hoofs are accompanied by a certificate issued by the national government of the country of origin and signed by an official veterinary inspector of that country stating that the hoofs have been disinfected and describing the manner in which the disinfection was accomplished.

§ 95.12 Bones, horns, and hoofs; importations permitted subject to restrictions.

Bones, horns, and hoofs, imported into the United States, that do not meet the conditions or requirements of § 95.11 must be handled and treated in the following manner after arrival at the port of entry:

(a) They must be consigned from the coast or border port of arrival to an approved establishment having facilities for their disinfection or their conversion into products customarily made from bones, horns, or hoofs: provided, however, that in-transit or in-bond shipments of bones, horns, or hoofs may go forward under customs seals from a coast or border port of arrival, with the approval of an inspector at said port, to another port for consumption entry subject to the other provisions of this section.

(b) They must be moved from the coast or border port of arrival or, in the case of in-transit or in-bond shipments, from the interior port to the approved establishment in cars or trucks with no other materials contained therein, sealed with seals of the Department, that may not be broken except by inspectors or other persons authorized by the Administrator to do so, or without sealing as aforesaid and with other freight when packed in tight cases or casks acceptable to an inspector at the port of entry.

(c) They must be handled at the approved establishment under the direction of an inspector, in a manner to guard against the dissemination of

anthrax, foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease, and the bags, burlap, or other containers thereof, before leaving the establishment, must be disinfected by heat or otherwise, as directed by the Administrator, or burned at the establishment. They may not be removed therefrom except upon special permission of the Administrator, and upon compliance with all the conditions and requirements of this section relative to the movement of the said bones, horns, and hoofs.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.13 Bone meal for use as fertilizer or as feed for domestic animals; requirements for entry.

Steamed or degelatinized or special steamed bone meal, that, in the normal process of manufacture, has been prepared by heating bone under a minimum of 20 pounds steam pressure for at least one hour at a temperature of not less than 250 °F (121 °C), may be imported into the United States without further restrictions for use as fertilizer or as feed for domestic animals if such products are free from pieces of bone, hide, flesh, and sinew and contain no more than traces of hair and wool. Bone meal for use as fertilizer or as feed for domestic animals that does not meet these requirements will not be eligible for entry.

§ 95.14 Blood meal, tankage, meat meal, and similar products, for use as fertilizer or animal feed; requirements for entry.

Dried blood or blood meal, lungs or other organs, tankage, meat meal, wool waste, wool manure, and similar products, for use as fertilizer or as feed for domestic animals, may not be imported into the United States except subject to handling and treatment in accordance with paragraphs (a), (b), and (c) of § 95.16, unless:

(a) Such products originated in and were shipped directly from a region classified as a Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease; or

(b) The inspector at the port of entry finds that such products have been fully processed by tanking under live steam or by dry rendering.

§ 95.15 Blood meal, blood albumin, intestines, and other animal byproducts for industrial use; requirements for unrestricted entry.

Blood meal, blood albumin, bone meal, intestines, or other animal materials intended for use in the industrial arts may not be imported into the United States except subject to handling and treatment in accordance with § 95.16, unless such products originated in and were shipped directly from a region classified as Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.16 Blood meal, blood albumin, intestines, and other animal byproducts for industrial use; importations permitted subject to restrictions.

Blood meal, blood albumin, bone meal, intestines, or other animal materials intended for use in the industrial arts, that do not meet the conditions or requirements of § 95.15 must be handled and treated in the following manner after arrival at the port of entry:

(a) They must be consigned from the coast or border port of arrival to an approved establishment: *provided, however,* that upon permission by the Administrator, they may be stored for a temporary period in approved warehouses under bond and under the supervision of an inspector: *and provided further,* that in-transit or in-bond shipments of such products may go forward under customs seals from a coast or border port of arrival, with the approval of an inspector at said port, to another port of consumption entry, subject after arrival at the latter port to the other provisions of this section.

(b) They must be moved from the coast or border port of arrival or, in the case of in-transit or in-bond shipments, from the interior port to the approved establishment in cars or trucks or in vessel compartments with no other materials contained therein, sealed with seals of the Department, that may not be broken except by inspectors or other persons authorized by the Administrator to do so, or without sealing as aforesaid and with other freight when packed in tight cases or casks acceptable to an inspector at the port of entry.

(c) They must be handled at the approved establishment under the direction of an inspector in a manner to guard against the dissemination of foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease. They may not be removed therefrom except upon special permission of the Administrator, and upon compliance with all the conditions and requirements of this section relative to the movement of the said products from the port of arrival to the said establishment.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.17 Glands, organs, ox gall, and like materials; requirements for unrestricted entry.

Glands, organs, ox gall or bile, bone marrow, and various like materials derived from domestic ruminants or swine, intended for use in the manufacture of pharmaceutical products may not be imported except subject to handling and treatment in accordance with § 95.18, unless such glands, organs, or materials originated in and were shipped directly from a region classified as a Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, bovine spongiform encephalopathy, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease.

§ 95.18 Glands, organs, ox gall, and like materials; importations permitted subject to restrictions.

Glands, organs, ox gall or bile, bone marrow, and various like materials derived from domestic ruminants or swine, that do not meet the requirements of § 95.17 may be imported for pharmaceutical purposes only if they are in tight containers and consigned to an approved establishment: *provided, however,* that upon special permission of the Administrator, they may be stored for a temporary period in approved warehouses under bond and under the supervision of an inspector. They must be handled and processed at the said establishment in a manner approved by the Administrator, and the containers must be destroyed or disinfected as prescribed by him or her. They shall not be removed therefrom except upon special permission of the Administrator, and upon compliance with all the conditions and requirements of this section relative to the movement of the said glands, organs, ox gall, and like materials from the port of arrival to the said establishment.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.19 Animal stomachs.

Stomachs or portions of the stomachs of ruminants or swine, other than those imported for food purposes under the meat-inspection regulations of the Department, may not be imported into the United States without permission from the Administrator. Importations permitted shall be subject to such restrictions as the Administrator may deem necessary in each instance.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.20 Animal manure.

Manure of horses, cattle, sheep, other ruminants, and swine may not be imported except upon permission from the Administrator. Importations permitted shall be subject to such restrictions as the Administrator may deem necessary in each instance: *Provided, however,* That manure produced by animals while in transit to the United States shall be subject only to the requirements of the Department regulations governing the importation of livestock and other animals.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.21 Hay and straw; requirements for unrestricted entry.

Except as provided in § 95.28, hay or straw may not be imported into the United States except subject to handling and treatment in accordance with § 95.22 after arrival at the port of entry, unless such hay or straw originated in and was shipped directly from a region classified as a Risk Class RN, R1, or R2 region for foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, swine vesicular disease, and restricted ectoparasites.

§ 95.22 Hay and straw; importations permitted subject to restrictions.

Except as provided in § 95.28, hay or straw that does not meet the conditions or requirements of § 95.21 must be handled and treated in the following manner upon arrival at the port of entry:

(a) Hay or straw packing materials must be burned or disinfected at the expense of the importer or consignee in the manner and within the time directed by the Administrator to prevent the introduction of disease.

(b) Hay or straw for use as feeding material, bedding, or similar purposes must be stored and held in quarantine for a period of not less than 90 days in an approved warehouse at the port of entry and must be otherwise handled as directed by the Administrator to prevent the introduction of disease.

§ 95.23 Previously used meat covers; importations permitted subject to restrictions.

Cloth or burlap that has been used to cover fresh or frozen meats originating in any region classified as a Risk Class R3, R4, or RU region for rinderpest, foot-and-mouth disease, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease may not be imported into the United States except under the following conditions:

(b) The cloth or burlap must be consigned from the coast or border port of arrival to an establishment specifically approved for the purpose by the Administrator.

(c) The cloth or burlap must be immediately moved from the coast or border port of arrival, or in the case of in-transit or in-bond shipments from the interior port, to the approved establishment, in railroad cars or trucks, or in vessel compartments, with no other material contained therein, sealed with seals of the Department, that may not be broken, except by inspectors or other persons authorized by the Administrator: *provided, however,* that upon permission of the Administrator, such cloth or burlap may be stored for a temporary period in approved warehouses at the port of arrival under bond and under the supervision of an inspector. The material must be disinfected and otherwise handled at the establishment under the direction of an inspector in a manner approved by the Administrator to guard against the dissemination of foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease, and the material may not be removed therefrom, except upon special permission of the Administrator, until all of the conditions and requirements of this section have been complied with.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.24 Methods for disinfection of hides, skins, and other materials.

Hides, skins, and other materials required by the regulations in this part to be disinfected must be subjected to disinfection by methods found satisfactory and approved by the Administrator.

§ 95.25 Transportation of restricted import products; placarding cars and marking billing; unloading enroute.

(a) Transportation companies or other operators of cars, trucks or other vehicles carrying import products or materials moving under restriction, other than those in tight cases or casks, must affix to and maintain on both sides of all such vehicles durable placards not less than 5½ by 6 inches in size, on which must be printed with permanent black ink and in boldface letters not less than 1½ inches in height the words ''Restricted import product.'' These placards must also bear the words ''Clean and disinfect this car or truck.'' Each of the waybills, conductors' manifests, memoranda, and bills of lading pertaining to such shipments must have the words ''Restricted import product, clean and disinfect car or truck,'' plainly written or stamped upon its face. If for any reason the placards required by this section have not been affixed to each car, or the billing has not been marked by the initial or the connecting carrier, or the placards have been removed, destroyed, or rendered illegible, the placards must be immediately affixed or replaced and the billing marked by the initial or connecting carrier, the intention being that the billing accompanying the shipment must be marked and each car, truck or other vehicle placarded as specified in this section from the time such shipment leaves the port of entry until it is unloaded at final destination and the cars, trucks or other vehicles are cleaned and disinfected as required by § 95.26.

(b) If it is necessary to unload enroute any of the materials or products transported in a placarded car, truck or other vehicle as provided in this section, the car, truck or other vehicle from which the transfer is made and any part of the premises in or upon which the product or material may have been placed in the course of unloading or reloading must be cleaned and disinfected by the carrier, in accordance with the provisions of § 95.26, and the said carrier must immediately report the matter, by telephone or FAX, to the Import/Export Products Staff, National Center for Import Export, APHIS, USDA, Telephone: 301–734–3294. Such report must include the following information: Nature of emergency; place where product or material was unloaded; original points of shipment and destination; number and materials of the original car or truck; and number and initials of the car, truck or other vehicle into which the product or material is reloaded in case the original car or truck is not used.

(Approved by the Office of Management and Budget under control number 0579–0015)

§ 95.26 Railroad cars, trucks, boats, aircraft and other means of conveyance, equipment or containers, yards, and premises; cleaning and disinfection.

Railroad cars, trucks, boats, aircraft and other means of conveyance, equipment or containers, yards, and premises that have been used in the transportation, handling, or storing of restricted import products or materials, other than those contained in leakproof cases or casks, must be cleaned and disinfected with a disinfectant approved for use in this part under the supervision of an inspector within the time and in the manner provided in this section. Except as provided in paragraph (a) of this section, such railroad cars, trucks, boats, aircraft and other means of conveyance, equipment or containers, may not be moved in interstate or foreign commerce until they have been so treated.

(a) *Cars to be cleaned and disinfected by final carrier at destination.* Cars required by this part to be cleaned and disinfected must be so treated by the final carrier at destination as soon as possible after unloading and before the same are moved from such final destination for any purpose: Provided, however, That when the products or materials are destined to points at which an inspector or other authorized representative of APHIS is not maintained or present or where proper facilities cannot be provided, the transportation company must seal, bill, and forward the cars in which the products or materials were transported to a point to be agreed upon between the transportation company and APHIS, and the transportation company must there clean and disinfect the said cars under the supervision of an inspector.

(b) *Methods of cleaning and disinfecting.* (1) Railroad cars, trucks, aircraft and means of conveyance other than boats, equipment or containers, required by this part to be cleaned and disinfected must be treated in the following manner: Collect all litter and other refuse therefrom and destroy by burning or other method approved by the Administrator; clean the exterior and interior of the cars or trucks, and the areas of the aircraft or other means of conveyance, equipment or containers that may have been contaminated; and saturate the entire surface with a permitted disinfectant approved for use in this part.

(2) Boats required by this part to be cleaned and disinfected must be treated in the following manner: Collect all litter and other refuse from the decks, compartments, and all other parts of the boat used for the transportation of the products or materials covered by this part, and from the portable chutes or other appliances, fixtures or areas used in loading and unloading same, and destroy the litter and other refuse by burning or by other methods approved by the Administrator, and saturate the entire surface of the said decks, compartments, and other parts of the boat with a permitted disinfectant approved for use in this part.

(3) Buildings, sheds, and premises required by this part to be disinfected must be treated in the following manner: Collect all litter and other refuse therefrom and destroy the same by burning or other approved methods, and saturate the entire surface of the fencing, chutes, floors, walls, and other parts with a permitted disinfectant approved for use in this part.

(c) *Permitted disinfectants.* The disinfectants permitted for use in disinfecting railroad cars, trucks, boats, aircraft and other means of conveyance, equipment or containers, yards, and premises against infection of foot-and-mouth disease, rinderpest, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease are freshly prepared solutions of:

(1) Sodium carbonate (4 percent) in the proportion of 1 pound to 3 gallons of water;

(2) Sodium carbonate (4 percent) plus sodium silicate (0.1 percent) in the proportion of 1 pound of sodium carbonate plus sodium silicate to 3 gallons of water; or

(3) Sodium hydroxide (Lye) prepared in a fresh solution in the proportion of not less than 1 pound avoirdupois of sodium hydroxide of not less than 95 percent purity to 6 gallons of water, or one 13½-ounce can to 5 gallons of water.[4]

(d) *Permitted disinfectants against ticks.* The disinfectants permitted for use against tick infestation are liquefied phenol (U. S. P. strength 87 percent phenol) in the proportion of at least 6 fluid ounces to one gallon of water; or chlorinated lime (U. S. P. strength 30 percent available chlorine) in the proportion of one pound to three gallons of water; or any one of the cresylic disinfectants permitted by APHIS in §§ 71.10 and 71.11 of this chapter, in the proportion of at least four fluid ounces to one gallon of water; or through application of boiling water if the treatment is against rinderpest, or foot-and-mouth disease, lumpy skin disease (Neethling virus), Sheep pox, goat pox, African swine fever, hog cholera, and swine vesicular disease and tick infestation; or other disinfectants or treatments approved by the Administrator.

[4] Due to the extreme caustic nature of sodium hydroxide solution, precautionary measures such as the wearing of rubber gloves, boots, raincoat and goggles should be observed. An acid solution such as vinegar shall be kept readily available in case any of the sodium hydroxide should come in contact with the body.

§ 95.27 Regulations applicable to products from Territorial possessions.

The regulations in this part shall be applicable to all the products and materials specified in this part that are imported into the United States from any place under the jurisdiction of the United States to which the animal-quarantine laws of this country do not apply.

§ 95.28 Hay or straw and similar material from tick-infested regions.

Hay or straw, grass, or similar material from tick-infested pastures, ranges, or premises may disseminate the contagion of splenetic, Southern or Texas fever when imported for animal feed or bedding; therefore, such hay or straw, grass, or similar materials may not be imported into the United States from regions classified as Risk Class R3, R4, or RU regions for restricted ticks, unless such material is first disinfected with a disinfectant specified in § 95.26(d).

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

53. The authority citation for part 96 would continue to read as follows:

Authority: 21 U.S.C. 111, 136, 136a; 7 CFR 2.22, 2.80, and 371.2(d).

54. In § 96.1, the definition of *Administrator* would be revised to read as follows:

§ 96.1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

* * * * *

55. Section 96.2 would be revised to read as follows:

§ 96.2 Casings from regions classified as Risk Class R3, R4, or RU for African swine fever or bovine spongiform encephalopathy.

(a) The importation of swine casings that originated in or were processed in a region that is classified as Risk Class R3, R4, or R4 for African swine fever is prohibited, with the following exception: Swine casings that originated

in a region designated as Risk Class RN, R1, or R2 for African swine fever may be processed in a region classified as R3, R4, or RU for African swine fever, if processed in an establishment that meets the criteria set forth in § 94.5(d) of this chapter.

(b) The importation of ruminant casings that originated in or were processed in any region that is classified as Risk Class R3, R4, or RU for bovine spongiform encephalopathy is prohibited, except for bovine stomachs.

§ 96.3 [Amended]

56. Section 96.3, paragraph (a), would be amended by removing the words ''foreign country'' and adding in their place the words ''foreign region''.

57. Section 96.10 would be amended by revising the introductory text of paragraph (a) to read as follows:

§ 96.10 Uncertified casings; transportation for disinfection; original shipping containers; disposition of salt.

(a) Foreign animal casings imported into the United States without certification may be forwarded in customs custody to a USDA-approved facility for disinfection under APHIS supervision and release by the United States Customs authorities, provided that before being transported over land in the United States each and every container of such casings shall be disinfected by the application of a solution of sodium hydroxide prepared as follows:

* * * * *

58. Sections 96.15 and 96.16 would be removed.

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

59. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

60. In part 98, the heading for subpart A would be revised to read:

Subpart A—Ruminant and Swine Embryos from Regions Classified as Risk Class RN, R1, or R2 for Rinderpest and Foot-and-Mouth Disease; and Embryos of Horses and Asses

61. In § 98.3, the introductory text, paragraph (a), and paragraph (f) would be revised to read as follows:

§ 98.3 General conditions.

Except as provided in subpart B of this part, an animal embryo shall not be imported into the United States unless it is from a region that is classified as Risk Class RN, R1, or R2 for rinderpest and foot-and-mouth disease, and:

(a) The embryo is exported to the United States from the region in which it was conceived;

* * * * *

(f) There is no basis for denying an import permit for the donor sire or donor dam under § 93.304(a)(2) of this chapter for horses, § 93.404(a)(2) of this chapter for ruminants, and § 93.504(a)(2) of this chapter for swine;

* * * * *

§ 98.4 [Amended]

62. In § 98.4, paragraphs (c)(1) and (c)(5), the word ''country'' would be removed and the word ''region'' would be added in its place.

63. Section 98.6 would be revised to read as follows:

§ 98.6 Ports of entry.

An embryo shall not be imported into the United States unless at a port of entry listed in § 93.303 of this chapter for horses, § 93.403 of this chapter for ruminants, or § 92.503 of this chapter for swine.

§ 98.7 [Amended]

64. In § 98.7, paragraph (g) would be amended by removing the word ''country'' and adding the word ''region'' in its place.

65. In part 98, the heading for subpart B would be revised to read:

Subpart B—Ruminant and Swine Embryos from Regions Classified as Risk Class R3, R4, or RU for Rinderpest or Foot-and-Mouth Disease

66. Section 98.12, paragraph (a), would be revised to read as follows:

§ 98.12 General prohibitions.

(a) Ruminant and swine embryos may not be imported from regions that are classified as Risk Class R3, R4, or RU for rinderpest or foot-and-mouth disease, except in accordance with this subpart.

* * * * *

67. Section 98.13, paragraph (a), would be revised to read as follows:

§ 98.13 Import permit.

(a) Ruminant and swine embryos and all test samples required by this subpart may be imported into the United States from regions that are classified as Risk Class R3, R4, or RU for rinderpest or foot-and-mouth disease only if accompanied by import permits issued by the Animal and Plant Health Inspection Service (APHIS).

* * * * *

68. In § 98.14, the introductory text to paragraph (a) would be revised to read as follows:

§ 98.14 Health certificate.

(a) Ruminant and swine embryos may be imported into the United States from a region that is classified as R3, R4, or RU for rinderpest or foot-and-mouth disease only if accompanied by a health certificate issued by:

* * * * *

69. In § 98.15, paragraph (a)(5)(ii) would be amended by removing the word ''country'' and replacing it with the word ''region'' and the introductory text of the section would be revised to read as follows:

§ 98.15 Health requirements.

Ruminant and swine embryos may be imported from a region that is classified as Risk Class R3, R4, or RU for rinderpest or foot-and-mouth disease only if all of the following conditions are met:

* * * * *

70. In § 98.16, the introductory text, the first sentence would be revised to read as follows:

§ 98.16 The embryo collection unit.

Ruminant and swine embryos may be imported into the United States from a region that is classified as R3, R4, or RU for rinderpest or foot-and-mouth disease only if they were conceived, collected, processed, and stored prior to importation at an embryo collection unit. * * *

* * * * *

§ 98.17 [Amended]

71. In § 98.17, paragraphs (f)(6)(i) and (f)(6)(ii) would be amended by removing the word ''country'' each time it appears, and adding in its place the word ''region.''

72. Section 98.34 would be amended as follows:

a. The word ''country'' would be removed and the word ''region'' would be added in its place in the following places:

i. Paragraph (a)(1), each time it appears;

ii. Paragraph (a)(3), each time it appears;

iii. Paragraph (c)(1)(ii);

iv. Paragraph (c)(3);

v. Paragraph (c)(4); and

vi. Paragraph (c)(5).

b. Paragraph (a)(2) would be revised to read as set forth below.

c. Paragraph (c), the heading and introductory text, would be revised to read as set forth below:

§ 98.34 Import permits for poultry semen and animal semen.

(a) * * *

(2) An application for permit to import animal semen will be denied for semen from ruminants or swine from any region that is classified as Risk Class R3, R4, or RU for foot-and-mouth disease or rinderpest, except as provided in paragraph (c) of this section.

* * * * *

(c) *Animal semen from regions classified as Risk Class R3, R4, or RU for foot-and-mouth disease or rinderpest.* Importation of semen of ruminants or swine, originating in any region that is classified as Risk Class R3, R4, or RU for foot-and-mouth disease or rinderpest is prohibited, except that semen from ruminants or swine originating in such a region may only be imported into the United States at the port of New York and later released from such port, provided the following conditions have been fulfilled:

* * * * *

Done in Washington, DC, this 26th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–9027 Filed 4–17–96; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Part 228 et al.

Trading Practices Rules Concerning Securities Offerings; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, and 242

[Release Nos. 33–7282; 34–37094; IC–21883; International Series Release No. 965; File No. S7–11–96]

RIN 3235–AF54

Trading Practices Rules Concerning Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') today is publishing for comment a new regulation containing trading practices rules governing securities offerings. Proposed new Regulation M would replace Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21 under the Securities Exchange Act of 1934. Reflecting the significant developments and innovations that have occurred in the securities markets during recent years, the proposed regulation would create a simpler, more flexible framework to govern the market conduct of persons with a significant interest in the outcome of an offering. The proposals are designed to reduce regulatory burdens on issuers, underwriters, and other offering participants by focusing restrictions on potentially manipulative conduct in connection with the pricing of an offering, while retaining core investor safeguards.

DATES: The comment period will expire on June 17, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule comments@sec.gov. All comment letters should refer to File No. S7–11–96; this file number should be included on the subject line if E-mail is used. Comments letters received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, at 202–942–0772: Nancy J. Sanow, M. Blair Corkran, K. Susan Grafton, Carlene S. Kim, Heidi E. Pilpel, Barbara J. Endres, John S. Markle, Lauren C. Mullen, Mark R. Pacioni, Alan J. Reed, or Marc J. Hertzberg.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment new Regulation M, which would be adopted under various provisions of the Securities Act of 1933 (''Securities Act''),[1] the Securities Exchange Act of 1934 (''Exchange Act''),[2] and other federal securities statutes, and would replace Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21 (''trading practices rules'').[3] Proposed Regulation M, consisting of six rules, would set forth a new approach to regulation of securities offerings that reflects the incentives to affect the price of the offered security during an offering, while acknowledging the different needs of various categories of offering participants to conduct ordinary market activities. Regulation M would contain separate rules for underwriters, prospective underwriters, participating broker-dealers (''distribution participants''), and their affiliated purchasers; and for issuers and other persons on whose behalf a distribution is being made and their affiliated purchasers.[4]

The proposed rules would retain the current prophylactic approach to anti-manipulation regulation as the most effective means of protecting the integrity of the market during a securities offering. Regulation M, however, would streamline and simplify the trading practices rules by, among other things:

- Eliminating restrictions on actively-traded securities.
- Reducing the period of trading restrictions for many other securities, and focusing that period on the pricing of the offering.
- Eliminating trading restrictions on derivative securities during a distribution of an underlying security.
- Narrowing substantially the restrictions on debt securities.
- Deregulating rights offerings.
- Allowing routine dissemination of research reports, transactions in baskets of securities, exercises of call options, and transactions complying with Rule 144A under the Securities Act.[5]
- Creating a *de minimis* exception for transactions that are unlikely to have market impact.
- Narrowing the scope of persons subject to the rules.
- Allowing greater flexibility for issuer plans and odd-lot programs.
- Expanding the scope of Nasdaq passive market making.
- Creating a more flexible framework for stabilizing transactions.
- Shortening the regulated period for short sales in connection with a public offering.

I. Introduction

A. Background

A fundamental goal of the federal securities laws is the prevention of manipulation. Manipulation impedes the securities markets from functioning as an independent pricing mechanism, and undermines the integrity and fairness of those markets. Congress granted broad rulemaking authority to the Commission to combat manipulative abuses in whatever form they might take, including anti-fraud, prophylactic, and general rulemaking authority. In exercising its authority, the Commission has focused on the market activities of persons participating in a securities offering. The Commission determined that securities offerings present special opportunities and incentives for manipulation, requiring specific regulatory attention. After developing experience in administering the general anti-fraud and anti-manipulation provisions of the Exchange Act,[6] the Commission in 1955 adopted Rules 10b–6, 10b–7, and 10b–8 to govern the market activity of persons with an interest in an offering's outcome.[7] These rules are intended to protect the integrity of the offering process by precluding activities that could influence artificially the market for the offered security.

The trading practices rules have served their purposes well. Today, the U.S. capital markets' unparalleled reputation for honesty and fairness attracts not only domestic issuers, but also an increasing number of foreign issuers that offer their securities here to gain both broader market recognition and cost-effective financing. These rules

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.10b–6, 240.10b–6A, 240.10b–7, 240.10b–8, and 240.10b–21. The proposed rules also would make conforming and clarifying changes to Items 502(d) and 508 of Regulation S–B and Regulation S–K, and to Rules 10b–18 and 17a–2 under the Exchange Act. 17 CFR 228.502(d), 229.502(d), 228.508, 229.508, 240.10b–18, and 240.17a–2, respectively.

[4] The term ''distribution participant,'' which is defined in proposed Rule 100 and discussed further below, has a narrower meaning than its use in the current trading practices rules.

[5] 17 CFR 230.144A.

[6] Sections 9(a)(2), 10(b), and 15(c), 15 U.S.C. 78i(a)(2), 78j(b), and 78o(c).

[7] Securities Exchange Act Release No. 5194 (July 5, 1955), 20 FR 5075.

contribute to investors' high degree of confidence that the offering price has not been influenced artificially by the conduct of offering participants.

Since the adoption of the Commission's trading practices rules over 40 years ago, and the last substantive revisions to Rule 10b–6 in the 1980s, the markets and their participants have changed significantly. Institutional investors, such as mutual funds and pension plans, have become major ''buy-side'' participants in securities offerings.[8] The market sophistication and bargaining power of such investors now provide important protections against abusive conduct on the ''sell-side'' of an offering. The secondary markets have become more transparent and trading volume has increased substantially. Increased transparency helps investors, analysts, and other market participants to better observe and evaluate unusual market price movements. Increased liquidity makes manipulation less cost-effective.

Self-regulatory organizations (''SROs'') have developed sophisticated surveillance technologies to monitor market activity on a real-time basis. The SROs' ability to surveil trading during a distribution serves a substantial deterrence function. The ready availability of transaction audit trails also enhances the Commission's and the SROs' ability to take appropriate enforcement action. As a consequence, manipulation of the actively-traded securities of large issuers has become more costly, and its success more uncertain.

The process of distributing securities also has evolved. Shelf-registered offerings have become a common method of raising capital in recent years, and equity shelf offerings are increasing.[9] Instead of engaging in formal stabilization, underwriters now routinely ''oversell'' an offering, which can result in substantial purchasing activity in the form of short covering transactions after an offering has been distributed. Today, rights offerings rarely are used as a financing tool by U.S. issuers.

Equity and debt offerings and the secondary markets have become international in scope. Many issuers' securities now are traded in financial centers throughout the world, providing issuers with expanded financing opportunities. U.S. investors are now active participants in U.S. offerings of foreign issuers. Globalization also has revealed differing, and at times conflicting, regulatory structures and offering practices.

These developments have outpaced the current structure of anti-manipulation regulation of securities offerings and have reduced the need for broad prophylactic restrictions. Moreover, the Commission has been advised by market participants that the application of the trading practices rules in the present environment has become needlessly complex and involves substantial compliance costs.

B. Concept Release

In April 1994, the Commission published a concept release as part of a comprehensive reexamination of its anti-manipulation regulation of securities offerings (''Concept Release'').[10] The release identified eight concepts that underlie the trading practices rules and anti-manipulation regulation generally. The premise underlying these concepts is that regulation should be limited to those persons, securities offerings, and market activities that involve a readily identifiable incentive to manipulate the market during an offering. In considering the need for a revised regulatory approach, the Commission requested that commenters focus on two central themes: whether certain classes of securities, transactions, or investors need the protection of specific rules; and whether a simpler structure for anti-manipulation regulation would achieve the goals of providing guidance to underwriters and their counsel, maintaining price integrity, establishing effective deterrence and enforcement tools, and promoting investor confidence. The Commission solicited comment on several alternative regulatory approaches.

Twenty-two comment letters were received.[11] All commenters appeared to accept the fundamental objectives of the trading practices rules of preventing manipulation during a securities offering and providing guidance to the underwriting community, principally as expressed in the exceptions to Rule 10b–6. Many commenters questioned the need for mechanical and complex proscriptive rules as opposed to a simpler, more flexible approach to anti-manipulation regulation. Of the various regulatory alternatives noted in the Concept Release, commenters addressed three: (1) Retaining the current structure, but relaxing restrictions; (2) more flexible stabilization regulation; and (3) safe harbor rules.

Many commenters proposed revising the current exceptions and adding new exceptions to the prohibitions of Rule 10b–6. Suggested approaches varied, but the dominant themes were to: shorten the period of restrictions; ease the application of the rules in multinational distributions; allow issuers greater flexibility in conducting dividend reinvestment and stock purchase plans; and narrow the scope of persons subject to restrictions.

With respect to multinational distributions, several commenters stated that extraterritorial application of the trading practices rules disadvantages U.S. participants, because foreign issuers sometimes will not engage in U.S. securities distributions that require compliance with the rules. Some commenters proposed exceptions from the trading practices rules for ''world-class'' issuers.

With respect to stabilization, commenters stated that the Commission should create a flexible structure that would allow underwriters to follow the independent market price for the offered security. Commenters also suggested that the Commission expand and adopt prior proposals to accommodate multinational stabilizing transactions. The commenters were divided, however, on whether the Commission should regulate transactions in the aftermarket of a distribution, such as the covering of syndicate short positions and the enforcing of penalty bids. Representatives of the underwriting industry argued that no regulation was warranted at this time. Other commenters asserted that certain aftermarket activity by the underwriting syndicate, such as enforcing penalty bids, can have a manipulative impact and can create conflicts of interest for broker-dealers.

Commenters also suggested that the restrictions on ''passive market making'' in Rule 10b–6A be relaxed. The few commenters who addressed Rule 10b–8 suggested that underwriters should have greater flexibility in effecting transactions during rights offerings. Two commenters stated that Rule 10b–21 was ineffectual because it did not cover securities that were related to the offered security.

[8] As of December 1995, mutual funds controlled more than $2.8 trillion in assets. See Investment Company Institute Press Release (January 25, 1996).

[9] In 1992, equity takedowns from shelf registrations accounted for 3% of all underwritten offers of additional common stock, while in 1994, equity takedowns accounted for 16% of the total value of such underwritten offerings. *See also* M. Santoli, *Block Trades Test Traditions on Wall Street,* Wall St. J., Feb. 9, 1996, at B12B (''Shelf filings that cover equity have steadily become more common in recent years, rising 18% to 110 in 1995 after climbing 26% in 1994.'')

[10] Securities Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681 (''Concept Release'').

[11] The comment letters and a summary of those comments which was prepared by the staff are available for public inspection and copying in File No. S7–14–94.

While directing the majority of their comments to specific provisions of the trading practices rules, many commenters endorsed recasting the rules as non-exclusive safe harbors from the anti-manipulation provisions of the Exchange Act.[12] In support of this proposal, they asserted that Rule 10b–6 can have a disproportionate effect on those offering participants who inadvertently run afoul of the rule's prohibitions because of ''technical'' violations that do not affect the offered security's price.

II. Overview of Proposed Regulation M

In light of the comments received and the recommendations of the Commission's Task Force on Disclosure Simplification, the Commission is proposing to replace the existing trading practices rules with new Regulation M, consisting of individual rules covering distinct categories of offering participants and activities.[13] The new regulation would continue to effectuate the goals of the existing trading practices rules. The Commission, however, recognizes that the current rules impose unwarranted costs on the capital raising process because they are overly broad and unnecessarily rigid.

The Commission's proposals seek to accomplish several objectives. The proposed rules are intended to eliminate unnecessary costs and burdens imposed on offering participants under the current rules. These impediments would be reduced by relaxing existing restrictions in those circumstances where either the risk of manipulation appears small or the costs of the restrictions are disproportionate to the purposes that they serve. For example, relaxation of restrictions seems particularly appropriate in cases where the expense of manipulating a security would be high or where improper trading activity would be easy to detect, because the risk of manipulation in such situations may be far less than in other offerings.

The proposed rules also seek to simplify and modernize the trading practices rules. These goals are accomplished by reorganizing the structure of the rules, reducing their complexity, and tailoring the concepts to accommodate contemporary market activities.

Regulation M would contain rules covering the following activities during a securities offering: (1) Activities by underwriters, prospective underwriters, brokers, dealers, or other persons who are participating in a distribution, and their affiliated purchasers (*i.e.*, distribution participants); (2) activities by the issuer or selling securityholder and their affiliated purchasers; (3) Nasdaq passive market making; (4) stabilization, transactions to cover syndicate short positions, and penalty bids; and (5) short selling in advance of a public offering. The general anti-fraud and anti-manipulation provisions of the federal securities laws, including Section 17(a) of the Securities Act, and Sections 9(a), 10(b), and 15(c) of the Exchange Act, and Rule 10b–5 thereunder, would continue to govern all activities in connection with an offering, whether or not the provisions of Regulation M applied.

A separate rule would contain definitional provisions. Some of these definitions are new or revised; many are common to more than one rule. The Commission has endeavored to use straightforward and precise language in both the definitions and rule text.

The provisions of Regulation M that are analogous to Rule 10b–6 would be contained in Rules 101 and 102, which would cover distribution participants, and issuers and selling securityholders, respectively. Rules 101 and 102 would apply only during a ''restricted period'' that would commence one or five business days before the day of the pricing of the offered security and continue until the distribution is over. The restricted periods would be based on the trading volume of the offered security, rather than the price per share and public float criteria used in Rule 10b–6. The restricted periods of Regulation M would focus more specifically on the time of pricing. In contrast, Rule 10b–6 imposes restrictions during the entire distribution, which can extend over a lengthy period of time, but excepts certain trading activities prior to a two or nine business day ''cooling-off period.'' The applicable cooling-off period is keyed off of the commencement of offers and sales. While Rule 10b–6 is intended to protect the pricing of an offering, certain distribution methods, particularly in connection with foreign offerings, can result in the cooling-off periods commencing after an offering has been priced.

Rule 101 would exclude from its coverage more actively-traded securities, many investment grade securities, and Rule 144A transactions. Further, Rule 101 would focus on the security being distributed and would not cover related derivative securities. It would permit the routine dissemination of research reports, exercises of options and other securities, and transactions in baskets of securities involving the offered security, among other transactions. In addition, Rule 101 would deal with ''inadvertent'' violations during the restricted period by excusing *de minimis* transactions, provided that a distribution participant had in place policies and procedures reasonably designed to achieve compliance with the rule. The scope of persons subject to the proposed rule would be narrowed by recognizing ''information barriers'' between the distribution participant and its affiliates.

Rule 102 would cover issuers, selling securityholders, and related persons. Issuers and selling securityholders would be able to engage in market activities prior to the applicable restricted period. During the restricted period, Rule 102 would permit bids and purchases of odd-lots, transactions in connection with issuer plans, and exercises of options or convertible securities by the issuer's affiliated purchasers. This rule would not contain an exception for actively-traded securities. The proposals also would reflect the view that the safe harbor of Rule 10b–18 under the Exchange Act is not available during a distribution.[14]

Proposed Rule 103 would govern Nasdaq passive market making and replace Rule 10b–6A. The new rule would extend to all Nasdaq securities and nearly all distributions, and would permit more distribution participants to engage in passive market making.

Proposed Rule 104 would regulate stabilizing and other activities related to a distribution. The rule would allow underwriters to initiate and change stabilizing bids based on the current price in the principal market (whether U.S. or foreign), as long as the bid did not exceed the offering price. Rule 104 also would address the fact that underwriters engage in substantial syndicate-related market activity, and enforce penalty bids in order to reduce volatility in the market for the offered security. These activities are analogous to traditional stabilizing under Rule 10b–7. The proposed rule would require disclosure and recordkeeping with respect to these aftermarket activities.

Proposed Rule 105 essentially would recodify Rule 10b–21 governing short selling in connection with a public offering. To harmonize Rule 105 with the provisions of Rules 101 and 102, the period of Rule 105's coverage would be narrowed to the five business day

[12] The American Bar Association (''ABA'') and the Securities Industry Association drafted proposed rule texts for the staff's consideration, which are included in File No. S7–14–94.

[13] *See Report of the Task Force on Disclosure Simplification* 77–79 (March 1996) (''Task Force Report'').

[14] 17 CFR 240.10b–18.

period before pricing, rather than the period extending from the time of filing of offering materials to the time when sales may be made. This release requests comment, however, on the continued need for a separate rule regulating such short selling.

The Commission believes that separate regulation of rights offerings, as contained in Rule 10b–8, may no longer be warranted. U.S. issuers infrequently use rights offerings to raise capital. Even when they do, purchases of rights generally would not be an efficient way for a distribution participant to facilitate the offering of the underlying security. In addition, the Commission believes that many rights offerings by foreign issuers would fall within the exception for actively-traded securities contained in Rule 101. Therefore, the proposals would rescind Rule 10b–8.

The proposed trading practices rules, like the current rules, would apply to all distribution participants in a multinational offering of securities, as well as the issuer and any selling securityholders or affiliated purchasers, if the offering occurs at least in part in the United States. In connection with the Concept Release, as noted above, several commenters addressed the application of the trading practices rules to multinational offerings. Regulation M would not distinguish between domestic and multinational offerings subject to the Commission's regulatory jurisdiction. Nevertheless, the proposed rules respond to the concerns of these commenters. In particular, the exceptions to Rule 101 for actively-traded securities, and the exclusion of affiliates of distribution participants where the distribution participant maintains and enforces certain information-flow restrictions, should facilitate the ability of issuers and underwriters to conduct multinational offerings.

Many terms and concepts in Regulation M would have the same meaning as under the trading practices rules (*e.g.*, the definition of ''distribution''), and current interpretations regarding such terms or concepts would be relevant to the new rules. Exemptions granted and no-action positions taken under the current rules no longer would be in effect under Regulation M because the rules under which they were issued would be rescinded. Many of these exemptions and no-action positions, however, are proposed to be codified and, in many cases, expanded under the new rules. Others no longer would be necessary in view of the provisions of the new rules. The Commission believes that the broad scope of these amendments will greatly reduce the need for the issuance of exemptions from the proposed rules. In reviewing the proposals, commenters are urged to consider their implications for existing exemptions, no-action positions, and interpretations.

The new regulatory framework should relieve market participants of unnecessary burdens and respond effectively to a changing marketplace, while maintaining essential investor protection. The following sections of this release describe the individual provisions of Rules 100 through 105 and discuss, where appropriate, how they would differ from current anti-manipulation regulation and why the Commission is proposing such changes. Comment is solicited throughout the release regarding specific aspects of the proposals. In addition to responding to these questions, commenters are encouraged to state how the proposed rules either would or would not accomplish the goals of Regulation M.

III. Discussion of Proposed Regulation M and Related Amendments

A. Rule 100—Definitions

Proposed Rule 100 would set forth the definitions that apply to all of the rules contained in Regulation M. Many of the terms in Rule 100 are defined in the trading practices rules, although the definitions of some of these terms have been revised to reflect commenters' suggestions. The Commission also proposes to codify terms that have been used in interpretations, or are the subject of outstanding Commission proposals.[15] Other terms are new, and are integral to the fundamental changes that are reflected by Regulation M. Individual definitions are discussed later in this release in connection with the particular aspects of Regulation M to which they relate.

Q1. Do any of the definitions need to be clarified or modified? Are there other terms used in Regulation M that should be defined in Rule 100?

B. Rule 101—Activities by Distribution Participants

1. Overview of Rule 101

This proposed rule would include significant similarities to as well as differences from Rule 10b–6. Rule 101, like Rule 10b–6, would place restrictions on the activities of distribution participants and their affiliated purchasers during the distribution period.[16] However, while Rule 10b-6 applies during the entire distribution period, which extends from the time the issuer determines to go forward with the offering until all sales efforts end, the rule contains exceptions permitting certain transactions until the commencement of cooling-off periods. In contrast, Rule 101 would apply only during the period commencing one or five business days immediately preceding pricing of the offering and ending when sales efforts cease.

Both Rule 101 and Rule 10b–6 cover securities that are the subject of the distribution. Rule 101 would not apply to any security with an average daily trading volume (''ADTV'') with a value of $1 million or more, or to any related derivative securities. Rule 101, however, would apply to transactions in an underlying security (*i.e.*, a ''reference security'') during a distribution of a derivative security.

Rule 101 and Rule 10b–6 apply to distribution participants and their affiliated purchasers. For purposes of Rule 101, ''distribution participant'' would refer to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution. Issuers and selling securityholders and their affiliated purchasers, which also are covered by Rule 10b–6, would be subject to proposed Rule 102. The definition of ''affiliated purchaser'' would be narrower than that contained in Rule 10b–6, and would recognize the use of information barriers to separate distribution participants' corporate financing activities from the trading operations of their affiliates.

Rule 101 would contain exceptions from its proscriptions for activity that is necessary to permit the offering to proceed; to limit adverse effects on the trading market that could result from these prohibitions; and to allow conduct that is not likely to have a manipulative impact.

Moreover, the Commission has simplified the language used in Rule 101, and believes that the proposed rule reflects the broader sources of statutory authority under which Regulation M would be adopted, including the anti-fraud provisions, the statutory authority to adopt ''means reasonably designed to prevent'' fraud and manipulation, and the Commission's general rulemaking authority. Rule 101 explicitly would include a prohibition against inducing

[15] See Securities Exchange Act Release No. 28732 (January 3, 1991), 56 FR 814 (proposing amendments to Rule 10b–7); Securities Exchange Act Release No. 28733 (January 3, 1991), 56 FR 820 (proposing definitional Rule 3b–10) (collectively, ''1991 Proposals''). These proposals would be withdrawn upon adoption of Regulation M.

[16] The definition of ''distribution'' for purposes of Rule 101 would be identical to that contained in Rule 10b–6.

others to bid for as well as purchase any covered security.

2. Securities Excepted From Rule 101

a. Securities With an ADTV Value of $1,000,000 or More

Commenters on the Concept Release supported the idea of reducing restrictions on actively-traded foreign and U.S. securities consistent with the principles of the Commission's 1993 Statement of Policy.[17] After considering commenters views and the Commission's experience with the Statement of Policy, the Commission is proposing to exclude from Rule 101 all securities with a published ADTV value of at least $1 million.[18] Thus, proposed paragraph (c)(1) of Rule 101 would eliminate the requirement of Rule 10b–6 that distribution participants and their affiliated purchasers restrict market activities in these securities and related securities. This action would enhance significantly cross-border capital raising capabilities because, for many foreign issuers, the trading practices rules have been an impediment to offering their securities in the United States.

The Commission preliminarily believes that it is reasonable to remove prophylactic trading restrictions for securities with a minimum ADTV value of $1 million and to rely on market mechanisms to curb manipulative activity.[19] While the price of any security can be manipulated, the Commission is of the view that, as the value of trading volume of a security increases, it becomes less likely that a distribution participant would be able, cost-effectively, to affect the price of the security. Actively-traded securities generally are followed widely by the investment community, and aberrations in price are likely to be observed and corrected quickly. Moreover, virtually all actively-traded securities are traded on exchanges or other organized markets with high levels of transparency and surveillance.[20]

If adopted, it is estimated that the $1 million value of ADTV threshold would remove from Rule 101 equity securities of over 2,000 domestic issuers and a substantial number of foreign securities.[21] The Commission believes that this threshold will except a large group of securities as to which the potential for a successful manipulation is more limited. This will make it easier for both foreign and domestic issuers to access the U.S. capital markets, and will afford more opportunities for U.S. investors.

The proposed exception would not compromise investor protection because the general anti-fraud and anti-manipulation provisions would continue to apply to offerings of these securities. Those provisions would continue to prohibit distribution participants and their affiliated purchasers from influencing a security's price as a means to facilitate a distribution.

Q2. Is the exception for actively-traded securities appropriate? Is the ADTV threshold of $1 million appropriate? Should the threshold be $5 million or some other level? Commenters suggesting another threshold should provide reasons to support their views.

Q3. Should transactions by distribution participants in actively-traded securities be restricted for a brief period (*e.g.*, one or two hours) prior to pricing? Would such a restricted period be feasible to implement?

In the case of distributions of certain actively-traded foreign securities, the Commission has not applied Rule 10b–6 to transactions in securities markets that have not represented a significant proportion of activity in the security, *i.e.*, where the trading volume in a particular jurisdiction accounts for less than 10% of the aggregate worldwide published trading volume in the security (''non-significant markets'').[22] The Commission is not proposing an exclusion for transactions effected in non-significant markets because the proposed exception for actively-traded securities would permit transactions in those securities without restriction. The concept of non-significant markets, however, may be important if a brief restricted period were required for actively-traded securities, or for those offerings of foreign securities that are subject to Rule 101.

Q4. Should transactions effected in non-significant markets be subject to restricted periods? How would non-significant markets be defined (*e.g.*, would the current test of less than 10% of aggregate worldwide published trading volume suffice)? Commenters favoring an exception for transactions in non-significant markets should discuss the context where the principal market is closed for trading.

Although the Commission is not proposing to include a specific disclosure or recordkeeping requirement for transactions in these securities by distribution participants, as contained in exemptions issued pursuant to the Statement of Policy, the Commission is proposing amendments to Regulations S–B and S–K that would require disclosure of syndicate covering transactions and penalty bids that could affect an offered security's price.[23]

Q5. Should the disclosure requirements referenced in the Statement of Policy apply to transactions in actively-traded securities excepted from Rule 101?

b. Investment Grade Nonconvertible Securities

Paragraph (c)(2) of Rule 101 generally would incorporate the exception contained in Rule 10b–6(a)(4)(xiii), which excepts nonconvertible debt securities and nonconvertible preferred securities, if the nonconvertible securities being distributed are rated investment grade by at least one nationally recognized statistical rating organization (''NRSRO''). This exception is based on the premise that these securities are traded on the basis of their yields and credit ratings, rather than the identity of the particular issuer, are largely fungible and, therefore, are less likely to be subject to manipulation.[24]

Q6. Do investment grade asset-backed securities have the same characteristics, including with respect to trading, as nonconvertible investment grade debt securities of corporate issuers? Should investment grade asset-backed securities be excepted from Rule 101?

[17] *See* Securities Exchange Act Release No. 33137 (November 3, 1993), 58 FR 60324 (''Statement of Policy''). *See also Letter regarding Exemptions from Rules 10b–6, 10b–7, and 10b–8 During Distributions of Certain German Securities,* Securities Exchange Act Release No. 33022 (October 6, 1993), 58 FR 53220; *Letter regarding Distributions of Certain French Securities,* Securities Exchange Act Release No. 34176 (June 7, 1994), 59 FR 31274; *Letter regarding Exemptions from Rules 10b–6, 10b–7, and 10b–8 During Distributions of Certain United Kingdom Securities and Certain Securities Traded on SEAQ International,* Securities Exchange Act Release No. 35234 (January 11, 1995), 60 FR 4644; *Letter regarding Exemptions from Rules 10b–6, 10b–7, and 10b–8 During Distributions of Certain Dutch Securities,* Securities Exchange Act Release No. 36412 (October 19, 1995), 60 FR 55391.

[18] A $5 million ADTV threshold was used in the Statement of Policy as well as in the class exemptions issued thereunder to identify very actively-traded securities. *See supra* note 17.

[19] *See infra* Section III.B.3.b. for a discussion of ADTV generally.

[20] The Commission expects that SROs will continue to enhance their systems and procedures to capture improper trading during distributions.

[21] Based on transaction information for 1994, approximately 1,051 securities listed on the New York Stock Exchange, Inc. (''NYSE''), 677 securities quoted on Nasdaq, and 30 securities listed on the American Stock Exchange, Inc. (''AMEX'') would be excluded from the rule. In 1994, firm commitment public offerings were conducted for 268 of these securities. The general increase in security prices and trading volume since year-end 1994 would increase the number of securities likely to be excluded from the proposed rule.

[22] *See supra* note 17 (citing class exemptions).

[23] *See infra* Section III.E.5.

[24] Securities Exchange Release No. 19565 (March 4, 1983), 48 FR 10628, 10631–32 (''Release 34–19565'').

Q7. For purposes of Rule 101, should an exception for nonconvertible investment grade debt or preferred securities be based on criteria other than a rating by an NRSRO?

c. Exempted Securities

The Commission proposes to exclude from Rule 101 ''exempted securities,'' as defined in Section 3(a)(12) of the Exchange Act. Rule 10b–6 provides an exception for these exempted securities, and also specifically excludes securities that are issued, or guaranteed as to principal and interest, by the International Bank for Reconstruction and Development (''IBRD''). The Commission believes that the exception for nonconvertible investment grade debt makes it unnecessary to refer to securities of the IBRD, or of any other entity, within the ''exempted securities'' exception.

d. Face-Amount Securities or Securities Issued by an Open-End Management Investment Company or Unit Investment Trust

The Commission proposes to except from Rule 101 face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust pursuant to paragraph (c)(4) of Rule 101. Paragraph (d) of Rule 10b–6 contains such an exception.

3. Securities and Activities Covered by the Rule

a. Restricted Periods

In the Concept Release, the Commission requested comment on whether the Rule 10b–6 cooling-off periods, and the criteria used to determine such periods, should be revised. Nine commenters addressed these issues. These commenters supported shortening the cooling-off periods, asserting that the two and nine business day periods no longer are justified, especially in light of advances in the SROs' surveillance systems and enhanced market transparency. A few commenters stated that the price and public float criteria should be replaced and suggested tests based on trading volume, market capitalization, or public float.

In Rule 10b–6, a security with a per share price of at least $5.00 and a public float of at least 400,000 shares has a cooling-off period of two business days, while all other securities are subject to a nine business day cooling-off period. The Commission adopted these criteria because a security's public float provided a reasonable indication of the depth and liquidity of the market for a security; a minimum share price criterion was appropriate in light of the generally greater volatility of lower priced stocks; and the criteria were easily ascertainable.[25] In addition, a five business day cooling-off period applies to the exercise of standardized call options that were acquired after the person became a distribution participant.

For securities covered by Rule 101 (*i.e.*, those with a published ADTV value of less than $1,000,000), the Commission is proposing to replace the existing cooling-off periods with two shorter restricted periods:

i. for a security with a published ADTV value equal to or exceeding $100,000, the restricted period would begin on the later of *one business day* prior to the determination of the price of the security to be distributed, or such time that a person becomes a distribution participant, and end upon the completion of such person's participation in the distribution of a security;[26]

ii. for all other securities, the restricted period would begin on the later of *five business days* prior to the determination of the price of the security to be distributed, or such time that a person becomes a distribution participant, and end upon the completion of such person's participation in the distribution.

Accordingly, the proposed trading restrictions of Rule 101 focus on a security's ADTV value, and the period immediately before the offering is priced. This approach differs from the cooling-off periods under Rule 10b–6, which are based on the price and public float of a security and begin prior to the commencement of offers and sales in the distribution.

The Commission believes that the proposed thresholds effectively balance maintaining depth and liquidity in the period immediately preceding pricing and protecting the integrity of the market as an independent pricing mechanism. Many securities now qualifying for a two business day cooling-off period and some nine business day securities would have this period reduced to one business day. For a large number of securities, the nine business day period would be reduced to five business days. The applicable period for some securities would increase from two to five business days.[27]

Q8. Would the proposed restricted periods adequately balance the goal of maintaining market liquidity with the mandate to protect investors from manipulation? If not, should one hour be used rather than one business day? Should two or nine business days continue to be used rather than one and five business days?

In some offerings, there is a lag between the time that the securities are priced and the commencement of sales. For example, in certain foreign offerings, the securities are priced, then there is a subscription period for home-country residents, after which international offers commence. Similarly, in the case of an exchange offer or merger, the securities could be priced some time before the exchange offer or proxy solicitation period commences. In these offerings, as in other distributions, the Commission believes that the restricted periods should apply one or five business days prior to the pricing of the offering and continue until distribution activities terminate. Thus, there could be a period of time between pricing and the commencement of offers and sales when market activity by distribution participants and their affiliated purchasers would be restricted by Rule 101.

Q9. Are there circumstances when the application of the restricted periods should be modified? For example, should there be a separate restricted period in the case of merger transactions or exchange offers? Commenters should describe situations where they believe that a restricted period based on pricing may not be feasible.

b. The Use of a Test Based on ADTV

As indicated above, the basis for determining which restricted period applies to a particular security would be different from the test used for the cooling-off periods under Rule 10b–6. Various measurements could be used to provide relatively certain and easily determinable criteria for applying the appropriate restricted period (*e.g.*, ADTV value, the security's price, an issuer's public float). For purposes of Regulation M, the Commission believes that the value of a security's ADTV is the most appropriate test because it provides a more accurate indication of

[25] See Release 34–19565, 48 FR at 10634.

[26] The term ''business day'' would be defined in Rule 100 as a 24 hour period, determined with reference to the principal market for the security to be distributed, that includes a complete trading session for that market.

[27] Compared with the cooling-off periods under the current rule, for 7,477 NYSE, AMEX, and Nasdaq securities, approximately 24% will not be subject to Rule 101, approximately 56% will have a shorter restricted period, and approximately 20% will have a longer restricted period (based on 1994 price and volume information).

the depth and liquidity of the trading market for a security than its price and public float. For example, although an issuer may have a significant public float, the dollar value of daily trading in its common stock may be quite low.

The Commission proposes to define ''average daily trading volume'' as the world-wide reported average daily trading volume during the three full consecutive calendar months immediately preceding either the date of the filing of the registration statement, or if there is no registration statement or if the distribution involves a shelf takedown, three full consecutive calendar months immediately preceding the pricing. To determine the value of the ADTV, it is proposed that the ADTV either be multiplied by the security's price (in dollars) as of the last business day of the most recent month, or calculated by using the actual price and volume information for each day within the three month period, if it is available.

Q10. Does the value of a security's ADTV provide the appropriate standard on which to base the restricted periods? Should a test based on the issuer's public float be used instead? If so, should the thresholds be, for example, a $150 million public float for the actively-traded securities exception; a public float of $25–$150 million for the one business day restricted period; and a public float of below $25 millon for the five business day restricted period?

Q11. Is information on ADTV readily available to participants in a distribution?

Q12. Should ADTV be based on a different measuring period, *e.g.*, 12 full calendar months, or a rolling three month (*i.e.*, 90 day) period, rather than three full calendar months?

c. Derivative Securities

The Concept Release stated the Commission's view that anti-manipulation regulation of securities offerings ''should be limited to securities whose prices may significantly affect the market's evaluation of a security in distribution.'' [28] Rule 10b–6(a)(4) applies to: (1) The security being distributed, (2) any security of the ''same class and series'' as that security, and (3) ''any right to purchase'' any such security. In the case of distributions of a security that is ''immediately exchangeable for or convertible into'' another security, or that entitles the holder immediately to acquire another security, Rule 10b–6(b) also prohibits purchases of the other security.

The ''right to purchase'' and ''same class and series'' concepts appear to be both too broad and too limited. The same class and series language has been construed broadly to encompass similar securities of an issuer even though there is no inherent mathematical relationship between the prices of those securities.[29] This has led to some complicated and not very clearly defined distinctions in applying the rule to offerings of debt. On the other hand, the right to purchase concept has been interpreted so as not to reach securities that are not ''immediately'' convertible into each other. These securities, however, trade with a price relationship to the security in distribution because their ultimate value is, or in the future may be, determined by the value of the security into which they are exchangeable or exercisable.[30] The concept also does not encompass a wide variety of securities that have been developed in recent years whose value is or will be derived from another security, but that do not give the holder the right to acquire that security. On the other hand, Rule 10b–6 applies to transactions in derivative securities, such as options and warrants, that are exchangeable or exercisable for the security in distribution, but are not very efficient vehicles to cause a price effect on the distribution security.

The Commission is proposing to eliminate these two Rule 10b–6 concepts, and to apply the trading restrictions of Rule 101 to ''covered securities,'' which would include the security in distribution and ''reference securities.'' A ''reference security'' would be defined in Rule 100 as a security whose price is or will be used to determine, in whole or in significant part, the price of another security that is the subject of a distribution.[31]

In contrast, derivative securities related to the security in distribution would not be covered by the rule. The Commission believes that the manipulative potential of trades in a derivative security for the purpose of affecting the price of an underlying security is sufficiently attenuated such that these securities should not be covered by Regulation M. Thus, for example, bids or purchases of the underlying common stock (*i.e.*, the reference security) would be restricted during a distribution of a security exercisable or exchangeable for, or convertible into, the common stock. On the other hand, bids or purchases of any exercisable, exchangeable, or convertible security would not be restricted during a distribution of the related common stock.

Many securities that under Rule 10b–6 are deemed by interpretation to be of the same class and series as those distributed, because of the similarities in their coupon rates, maturity dates, and other provisions, would not be subject to Rule 101. For example, Rule 101 would not apply to bids for and purchases of nonconvertible debt or preferred securities of the same issuer that are not identical in their principal features to the securities being distributed. The Commission preliminarily believes that the benefit of reducing compliance costs and maintaining a normal trading market for these other securities outweighs the possibility that bids for and purchases of such securities could be used to facilitate a distribution. Rule 101 would apply, however, to transactions in securities that differ from a security in distribution only as to the presence or absence of voting rights.

Q13. Commenters are invited to discuss whether derivative securities, *i.e.*, those that derive all or part of their value from a security in distribution, should be covered by Regulation M.

Q14. Is there a more appropriate definition for a ''reference security?''

Q15. Should a security that could never contribute more than 5% of the value of another security not be deemed to be a reference security for that security? If derivative securities are covered by the rule, are there feasible means to identify securities with a price relationship to a security in distribution that is sufficiently attenuated that it should not be covered by the rule? For example, should a derivative security that derives less than 5% of its value from a security in distribution be excluded?

4. Distributions

a. Definition of Distribution

In the Concept Release, the Commission sought comment on whether to continue to define the term ''distribution,'' and if so, whether the term's definition should continue to be based on the ''magnitude of the offering'' and the presence of ''special

[28] Concept Release, 59 FR at 21688.

[29] *See* Concept Release, 59 FR at 21688. *See also Letter regarding Gamble-Skogmo, Inc.* (January 11, 1974).

[30] *See* Release 34–19565, 48 FR at 10634 n.28.

[31] Examples of securities that are not covered expressly by Rule 10b–6, but would be covered by Rule 101 as reference securities, include the underlying common stock during distributions of ''preferred equity redemption cumulative stocks'' (''PERCS'') and ''equity-linked notes'' (''ELNS'').

selling efforts and selling methods.''[32] Commenters did not suggest any changes to the definition or that it be eliminated from the rule. Accordingly, the term ''distribution'' for purposes of Regulation M is proposed to have the same meaning as in Rule 10b–6. The Concept Release sought comment on whether certain types of offerings, specifically, mergers and exchange offers, should continue to be deemed distributions. Few comments, however, were received on this issue. Thus, the Commission does not propose excluding mergers and exchange offers from the definition of distribution.[33]

Q16. Does the definition of distribution continue to be appropriate?

b. Shelf Offerings

The Commission believes that it is useful to discuss the proposed application of Rules 101 and 102 in the particular context of shelf offerings. In 1983, the Commission permanently adopted Rule 415, which, among other things, allows issuers and selling shareholders to register securities for sale on a delayed or continuous basis.[34] Since the Commission last addressed this issue, the methods by which shelf offerings are conducted have changed, and the use of shelf registration has increased. For example, ''unallocated'' shelf registration statements that register a substantial amount of securities, but do not specify the exact amounts of particular types of securities that may be sold, have become more common. The Commission believes that it is appropriate to reflect these developments in the treatment of shelf offerings for purposes of proposed Rules 101 and 102.

Under a current Commission interpretation, ''any shelf-registered offering that constitutes a Rule 10b–6 distribution should be considered a single distribution for purposes of the rule.''[35] This means that once an issuer, or a selling securityholder that is in a control relationship with the issuer, determines to proceed with a shelf registered distribution, each takedown off of the shelf is subject to Rule 10b–6 irrespective of its individual magnitude.[36] However, a selling securityholder that is not an affiliated purchaser of the issuer or of any other selling securityholder is subject to the restrictions of Rule 10b–6 only with respect to offers or sales of that individual securityholder's securities.[37]

In addition, under Rule 10b–6, the Commission has distinguished between broker-dealers that have arrangements, agreements, or understandings with issuers to sell all or a portion of the securities being distributed off the shelf (''continuing agreements''), and those that do not. If a broker-dealer has a continuing agreement with an issuer to sell, from time to time, securities registered on the shelf, it is subject to the full cooling-off period prior to any offer or sale off the shelf. If a broker-dealer does not have a continuing agreement with an issuer, and decides to submit a bid in response to an issuer's solicitation of interest in purchasing its securities for distribution, the broker-dealer is subject to the applicable cooling-off period from the time that it decides to submit the bid.[38] If a broker-dealer submits an unsolicited bid, it is not deemed to be a participant until the bid has been accepted or the broker-dealer has reason to believe that it will be accepted.[39]

Rather than applying the single distribution position, the Commission would take a modified approach regarding the application of Rule 101 to shelf distributions.[40] Under the Commission's proposed approach, rather than considering the entire shelf to be a single distribution and applying the rule's restricted periods to any offers or sales off the shelf, each takedown would be examined individually in order to determine whether such offering constitutes a distribution, *i.e.*, whether it satisfies the ''magnitude'' and ''special selling efforts and selling methods'' criteria of a distribution.[41]

A broker-dealer participating in the offering of a shelf tranche should determine whether it is participating in a ''distribution.'' To determine the magnitude of the offering for purposes of Rule 101, the broker-dealer would have to assess the amount of securities that it is, or foreseeably will be, asked to sell.[42] The broker-dealer also would need to analyze the selling efforts and selling methods that it will use. For example, where a broker-dealer sells shares on behalf of an issuer or selling securityholder in ordinary trading transactions into an independent market, *i.e.*, without any special selling efforts, the broker-dealer is not subject to Rule 10b–6.[43] Special selling efforts likely would be involved, however, where a broker-dealer enters into a sales agency agreement that provides that it will receive unusual transaction-based compensation for the sales, even if the securities are sold in ordinary trading transactions. An issuer's identification in a shelf registration statement of a variety of potential selling methods that could be used to sell registered securities off a shelf (some of which would constitute ''special selling efforts''), however, would not, in itself, require a broker-dealer to consider itself to be involved in a distribution unless special selling efforts or methods were used by the broker-dealer in connection with particular sales off the shelf.[44]

[32] A distribution is defined in Rule 10b–6(c)(5) as ''an offering of securities, whether or not subject to registration under the Securities Act of 1933, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.''

[33] The Commission is of the view that exchange offers and mergers involving the issuance of securities, and related shareholder election and valuation periods, should be subject to Regulation M. *See Georgia-Pacific Corporation*, SEC Litigation Release No. 3511, (May 23, 1966). *See also* Release 34–19565, 48 FR at 10638 n.61.

Because the Commission is proposing to eliminate the ''right to purchase'' concept, Rule 10b–6 restrictions on purchases of most target company securities during an exchange offer or a merger involving the issuance of securities would be eliminated. Rule 10b–13 under the Exchange Act, however, would continue to prohibit any purchases or arrangements to purchase target securities, or a security immediately convertible into or exchangeable for those securities, from the time of public announcement until the expiration of a tender or exchange offer. 17 CFR 240.10b–13.

[34] 17 CFR 230.415. Securities Exchange Act Release No. 20384 (November 17, 1983), 48 FR 52889.

[35] Release 34–19565, 48 FR at 10631. This has been known as the ''single distribution position.''

[36] *Id. See also* Securities Exchange Act Release No. 23611 (September 11, 1986), 51 FR 33242, 33244 (''Release 34–23611'').

[37] Release 34–23611, 51 FR at 33244.

[38] *See* Release 34–19565, 48 FR at 10634.

[39] *See id.* at 10635. *See also infra* Section III.B.5.b. discussing the revised definition of ''prospective underwriter.''

[40] The Commission's revised interpretation regarding shelf offerings would apply to distribution participants, issuers, and selling securityholders, and would modify previous Commission interpretations regarding shelfs. *See* Release 34–23611, 51 FR at 33244–45.

[41] If a distribution participant (*e.g.*, a broker-dealer) has not entered into a continuing agreement with an issuer or selling securityholder, and if the sales off the shelf constitute a distribution, then the distribution participant would be required to comply with Rule 101 from the later of the applicable restricted period for the offered security, or the time that such person becomes a distribution participant. This interpretation reflects the speed with which sales off a shelf frequently occur.

[42] If sales off a shelf by an issuer, or by any affiliated purchaser of the issuer, constitute a distribution of securities, the issuer and all issuer affiliated purchasers would be subject to the applicable restricted period of Rule 102. Similarly, if any shelf securityholder is selling securities off a shelf, and such sales constitute a distribution, all other shelf securityholders who are affiliated purchasers of the selling securityholder would be subject to the applicable restricted period of Rule 102. *See* Release 34–23611, 51 FR at 33245.

[43] *See* Release 34–23611, 51 FR at 33247.

[44] *Cf.* Securities Exchange Act Release No. 18528 (March 3, 1982), 47 FR 11482, 11485 (''Release 34–18528''). Under current interpretation, if a registrant, when disclosing its proposed plan of distribution, reserves the right to utilize techniques that might entail selling efforts or compensation of the type normally associated with a distribution,

Continued

Q17. Should a broker-dealer that enters into a continuing agreement regarding sales of all securities or a significant amount of the shares on the shelf be viewed differently from one whose participation is limited to a single takedown?

Q18. Are there other issues raised by the application of Rule 101 to shelf offerings that the Commission should address?

5. Persons Subject to the Rule

a. Distribution Participant

The term ''distribution participant'' is proposed to be defined in Rule 100 as an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in the distribution.

Q19. Does the proposed definition of distribution participant adequately cover those persons, other than an issuer or selling securityholder, who have a readily identifiable incentive to manipulate the market during an offering? [45]

b. Prospective Underwriter

Commenters requested that the Commission provide greater certainty as to when a person becomes a ''prospective underwriter'' for purposes of Rule 10b–6.[46] Commenters were concerned especially with the application of this definition in the context of shelf-registered distributions when a broker-dealer has submitted a bid to purchase shelf-registered securities, but does not know whether the bid will be accepted by the issuer or selling securityholder. This uncertainty may exist in those circumstances where bids are submitted to the issuer or selling securityholder by a number of broker-dealers, or where the issuer or selling securityholder solicits a bid from a broker-dealer, but has not indicated an intention to offer shares off the shelf or to select that particular broker-dealer as an underwriter.

The Commission believes that the definition of ''prospective underwriter'' should reflect the principle that anti-manipulation regulation should apply when there exists an incentive to manipulate.[47] In the Commission's view, a person has an incentive to manipulate, and thus becomes a prospective underwriter, when such person knows or reasonably expects that a bid or proposal it has submitted to the issuer or selling securityholder will be accepted, whether or not the underwriting's terms and conditions have been agreed upon. Moreover, a person who has received an invitation to participate in an offering should be deemed a ''prospective underwriter'' from the time that the person decides to participate, whether or not that decision has been communicated to the issuer, selling securityholder, or managing underwriter.

Accordingly, Rule 100 would define ''prospective underwriter'' as a person who: (i) has submitted a bid to the issuer or other person on whose behalf the distribution is to be made, which such person knows or reasonably expects will be accepted, whether or not the terms and conditions of the underwriting have been agreed upon; or (ii) has reached, or reasonably expects to reach, an understanding with the issuer or selling shareholder, or with the managing underwriter, that such person will become an underwriter, whether or not the terms and conditions of such person's participation have been agreed upon.

A broker-dealer would be subject to Rule 101 beginning with the commencement of the restricted period or such later time as the broker-dealer becomes an underwriter or prospective underwriter. If the broker-dealer has a continuing agreement with the issuer or selling securityholder, such firm would have advance knowledge that the distribution will take place. Thus, the broker-dealer would be required to observe the entire restricted period prior to the pricing of the offered security subject to that agreement. There may be other scenarios where a broker-dealer does not have a continuing relationship with an issuer, but would be in a position to have advance knowledge that a takedown off a shelf will occur and that the broker-dealer will participate in the distribution. Such broker-dealer also would be required to observe the entire restricted period. This position reflects the role that such broker-dealers generally play in advising issuers and selling shareholders regarding the timing of shelf offerings.

Q20. Does the proposed definition of prospective underwriter provide sufficient flexibility and certainty to persons who submit bids to become underwriters of securities?

c. Affiliated Purchaser

Certain persons who are not themselves distribution participants have relationships with distribution participants that raise concerns that they may have incentives to facilitate a distribution through manipulative means. These persons are referred to in Rule 10b–6 and in Regulation M as ''affiliated purchasers.'' Both Rule 10b–6 and Rule 100 include within this term: (1) persons who act in concert with a distribution participant in connection with the acquisition or distribution of a security that is the subject of a distribution; or (2) affiliates who control the purchase of such securities by a distribution participant, or whose purchases are controlled by a distribution participant, or whose purchases are under common control with those of a distribution participant.

The Commission believes that Regulation M should reflect the structural complexity of multi-service financial organizations, the administrative costs incurred by such entities in complying with Rule 10b–6, and the precedents recognizing information barriers as an element of exemptions from Rule 10b–6.[48] The Commission proposes that Rule 100 would exclude an affiliate of a distribution participant from the coverage of Rule 101 if the distribution participant establishes, maintains, enforces, and reviews at least annually written policies and procedures to separate its corporate finance activities conducted in connection with a distribution from the trading operations of the affiliate (''information barriers'')[49] and the affiliate is a separate and distinct organizational entity from, with no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support

the Commission deems special selling efforts and selling methods to be used throughout the shelf offering for purposes of Rule 10b–6.

[45] *See* Concept Release, 59 FR at 21686.

[46] Rule 10b–6(c)(2) defines the term as:

A person (i) who has decided to submit a bid to become an underwriter of securities as to which the issuer or other person on whose behalf the distribution is to be made, has issued, directly or indirectly, an invitation for bids, or (ii) who has reached an understanding, with the issuer or other person on whose behalf a distribution is to be made, that he will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon. 17 CFR 240.10b–6(c)(2).

[47] *See* Concept Release, 59 FR at 21686. *See also* Release 34–19565, 48 FR at 10634–10635.

[48] *See* Securities Exchange Act Release No. 36033 (July 31, 1995), 60 FR 40212; *Letter regarding CS Holding,* [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,018 (March 31, 1995) (''CS Holding Letter'').

[49] The information barriers may be established pursuant to separate regulatory requirements. *See, e.g.,* 2 NYSE Guide (CCH) ¶ 2098 (requiring that information barriers be established that place substantial limits on access to, and communication of, trading information, including strategies and positions, between a specialist organization and an affiliated entity); *Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Nonpublic Information,* Report by the Division of Market Regulation to the Securities and Exchange Commission (March 1990); *Broker-Dealer Internal Control Procedures for High Yield Securities,* Report by the Division of Market Regulation to the Securities and Exchange Commission (October 1993).

personnel) in common with, the distribution participant.[50]

A distribution participant would be required to obtain an independent review at least annually of its compliance during the preceding year with the policies and procedures governing its information barriers, including the operation and any breaches of such barriers, and to report on the findings of such review to its management.[51] The distribution participant's internal audit group could perform the review if the group were independent of the corporate financing and trading departments.[52]

Q21. Would this proposed definition appropriately narrow the types of affiliates that should be deemed ''affiliated purchasers''?

Q22. Is it appropriate to rely on information barriers to exclude certain affiliates of distribution participants from the restrictions of Rule 101?

Q23. Can information barriers be established effectively within the same organizational entity so as to preclude opportunities to manipulate the price of a security that is the subject of a distribution?

Q24. Should the independent annual review be conducted by an external reviewer (such as an accounting firm)?

Q25. The requirement under Rule 10b–6 of no common employees, other than clerical, ministerial, or support personnel, would be retained; however, the requirement of separate employee compensation arrangements would be discontinued. Should the separate employee compensation requirement be retained? Should shared employees or officers be permitted?

Q26. How would this definition affect the operations of distribution participants? Do they now conduct their corporate finance activities in separate and distinct organizational entities from their trading operations?

Q27. How would this definition affect investment advisers and other non-broker-dealer fiduciaries?

Q28. How would this definition affect non-U.S. distribution participants and their affiliates, including non-U.S. entities that are permitted to engage in both commercial and investment banking activities (*e.g.*, universal banks)?

6. Activities Excepted From Rule 101: Paragraph (b)

a. Generally

As with Rule 10b–6, the Commission believes that certain activities should be excepted from the prohibitions of proposed Rule 101 because of the need to facilitate orderly distributions of securities, or to limit potential disruptions in the trading market, or because the activity has little manipulative potential. The exceptions to Rule 10b–6 are prefaced with a proviso that such activities are not prohibited if not ''engaged in for the purpose of creating actual, or apparent, active trading in or raising the price of any such security.'' The Commission does not propose to include this proviso in Rule 101 because it adds an element of complexity that does not appear to be warranted in light of the new structure of Rule 101. Activities permitted by Rule 101 would remain subject to the general anti-fraud and anti-manipulation protections of the Securities Act and Exchange Act.

b. Exception 1—Research

Rule 10b–6 and Rule 101 prohibit any person participating in a distribution from inducing others to purchase securities covered by the rule. To reflect recent amendments to Securities Act Rule 139,[53] and to codify and expand the staff's interpretations regarding research, Rule 101 would permit written information, opinions, or recommendations that satisfy Rule 138 or 139 under the Securities Act to be published or disseminated in the ordinary course of its business by a distribution participant during the restricted period.[54] The proposed exception is intended to harmonize treatment of research under Securities Act and Exchange Act rules.

Although research distributed in the ordinary course of business that complies with Rule 138 or 139 would be excepted from Rule 101, research transmitted by sales personnel to customers who normally would not receive it in the ordinary course of business can constitute a solicitation to purchase.[55] This directed research, or execution of orders resulting from directed research, would not be permissible during the Rule 101 restricted period.

Q29. Should the circulation of offering materials and other publications outside of the United States be excepted from Rule 101, as some commenters have suggested?

c. Exception 2—Transactions Complying With Certain Other Rules

Rule 101 would provide an exception for transactions complying with Rules 103 or 104 of Regulation M (governing passive market making and stabilization). This proposed exception incorporates paragraphs (a)(4)(xiv) and (a)(4)(viii), respectively, of Rule 10b–6.

d. Exception 3—Odd-Lot Transactions

The Commission proposes to expand the exception for odd-lot transactions contained in Rule 10b–6(a)(4) to permit distribution participants to bid for and purchase odd-lots during the restricted period.

e. Exception 4—Exercises of Securities

The Commission proposes an exception to permit the exercise of call options and other securities to acquire a covered security. Many securities having associated standardized options would not be subject to Rule 101 because of the proposed exception for actively-traded securities, and other securities underlying standardized call options generally would be subject to the proposed one business day cooling-off period. These changes, coupled with the unpredictability of the timing or the extent of any purchases by parties who are exercised against, would reduce significantly the likelihood that the exercise of call options would be used to facilitate a distribution. Therefore, the Commission proposes to eliminate the five business day cooling-off period contained in Rule 10b–6 for the exercise of standardized call options. Under proposed exception 4, distribution participants would be permitted to exercise call options during the restricted period, regardless of when the options were acquired.

The Commission also proposes to except exercises of options or warrants, rights received in connection with a rights offering, or rights or conversion privileges set forth in the instrument

[50] Distribution participants and their affiliates would not be required to have separate compensation arrangements to qualify for this exclusion. *Cf.* Rule 10b–6(c)(6)(i)(D)(2).

[51] Consistent with Rule 17a–4(b)(4) under the Exchange Act, registered brokers and dealers would be required to maintain and preserve the review for a period of not less than three years, the first two years in an accessible place. 17 CFR 240.17a–4(b)(4).

[52] *See* CS Holding Letter, *supra* note 48.

[53] Securities Act Release No. 7132 (February 1, 1995), 60 FR 6965.

[54] 17 CFR 230.138 and 230.139. The Commission's staff has taken the position that certain research reports are not prohibited inducements if they are issued by a broker-dealer in the ordinary course of business and satisfy Rule 138 or Rule 139(b) under the Securities Act, or satisfy Rule 139(a) and do not contain a recommendation or earnings forecast more favorable than that previously disseminated by the firm. *See* Securities Exchange Act Release No. 21332 (September 19, 1984), 49 FR 37569, 37572 n.25. The current interpretive limitations on more favorable earnings forecasts or recommendations in research reports would not be included in exception 1.

[55] Distribution participants also must consider the broker-dealer registration requirements of Section 15(a) of the Exchange Act and the rules thereunder in connection with continuous distributions of research reports to investors. 15 U.S.C. 78o(a).

governing a security to acquire any security directly from an issuer. This would include exercises by distribution participants of rights acquired during a distribution through rights. Consistent with exception (vii) of Rule 10b–6, this provision of Rule 101 is intended to permit exercises or conversions of securities that do not entail any significant market impact or manipulative potential, and thus do not involve the concerns at which the anti-manipulation regulation of securities distributions is directed.

Q30. Would any activity permitted by this exception raise manipulative concerns because of a significant market impact?

f. Exception 5—Unsolicited Brokerage Transactions

The Commission proposes to include in Rule 101 the exception for brokerage transactions not involving solicitation of the customer's order that is contained in Rule 10b–6(a)(4)(v)(A).

g. Exception 6—Basket Transactions

Commenters recommended that the Commission adopt some form of relief for transactions effected as part of a basket strategy if the basket is not used for manipulation. Basket trading involves contemporaneous transactions in groups of securities that often are related to a standardized index. The Commission has granted Rule 10b–6 relief for standardized basket transactions subject to certain conditions, including those relating to the number of securities to be purchased, the weighting of the distribution security in the basket, and the timing of the basket transaction.[56] Several commenters supported expanding and streamlining the treatment of basket transactions in view of the increasing importance of such transactions to institutional investors, and the need of broker-dealers to provide liquidity to these investors.

The Commission is proposing to include an exception for purchases of covered securities made in connection with a basket transaction. This exception would be available with respect to both index-related baskets and baskets unrelated to any standardized index.[57] Proposed paragraph (b)(6) of Rule 101 would apply to transactions in covered securities when: (1) the aggregate dollar value of any bids or purchases of the security in distribution constitutes 5% or less of the total dollar value of the basket being purchased; and (2) the basket contains at least 20 stocks. The basket transaction also would have to be a *bona fide* transaction effected in the ordinary course of business (*i.e.*, the decision to include the security in distribution in the basket must be independent of the existence of the distribution). The 5% and 20 stock criteria are intended to provide an objective indication of the *bona fide* nature of a basket transaction and to limit the exception to those basket transactions where the security in distribution represents a small portion of the basket, such that use of the basket transaction to facilitate a distribution would not be economical. These criteria also would provide flexibility for basket transactions.

The exception also would permit bids and purchases for the purpose of adjusting an existing basket position related to a standardized index when made in the ordinary course of business to the extent necessary to reflect a change in the composition of the index. For example, a basket could be adjusted to reflect substitutions of securities in a standardized index.

Q31. In view of the exception for actively-traded securities, is this exception necessary?

Q32. Should the exception be unavailable in the last hour of trading before the pricing of an offering because basket transactions can involve significant amounts of stock and may have an impact on the security's price? If a last-hour restriction were imposed in this exception, would a further relaxation of the 5% and 20 stock parameters be justified?

h. Exception 7—*De Minimis* Transactions

Several commenters cited the consequences of ''insignificant'' violations of Rule 10b–6 by a distribution participant, particularly bids for, or small trades in, covered securities effected during the cooling-off period. These violations have resulted in the distribution participant dropping out of an underwriting syndicate, or the postponement of the offering.

In the past, at a distribution participant's request, the Commission's staff has taken informal no-action positions with regard to the occurrence of such violations in cases where the transactions were represented to be inadvertent and appeared to have had no market impact. Frequently, these transgressions occurred because of a failure to follow policies and procedures established by the firm to comply with Rule 10b–6. Based on the inadvertent nature of many of these violations and the lack of market impact, coupled with the impact of such violations on distribution participants and offerings, some commenters recommended that the Commission consider a safe harbor approach for such activity that was not undertaken with a manipulative purpose.

To address these concerns, the Commission is proposing an exception to Rule 101 for certain *de minimis* transactions. A *de minimis* transaction would be defined as a bid that was not accepted, or one or more purchases that in the aggregate total less than 1% of the security's ADTV. Because this proposed exception is intended to cover ''inadvertent'' violations, and not bids or purchases wilfully made in violation of the rule, it would be available only when the firm had established and enforced policies and procedures reasonably designed to achieve compliance with Rule 101. Inadvertence also would be evidenced by prompt cessation of the activity upon its discovery.[58]

Q33. Would this exception address the problems experienced with respect to ''inadvertent'' violations under Rule 10b–6?

Q34. Is 1% of the security's ADTV the appropriate level to be considered *de minimis*?

Q35. Would an alternative exception containing the 1% ADTV threshold, but permitting bids and purchases whether or not in violation of procedures, be preferable? In view of the increased latitude that would be provided by this alternative, the Commission believes that it may be necessary to make the exception unavailable for transactions effected during the last hour of trading prior to pricing the offering.

i. Exception 8—Transactions in Connection with the Distribution

A variety of transfers, allocations, and reallocations of securities are necessary in the course of conducting a distribution. These transactions should not be effected in a manner that may affect the price of, or give an appearance of trading activity in, covered securities. The Commission proposes exception 8 to permit *non-publicly reported* transactions among distribution participants to allocate and reallocate

[56] *See Letter regarding Basket Trading During Distributions*, [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,752 (August 6, 1991).

[57] As a practical matter, a high percentage of the securities involved in basket transactions would be covered by the proposed exception for actively-traded securities.

[58] A firm's reliance on this exception on repeated occasions would raise questions about the adequacy and effectiveness of the firm's procedures. Therefore, upon the occurrence of any violation, a broker-dealer would be expected to review its policies and procedures and modify them as appropriate to prevent future violations.

securities among syndicate members in connection with a distribution, and *non-publicly reported* purchases of securities from the issuer or selling securityholders necessary to conduct the distribution. Exception 8 is consistent with the objective of exception (i) of Rule 10b–6, which permits transactions in connection with a distribution that are effected otherwise than on a securities exchange with the issuer or other person or persons on whose behalf such distribution is being made, or among underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in such distribution. It reflects, however, the fact that many over-the-counter (''OTC'') transactions today are as transparent as exchange transactions. Therefore, the proposed exception would apply only to transactions among distribution participants, issuers, or selling securityholders that are effected otherwise than on or through the facilities of a securities exchange *or* an inter-dealer quotation system (*e.g.*, Nasdaq). Exception 8 also would permit offers and sales of, and the solicitation of offers to buy, the securities being distributed, including securities acquired in stabilizing transactions, which are permitted under exception (vi) of Rule 10b–6.

j. Exception 9—Distributions of Rule 144A Securities

Several commenters recommended expanding Rule 10b–6(i) which excepts distributions of Rule 144A-eligible foreign securities if the securities are sold solely to qualified institutional buyers (''QIBs'') in transactions exempt from registration under the Securities Act (''Rule 144A distributions'').[59] After considering the comments received, the Commission proposes to expand this exception in proposed Rule 101 to include Rule 144A distributions of domestic issuers' securities. In light of the characteristics of transactions involving Rule 144A securities (*e.g.*, eligible securities are not listed on a U.S. exchange or quoted on Nasdaq, and Rule 144A transactions are limited to QIBs), the Commission has determined not to distinguish between Rule 144A distributions of foreign and domestic securities. The exception also would apply to a distribution of Rule 144A-eligible securities to non-U.S. persons, within the meaning of paragraphs (o)(2) and (o)(7) of Regulation S under the Securities Act, that is made concurrently with a Rule 144A distribution to QIBs.[60]

The Commission notes that an exception from proposed Rule 101 based on the category of persons to whom the securities are distributed may be viewed as a departure from the anti-manipulation purposes of Regulation M, because no class of investors, including large institutions, is immune to injury from securities fraud or manipulation.[61] However, based on the ability of QIBs to obtain, consider, and analyze market information, the Commission believes that it may be appropriate to reduce the scope of Rule 101's *prophylactic* protections for such market participants. Although some commenters recommended expanding the exception to include offerings of Rule 144A-eligible securities to institutional accredited investors in addition to QIBs, the Commission is not adopting that recommendation because it encompasses a much broader category of investors, all of whom may not have comparable characteristics.

Q36. Is it appropriate to except certain distributions of securities from Rule 101 based in part on the class of persons to whom the securities are offered (*e.g.*, QIBs)?

Q37. In light of the new exception for actively-traded securities, which will except many distributions of Rule 144A-eligible foreign securities from the rule, does an exception expressly covering Rule 144A distributions continue to be necessary or appropriate?

Q38. Do QIBs favor this exception and agree with its rationale?

7. Rule 10b–6 Exceptions That Are Not Included in Proposed Rule 101

a. Unsolicited Privately Negotiated Purchases

Rule 10b–6(a)(4)(ii) permits unsolicited privately negotiated purchases, each involving at least a block of securities, that are not effected from or through a broker or dealer. This exception was adopted in response to industry concerns regarding the need to permit issuers and distribution participants to purchase blocks of securities ''overhanging'' the market during a distribution.[62]

The staff's experience is that this provision is very seldom utilized, and does not appear to be necessary to facilitate orderly distributions. Therefore, and in light of the shortened restricted periods and the proposed exception for unsolicited brokerage transactions, the Commission is not proposing an exception from the rule for privately negotiated, unsolicited purchases of securities.

Q39. Does an exception for unsolicited privately negotiated purchases continue to be necessary? If so, should there be any requirements as to the size of the purchases (*e.g.*, a block) or whether the purchases were unsolicited? Should such an exception be available for purchases by a broker-dealer?

b. Sinking Fund Obligations

Rule 10b–6(a)(4)(iii) provides an exception to permit an issuer to satisfy its mandatory sinking fund obligations that become due within 12 months from the date of purchase (*i.e.*, those that are current).[63] The Commission is of the view that this exception no longer appears to be necessary and thus does not propose to include within Rule 101 an exception for purchases to satisfy sinking fund or similar obligations.

Q40. Is there any reason to retain this exception?

c. Rights Offerings

The Commission is of the view that Rule 10b–8 contains overly rigid and complex restrictions on purchases of rights and, unlike the other trading practices rules, regulates sales of the offered security. These restrictions may no longer be necessary. Rights offerings today generally are conducted in a manner designed not to trigger Rule 10b–8's restrictions on purchases of rights. The Commission proposes to rescind Rule 10b–8 to conform with Regulation M's treatment of derivative securities. Therefore, bids and purchases of rights would not be covered by Rule 101. Bids and

[59] *See* 17 CFR 230.144A.

[60] 17 CFR 230.902(o)(2) and 230.902(o)(7). This would codify the position taken in *Letter regarding Regulation S Transactions during Distributions of Foreign Securities to Qualified Institutional Buyers*, [1993–1994] Fed. Sec. L. Rep. (CCH) ¶ 76,851 (February 22, 1994), as modified by *Letter regarding Regulation S Transactions during Distributions of Foreign Securities to Qualified Institutional Buyers* (March 9, 1995).

[61] *Cf. BT Securities Corporation*, Securities Exchange Act Release No. 35136 (December 22, 1994); *In re Scientific Control Corp. Sec. Litig.*, 71 F.R.D. 491, 512 (S.D.N.Y. 1976) (both sophisticated and unsophisticated investors are entitled to protection from the disclosure and anti-fraud provisions of the securities laws).

[62] In 1983, the Commission deleted the requirement that transactions effected in reliance on the exception not be made on an exchange in recognition of the fact that both third market and exchange transactions in reported securities are reported to the consolidated transaction reporting system (''consolidated system''). Release 34–19565, 48 FR at 10634. *See also* Release 34–18528, 47 FR at 11489.

[63] A sinking fund is a capital reserve set aside annually from current earnings to provide funds to retire a particular bond issue or debt security, in whole or in part, prior to the security's maturity date. *See* Release 34–18528, 47 FR at 11490 n.44.

purchases of the security that is the subject of the rights offering, however, would be restricted by Rule 101.

Q41. Should the Commission continue to regulate rights offerings through a separate rule?

Q42. Recently, a number of closed-end funds have conducted rights offerings. Do rights offerings by closed-end funds present any special manipulative concerns that should be addressed by Regulation M?

8. Exemptive Authority

The Commission proposes to include within Rule 101 the authority to grant exemptions from Rule 101. This provision is similar to paragraph (j) of Rule 10b–6.

C. Rule 102—Activities by Issuers and Selling Securityholders

1. Generally

The Commission is proposing new Rule 102, which would govern the activities of issuers, selling securityholders (*i.e.*, any person other than an issuer on whose behalf a distribution is being made), and their affiliated purchasers in connection with a distribution of securities. Rule 102 would make it unlawful for such persons to bid for, purchase, or to attempt to induce any person to bid for or purchase any security that is the subject of such distribution and any reference security for such security during the applicable restricted period.

Q43. Commenters should discuss whether an exception from the definition of ''affiliated purchaser'' should be available to affiliates of an issuer or selling securityholder who establishes, maintains, and enforces written policies and procedures regarding information barriers in compliance with Rule 100. Under what circumstances would issuers or selling securityholders establish information barriers?

Q44. Should the rule provide more guidance as to how the ''affiliated purchaser'' concept would apply where a distribution participant (subject to Rule 101) is an affiliate of an issuer or selling securityholder?

2. Excepted Securities

An issuer or selling shareholder may have a substantial incentive to raise improperly the price of offered securities. Also, issuer and shareholder transactions are not as readily identifiable from a surveillance perspective as those of distribution participants. Thus, the Commission preliminarily believes that it may not be appropriate to extend the exception for actively-traded securities, or the exception for investment grade debt and investment grade preferred securities provided in Rule 101, to issuers, selling securityholders, or their affiliated purchasers.

The Commission does propose, however, to provide an exception from Rule 102 for ''exempted securities,'' as defined in Section 3(a)(12) of the Exchange Act, and face-amount securities or securities issued by an open-end management investment company or unit investment trust.

Q45. Should issuers be provided with an exception for actively-traded securities? If so, are any new procedures necessary to assist the exchanges or the NASD with surveillance of issuer transactions in such securities?

Q46. Do issuers, selling securityholders, or their affiliated purchasers rely on the exception for investment grade debt securities in Rule 10b–6? If so, under what circumstances?

3. Excepted Activities

a. Generally

The Commission is proposing fewer exceptions from the restrictions of Rule 102 than it is proposing in connection with Rule 101. Rule 102 differs from Rule 101 because of the view that issuers and selling securityholders have a direct and immediate stake in the proceeds of offerings, and do not engage in the same types of market activities as broker-dealers. Moreover, SRO surveillance mechanisms can detect more quickly, *i.e.*, on a real-time basis, the market activities of their member firms that are distribution participants, while transactions by issuers and their affiliated purchasers are not as readily identifiable.

b. Exception 1—Odd-Lot Transactions

As with Rule 101, the Commission proposes to except from Rule 102 bids for or purchases of securities in odd lots. Among other things, paragraph (b)(1) would permit issuers to conduct odd-lot tender offers during the restricted period.

c. Exception 2—Transactions Complying With Rule 23c–3 of the Investment Company Act of 1940

Paragraph (b)(2) of Rule 102 would provide an exception for repurchases of equity securities pursuant to Rule 23c–3 under the Investment Company Act of 1940.[64]

[64] Rule 23c–3 under the Investment Company Act of 1940, 17 CFR 270.23c–3, permits periodic repurchases of common stock by issuers that are registered closed-end investment companies as well as business development companies.

d. Exception 3—Exercises of Securities

The Commission proposes to except from Rule 102 exercises of call options and other securities and exercises of any right or conversion privilege set forth in the instrument governing a security, which provides for purchasing a security directly from the issuer, including rights issued in a rights offering. This provision is intended to permit affiliated purchasers of issuers to exercise rights in connection with convertible, exchangeable, or exercisable securities, including options received in connection with employee benefit plans.

e. Exception 4—Transactions in Connection With the Distribution

Rule 102 would provide an exception for offers to sell or the solicitation of offers to buy the securities being distributed. This exception, which comports with Rule 10b–6(a)(4)(vi), would permit an issuer or selling securityholder to conduct the offering on its own behalf.

Q47. What is the impact on issuers of not providing for other transactional exceptions, such as the exception for unsolicited privately negotiated purchases or stabilizing transactions? Do issuers or selling securityholders rely on other exceptions in Rule 10b–6? If so, how often and for what purpose? Persons urging additional exceptions for issuers should provide reasons why they are warranted.

4. Plans

The Concept Release solicited comment on whether issuer plans should be distinguished from other types of distributions of securities, and whether plans should be distinguished based on the nature of the participants, *e.g.*, when the plan is available only to certain groups having a relationship to the issuer. Rule 10b–6(e) excludes from the rule's coverage any distribution of securities by an issuer or a subsidiary of the issuer to *employees or securityholders* of the issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the account of such employees or securityholders pursuant to a ''plan,'' as defined in Rule 10b–6(c)(4).[65]

Many issuers, however, no longer limit participation in their plans to securityholders or employees. Issuers have extended plan participation to, among others, retirees, outside directors,

[65] ''Plan'' is defined as ''any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for *employees or shareholders* of an issuer or its subsidiaries.'' (emphasis supplied).

agents, consultants, suppliers, franchisees, independent contractors, and family members of such persons, as well as credit card holders and other customers. Moreover, some plans permit prospective investors to participate by making an initial cash payment, rather than requiring prior share ownership. Issuer plans that allow participation by persons other than their employees or securityholders, or those of their subsidiaries, do not qualify for the exception.

The Division of Market Regulation, acting pursuant to delegated authority, in 1994 granted a class exemption from Rule 10b–6 that facilitates investors' access to plans by permitting investors to obtain their first share of an issuer's securities directly from the issuer, and expands the availability of these programs to persons other than the issuer's employees and securityholders.[66] Many issuers have relied on this exemption in implementing dividend reinvestment and stock purchase plans. The staff also recently has provided no-action relief from Rule 10b–6 for securities purchase and sale service programs offered by bank-registered transfer agents.[67] These actions appear to have addressed most of the concerns of the ten commenters who discussed plans. Therefore, the Commission proposes to simplify the treatment of plans under Rule 102 by codifying this relief and further reducing the restrictions on plan transactions.

For purposes of Rule 102, plans would be divided into three different groups: (1) plans that are available only to employees and shareholders; (2) plans that are available to persons other than employees and shareholders where securities for the plan are purchased from a source other than the issuer or an affiliated purchaser, *i.e.*, in the open market or in privately negotiated transactions, by an agent independent of the issuer; and (3) plans that are available to persons other than employees and shareholders where securities for the plan are purchased directly from the issuer or an affiliated purchaser (''direct issuance plans'').[68]

The Commission proposes to exclude from Rule 102 any distribution pursuant to a plan by or on behalf of an issuer or a subsidiary of an issuer, when such distribution is made solely to employees or shareholders of the issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such person. This provision remains essentially unchanged from Rule 10b–6(e). For purposes of this exception, however, the term ''employee'' would have the same meaning as contained in Form S–8 of the Securities Act relating to employee benefit plans.[69] Thus, distributions by plans that allow directors, general partners, insurance agents, former employees, consultants, and certain advisors to participate in their plans are proposed to be excepted from Rule 102. This reflects the view that persons that are not employees of an issuer or a subsidiary of an issuer may have a relationship with an issuer that is sufficiently similar to that of an employee such that it is appropriate to treat such persons in the same manner as employees for purposes of this exception. Further, this will provide consistency between the Securities Act and the Exchange Act regarding the types of issuer sponsored programs that are considered to be plans.

Second, the Commission proposes to except all distributions involving plans that include persons other than employees or shareholders where purchases for the plan are made from sources other than the issuer or an affiliated purchaser (*i.e.*, in the open market or in privately negotiated transactions) by an agent independent of the issuer. The Commission believes that when an agent independent of the issuer effects plan transactions, the issuer's opportunity to engage in improper conduct is reduced greatly. The Commission proposes to include the definition of ''agent independent of the issuer'' in Rule 100, rather than referring to the definition of that term presently in Rule 10b–18(a)(6) under the Exchange Act.[70] Except with respect to the issuer's ability to change its determination once every three months regarding the source of shares to fund a plan, an agent would not be considered independent if the issuer directs the agent as to the source of shares, or the timing of purchases of shares (*e.g.*, a requirement that shares to fund the plan must be purchased on the plan's investment date). The issuer, however, may establish general conditions for the operation of the plan, including, for example, requirements with respect to the return of uninvested funds to plan participants, and requirements that optional cash payments be invested within 35 days of receipt.[71]

Third, the Commission proposes that a direct issuance plan (*i.e.*, a plan that is open to persons other than employees or securityholders, and where shares are purchased from the issuer or an affiliated purchaser) would be subject to Rule 102 when offers and sales of securities pursuant to the plan constitute a ''distribution'' within the meaning of Rule 100. Thus, the ''magnitude'' and ''special selling efforts and selling methods'' tests would be applied to offers and sales under such plan to determine whether a distribution exists. In determining the magnitude of an offering of plan shares, an issuer would need to consider the amount of securities it distributes through the plan directly and indirectly (e.g., by broker-dealers who obtain securities from the issuer as participants in a plan by virtue of being securityholders and then distribute the shares to the public). In determining whether special selling efforts or selling methods are involved, for purposes of a plan, selling efforts consistent with the solicitation activities permitted in the 1994 STA Letter would be presumed not to involve special selling efforts and selling methods for purposes of determining the existence of a distribution. The treatment of direct issuance plans under Regulation M recognizes that these plans potentially can be capital raising transactions analogous to the types distributions that historically have been subject to Rule 10b–6.

These proposed changes are intended to reduce significantly and, in most cases, eliminate the rule's application to

[66] *See* Securities Exchange Act Release No. 35041 (December 1, 1994), 59 FR 63393 (''1994 STA Letter''), as modified by *Letter Regarding Dividend Reinvestment and Stock Purchase Plans,* [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,110 (May 12, 1995). The 1994 STA Letter also provided the staff's views on Sections 15(a) and 17A of the Exchange Act, 15 U.S.C. 78o(a) and 78q–1, respectively.

[67] *See Letter Regarding First Chicago Trust Company of New York,* [1994] Fed. Sec. L. Rep. (CCH) ¶ 76,939 (December 1, 1994); *Letter Regarding Bank-Sponsored Investor Services Programs,* [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,122 (September 14, 1995) (''Bank-Sponsored Programs Letter''). These letters also took no-action positions with regard to Section 5 of the Securities Act, and Sections 13(e), 14(d), and 14(e) of, and Rule 10b–13 under, the Exchange Act, 15 U.S.C. 77e, 78m(e), 78n(d), and 78n(e), and, in the case of the Bank-Sponsored Programs Letter, Section 15(a) of the Exchange Act.

[68] As provided by paragraph (g) of Rule 10b–6, the Commission proposes to exclude from Rule 102 any bids or purchases of a security made or effected by or for a plan by an ''agent independent of the issuer.'' *See infra* note 70 (discussing the definition of ''agent independent of the issuer'').

[69] 17 CFR 239.16b. The definition of plan would be expanded to include plans within the meaning of paragraph (c)(4) of Rule 10b–6 as well as dividend or interest reinvestment plans or employee benefit plans, as defined in Rule 405 of Regulation C. 17 CFR 230.405.

[70] 17 CFR 240.10b–18(a)(6). The definition of ''agent independent of the issuer'' would be substantially the same as under paragraph (a)(6) of Rule 10b–18. It also is proposed that Rule 10b–18 be amended to refer to the definition in proposed Rule 100.

[71] *See* 1994 STA Letter, *supra* note 66 (modifying *Letter regarding Lucky Stores Inc.,* [1974–1975] Fed. Sec. L. Rep. (CCH) ¶ 79,903 (June 5, 1974)).

issuer plans. Of course, issuers that employ their plans for manipulative purposes would continue to be subject to the anti-fraud and anti-manipulation provisions of the federal securities laws.[72]

Q48. Do these proposals strike the appropriate balance? Are any manipulative incentives raised by plan distributions?

Q49. Is it appropriate to distinguish plans available only to employees and securityholders from other plans for purposes of this rule? Is it appropriate to distinguish direct issuance plans from other plans for purposes of this rule?

5. Exemptive Authority

The Commission proposes to include within Rule 101 the authority to grant exemptions from Rule 101. This provision is similar to paragraph (j) of Rule 10b–6.

6. Rule 10b–18

Rule 10b–18 provides that the issuer and its affiliated purchasers will not incur liability under the anti-manipulation provisions of Sections 9(a)(2) or 10(b) of the Exchange Act or Rule 10b–5 thereunder, if purchases of the issuer's common stock are effected in compliance with the conditions contained in that rule relating to the time, price, volume, and manner of purchases of the issuer's common stock.[73] The Commission does not believe that a safe harbor should be available in circumstances that raise reasonably identifiable manipulative incentives. Accordingly, in light of the special incentives that an issuer and its affiliated purchasers may have in facilitating sales of the issuer's securities that are the subject of a distribution, the Commission is proposing to revise the definition of a ''Rule 10b–18 purchase'' to clarify that the safe harbor is not available during a distribution of the issuer's common stock that is subject to Rule 102, or during a distribution for which such stock is a reference security.[74] Under the proposals, the Rule 10b–18 safe harbor would be unavailable during the entire course of the distribution, and not only during the applicable restricted period. The proposed amendment would codify an informal staff interpretation and more clearly define the parameters of the Rule 10b–18 safe harbor.

As noted earlier in the discussion of the treatment of shelf offerings as distributions for purposes of Regulation M, the Commission is of the view that generally each takedown off a shelf should be examined individually to determine whether it constitutes a distribution for purposes of Rule 100. Accordingly, if the issuer determines to go forward with a distribution of common stock pursuant to a shelf registration statement, the Rule 10b–18 safe harbor would be unavailable from the time of that determination until sales pursuant to the takedown are completed.

Q50. Will the proposed revision to the definition of ''Rule 10b–18 purchase'' have any significant impact on issuers' repurchase programs? Commenters that believe that there will be an impact should describe how such programs will be affected.

D. Rule 103—Passive Market Making

1. Discussion of Rule 103

Proposed Rule 103 would replace Rule 10b–6A, which was adopted in 1993.[75] Rule 103 would permit ''passive market making'' in connection with the distribution of securities quoted on Nasdaq during the restricted periods of Regulation M, when proposed Rule 101 otherwise would prohibit such transactions. The purpose of the proposed rule (and Rule 10b–6A) is to alleviate special liquidity problems that may exist in the Nasdaq market during the restricted period, when distribution participants or their affiliates that are Nasdaq market makers otherwise must withdraw from the market. In general, exchange-traded securities are not similarly affected because independent specialists are assigned to provide depth and liquidity in listed securities.

Rule 103 would incorporate many provisions of Rule 10b–6A. Rule 103 generally would limit a passive market maker's bids and purchases to the highest current independent bid, *i.e.*, a bid of a Nasdaq market maker that is not participating in the distribution. Additionally, the rule would limit the amount of purchases that each passive market maker could make and the displayed size of the bid, and contain requirements relating to identification, notification, and disclosure of passive market making.

Several commenters and others experienced with Rule 10b–6A have suggested allowing Nasdaq market making in a greater number of contexts than is permitted under the current criteria. Rule 10b–6A defines an ''eligible security'' as a Nasdaq security that: (1) is the subject of a firm commitment, fixed price offering registered under the Securities Act or is a related security; (2) has a minimum price of $5.00 per share and a minimum public float of 400,000 shares; and (3) has Nasdaq market makers that are underwriters or prospective underwriters, or affiliated purchasers of underwriters or prospective underwriters, that account for at least 30% of the total trading volume in such security.[76] These eligibility criteria were designed to limit the availability of passive market making to those firm commitment offerings of securities qualifying for the two business day cooling-off period of Rule 10b–6, when the restrictions of that rule otherwise would have reduced market making capacity significantly.

The Commission believes that eliminating the rule's eligibility criteria, thereby permitting passive market making in a greater number of contexts, is consistent with the purposes of Regulation M. Rule 103 would eliminate almost all of the eligibility criteria contained in Rule 10b–6A(b)(3). The Commission no longer considers it necessary to restrict passive market making to the class of offerings where the potential liquidity loss may be substantial. Under the proposals, however, best efforts and at the market offerings would remain ineligible for passive market making.[77]

Rule 103 also would extend the period when passive market making is permitted, and increase the number of eligible securities. Rule 10b–6A restricts passive market making to the two business day cooling-off period, and prohibits passive market making upon the commencement of offers and sales or when stabilization commences. The new rule would permit passive market making throughout the applicable restricted period, but would continue to prohibit passive market making when stabilization is being conducted. Under the proposals, all Nasdaq securities would qualify for passive market

[72] In addition, to avoid broker-dealer registration under Section 15(a) of the Exchange Act, an issuer operating a plan must limit its activities in accordance with the conditions set forth in the 1994 STA Letter. For example, the issuer may perform only purely clerical and ministerial functions, including forwarding cash and securities to an independent broker-dealer or bank, in connection with the plan.

[73] 17 CFR 240.10b–18.

[74] *See* 17 CFR 240.10b–18(a)(3). The Commission notes that although the Rule 10b–18 safe harbor would not be available, this does not mean that such purchases necessarily would violate Sections 9(a)(2) or 10(b), or Rule 10b–5.

[75] Securities Exchange Act Release No. 32117 (April 8, 1993), 58 FR 19598 (''Release 34–32117'').

[76] See 17 CFR 240.10b–6A(b)(3).

[77] The Commission previously has noted that the NASD surveillance system does not easily accommodate at the market offerings. Release 34–32117, 58 FR at 19600. The Commission notes that the NASD's surveillance of passive market making is an essential consideration in the proposal to expand the contexts in which passive market making would be permitted.

making. The rule also would permit passive market making in Nasdaq reference securities (*e.g.*, the underlying common stock during a distribution of a convertible security).

In addition, passive market makers could bid for one round lot of securities if their initial or remaining net purchasing capacity is between one and 99 shares. This provision would permit more syndicate members to be passive market makers and also would respond to commenters who suggested greater flexibility for passive market making.

To provide flexibility in the operation of passive market making, a market maker is not required to lower its quotation to reflect lower independent bids until it purchases an amount equal to five times the maximum order size for the particular security, as provided for under the NASD's rules for the Small Order Execution System (''SOES''). In order to account for possible changes to Nasdaq operations, the Commission proposes to allow a passive market maker to purchase an amount that equals or exceeds two times the minimum quotation size for the security as determined by the NASD, before it is required to lower its quotations to reflect lowered independent bids.[78] Moreover, passive market makers facilitating the execution of customer orders would be able to make bids or purchases at a price above the independent price where necessary to comply with any Commission or NASD rule relating to the execution of customer orders.[79]

Q51. Are the proposals to delete the requirements of the definition of ''eligible security'' in Rule 10b–6A appropriate? Is it appropriate to extend passive market making to Nasdaq securities with an ADTV value under $100,000?

Q52. Would the provision permitting passive market making for at least one round lot of a security assist Nasdaq market makers whose trading volumes are insufficient to qualify for passive market making? Is some other minimum purchase limitation appropriate, *e.g.*, two round lots or five round lots?

2. Postponement of Further Changes

The Commission is not proposing to make other revisions to passive market making regulation at this time because proposed Rule 101 would eliminate the need for passive market making for many actively-traded Nasdaq securities and would allow passive market making in many more contexts than permitted currently. Moreover, the Commission is aware that there have been a significant number of failures to comply with basic requirements of passive market making (*i.e.*, bid and purchase prices have exceeded the highest independent bid, and purchases have exceeded the rule's net purchase limitation). These incidents, along with the expansion of passive market making to cover more offerings and securities, suggest that it would be appropriate for the Commission to continue to monitor passive market making before proposing further changes. The Commission, however, intends to review passive market making under Rule 103, if adopted, and will consider other appropriate modifications.

Q53. In view of the compliance difficulties associated with Rule 10b–6A, are there any structural changes that could help to eliminate these problems, other than revisions to the rule's price and volume limitations?

Q54. Net purchases by a passive market maker are limited to 30% of its Nasdaq ADTV. Is this 30% Nasdaq ADTV limitation adequate to allow passive market making, particularly in light of the elimination of the provisions for SOES transactions, or should this threshold be revised, *e.g.*, by permitting net purchases of 50% of a market maker's Nasdaq ADTV?

E. Rule 104—Stabilization and Other Syndicate Activities

1. Background

The Commission is proposing new Rule 104 to govern stabilization. It would create a more flexible framework for managing the distribution process and eliminate much of the complexity in the operation of Rule 10b–7.[80] The Commission believes that stabilization should continue to be regulated because it is market activity during an offering that is intended to influence a security's price.[81]

Rule 104 would reflect the significant changes that have occurred in underwriting methods since Rule 10b–7 was adopted. For example, underwriters have developed highly effective means of quickly placing and controlling an offering through the book-building and allocation processes. Stabilization pursuant to Rule 10b–7 has become less common, perhaps in part because of the rule's limitations on increasing stabilizing bids, but also because of the development of efficient distribution methods and underwriters' concern that stabilization may indicate that an offering is progressing poorly. Nevertheless, underwriters continue to disclose in prospectuses that they reserve the right to stabilize an offering, and stabilization remains an important option in domestic and foreign contexts.

In their responses to the Concept Release, commenters recognized the importance of regulating stabilization, but were critical of Rule 10b–7's price restrictions, which prevent underwriters from adjusting stabilizing bids to reflect fluctuating markets and currency changes, and of the rule's reliance on U.S. markets to govern permissible stabilizing prices. Rule 104 reflects a fundamental shift from Rule 10b–7's structure, while codifying exemptive and no-action relief issued by the Commission and its staff within the last decade, particularly with respect to cross-border transactions.

2. Stabilizing Levels

The most significant proposed changes from Rule 10b–7 pertain to permissible stabilizing price levels. The Commission believes that these changes would afford greater flexibility to underwriters, which is especially important in the context of multinational securities offerings. Under Rule 10b–7, an underwriter generally must set its stabilizing bid based on the independent market price for the security, and cannot change that bid except in limited circumstances. In principal markets that are exchanges, initiation of stabilizing bids is limited by last sale prices. In other markets, independent bids are the reference price.

Rule 104 would allow persons effecting stabilizing transactions to establish a stabilizing bid with reference to prices in the principal market for the security, wherever located,[82] and then to maintain, reduce, or raise that bid to follow the independent market, as long as the bid does not exceed the highest

[78] *See, e.g.*, Securities Exchange Act Release No. 36548 (December 1, 1995), 60 FR 63092.

[79] *See Letter regarding Obligations of Passive Market Makers that Hold Customer Limit Orders*, [1995] Fed. Sec. L. Rep. (CCH) ¶ 77,040 (July 19, 1995).

[80] In addition to comments responding to the Concept Release, the proposed new rule is based on comments received in response to the 1991 Proposals. *See supra* note 15. The 1991 Proposals chiefly were intended to accommodate the increasing internationalization of securities markets and would be superseded by Regulation M. Therefore, they would be withdrawn if Regulation M is adopted.

[81] See Section 9(a)(6) of the Exchange Act, 15 U.S.C. 78i(a)(6); Concept Release, 59 FR at 21689. *See also* the Commission's 1940 policy statement on stabilizing, Securities Exchange Act Release No. 2446 (March 18, 1940).

[82] A U.S. market that is not the principal market would no longer control stabilizing price levels. The reference prices in the principal market must be reported pursuant to Rule 11Aa3–1 under the Exchange Act, 17 CFR 240.11Aa3–1, or be reported to a foreign financial regulatory authority as defined in Section 3(a)(52) of the Exchange Act, 15 U.S.C. 78c(a)(52).

independent bid and in no case exceeds the offering price of the security.[83] These provisions would provide significant flexibility to stabilization regulation, because they effectively would permit the stabilizing bid to follow the independent market for the security, limited by the offering price.

When the principal market is open, stabilizing price levels would be determined by the stabilizing bid in that market, and if there is no stabilizing bid, by the highest independent bid price in that market. If the principal market is closed and stabilizing has not been initiated in any market, no stabilizing could be effected at a price in excess of the lower of: (1) The price at which stabilizing could have been effected in the principal market at the close thereof; or (2) the most current reported price at which transactions in the offered security have been effected on any exchange or inter-dealer quotation system after the close of the principal market. After the opening of quotations or trading in the market where stabilizing will be effected, stabilizing could not be effected at a price higher than the highest independent bid price for such security reported in that market at the time such stabilizing is effected. Where an independent market for the offered security does not exists, stabilizing would be limited only by the offering price. Rule 104 also provides for adjustments to the stabilizing bid when the security being stabilized goes ex-dividend, ex-rights, or ex-distribution, or is expressed in a currency other than the currency of the principal market and there are changes in the exchange rate between the two currencies.[84]

Q55. Do the provisions regarding stabilizing price levels create an effective framework to govern stabilizing transactions? Do the provisions regarding stabilizing price levels present any manipulative concerns?

3. Other Provisions Relating to Stabilization

As under Rule 10b–7, Rule 104 would provide that no person may effect either alone or with others any stabilizing transaction to facilitate an offering of any security in contravention of its provisions.[85] The term ''stabilizing'' would be defined in Rule 100 as the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or otherwise maintaining the price of a security. Rule 104 would retain provisions governing priority of independent bids, control and purpose of stabilizing, stabilizing at prices resulting from unlawful activity, and the prohibition of stabilization in ''at the market'' offerings. The Commission proposes to eliminate the distinction in Rule 10b–7 between exchange-traded and OTC securities.

Rule 104 would retain the exclusion for ''excepted securities.'' The Commission also proposes to expand the exception in Rule 10b–7 for distributions of Rule 144A-eligible foreign securities made solely to QIBs in exempt transactions. Rule 104 would except all distributions of Rule 144A-eligible securities to QIBs, and sales of Rule 144-eligible securities to non-U.S. persons, within the meaning of Regulation S under the Securities Act, that are made concurrently with Rule 144A distributions to QIBs. This responds to commenters who argued that as a matter of consistency, the exception for Rule 144A-eligible securities should be extended to the domestic context.

Rule 104 would eliminate the provision pertaining to limitation of liability. The Commission believes that lead managers now exert considerably more control over stabilizing transactions than when Rule 10b–7 was adopted, and that a provision regarding vicarious liability arising out of stabilizing transactions by syndicate members no longer appears necessary.

Q56. Does Rule 104 cover all situations where underwriters believe that stabilizing would be appropriate to facilitate an offering? Would the rule's greater flexibility result in stabilizing by underwriters in a greater number of instances?

Q57. In addition to ''at the market'' offerings, are there other categories of offerings (*e.g.*, best efforts) or securities (*e.g.*, penny stocks) for which stabilizing is not appropriate? Should issuers be permitted to stabilize and, if so, under what circumstances?

Q58. Is it appropriate to except from an anti-manipulation provision stabilization of offerings of Rule 144A-eligible securities?

Q59. Should the Commission retain the provision in Rule 10b–7(m) regarding limitation of liability? What purpose does this paragraph serve? If it should be retained, should it be in the same form as the current provision?

4. Aftermarket Activities

An underwriter's interest in the success of an offering does not necessarily end with the completion of the sales efforts and termination of formal stabilizing activities, but can extend into the ''aftermarket'' trading in the distributed security (in general, the period immediately following the termination of formal syndicate activity—the so-called ''breaking of the syndicate''). Aftermarket participation may be an expected part of the underwriting services provided to an issuer, and the anticipated quality of such services can influence the issuer's selection of a managing underwriter. Underwriters also have an incentive to provide ''support'' in the aftermarket to counterbalance pressure on the security's price from ''flipping'' and other selling activity that could adversely affect the investors who have purchased in the offering. In addition, the managing underwriter often purchases shares in the aftermarket period to cover a syndicate short position.[86] Accordingly, the point in time when underwriters no longer have the purpose to ''facilitate an offering'' cannot be identified with precision.

Furthermore, in initial public offerings the agreement among underwriters may contain a provision authorizing the managing underwriter to invoke a ''penalty bid.'' This is a contractual agreement permitting the managing underwriter to reclaim the selling concession accruing to a syndicate participant with respect to shares that the managing underwriter purchases in the aftermarket to cover the syndicate short position.[87] One of

[83] Rule 100 would define ''independent bid'' as a bid by a person who is not a distribution participant, issuer, selling securityholder, or affiliated purchaser.

[84] Rule 100 would define ''current exchange rate'' as the current rate of exchange between two currencies, which is obtained from at least one independent entity that provides foreign exchange quotations and information in the ordinary course of its business. Rule 104(g)(5) would retain Rule 10b–7's provisions that any stabilizing price that otherwise meets the requirements of the rule need not be adjusted to reflect special prices available to any group or class of persons (including employees or holders of warrants or rights). *See* 17 CFR 240.10b–7 (h), (i), (j)(5), and (j)(7).

[85] Unlike proposed Rules 101 and 102, which would apply to a ''distribution,'' Rule 104 would govern stabilizing to facilitate an ''offering,'' a term that is broader in scope.

[86] Underwriters frequently receive an overallotment option (commonly referred to as the ''Green Shoe'' option), which is the right, but not the obligation, to purchase securities from the issuer in addition to those initially underwritten by the syndicate, which may constitute up to 15% of the initial underwritten amount. Because the overallotment option may be insufficient to cover the entire syndicate short position, that portion in excess of the overallotment option must be covered through purchases in the secondary market.

[87] Penalty bids are governed by Schedule D of the NASD's By-Laws, Part V, Section 3, NASD Manual (CCH) ¶ 1820.

the primary objectives of a penalty bid is to encourage syndicate participants to sell the securities to those persons who intend to hold them rather than to engage in short-term profit-taking, *i.e.*, to combat flipping. Enforcement of penalty bids typically continues for as long as 30 days.

The Commission believes that the aftermarket activities described above are not uncommon and may act to support the price of the offered security in the aftermarket.[88] Commenters, however, were divided concerning whether regulation should be extended to cover such activities. Therefore, the Commission at this time is not proposing to extend the price limitations of Rule 104 to cover aftermarket activities. Instead, as described in the following section, the Commission is proposing to require disclosure of syndicate covering and penalty bid activities, and that underwriters keep records of such activities. Disclosure of these aftermarket activities would serve to apprise regulators of their possible market effects, while the recordkeeping requirements would assist the Commission in monitoring aftermarket practices and in assessing whether further regulation is warranted.

5. Disclosure and Recordkeeping

The Commission proposes to require more specific disclosure of stabilization, syndicate covering transactions,[89] and penalty bids[90] in order to make disclosure of these activities more meaningful.

Like Rule 10b–7, paragraph (h) of Rule 104 would require any person who places or transmits a bid that such person knows is for the purpose of stabilizing the price of any security to notify the market on which the transaction is effected, and to disclose the purpose of such transaction to the person to whom the bid is placed or is transmitted (*e.g.*, the specialist or the executing broker-dealer). The NASD requires persons intending to initiate stabilization to provide it with prior notification.[91] Stabilizing bids are then identified by a symbol on the Nasdaq quotation display. In this way, the person engaged in stabilization satisfies the requirement to inform the market and the recipients of the purpose of a bid by notifying the NASD. The exchanges, however, do not have this procedure. To fulfill the proposed requirements for stabilizing transactions on an exchange, underwriters would have to notify the exchange and provide disclosure separately to recipients of the bid. In the Commission's view, contemporaneous disclosure of the fact that stabilizing is occurring is beneficial to the market and its participants.

Rule 104 also would require any person effecting a syndicate covering transaction, or placing or transmitting a penalty bid, to disclose that fact to the SRO that has direct oversight authority over the market on which the syndicate covering transaction is effected, or the penalty bid is placed. This information would be helpful to the exchanges and Nasdaq in carrying out their surveillance responsibilities.

The stabilizing legend required by Rule 10b–7(k), and Item 502(d) of Regulations S–B and S–K,[92] would be replaced by a brief legend identifying activity that may affect the offered security's price and directing investors to a discussion in the ''plan of distribution'' section of the prospectus. Item 508 of Regulations S–B and S–K,[93] governing the plan of distribution disclosure, would be revised to require a brief description of any prospective stabilizing and aftermarket activities, including syndicate covering transactions and the imposition of a penalty bid, and their potential effects on the market price. The objective of these proposals is to augment the language found in the stabilizing legend with more meaningful information regarding stabilizing and related activities.[94]

Q60. Is regulation of aftermarket transactions warranted? For example, should syndicate covering transactions be subject to the price level restrictions of Rule 104? Should penalty bids be prohibited as some commenters have suggested?

Q61. Would there be any difficulty in disclosing to the SRO the fact that syndicate covering transactions are occurring or that a penalty bid is in place?

Proposed amendments to Rule 17a–2 under the Exchange Act would require managing underwriters to keep records of syndicate covering transactions and penalty bids, in addition to stabilizing information. Records would reflect the name and class of securities, and the price, the date, and the time for each syndicate covering transaction. The records also would reflect the dates that any penalty bid was in effect, information relating to transactions against which penalty bids were assessed, and the date the bid was terminated. The information would be required to be maintained in a separate file, for a period of three years, the first two years in an easily accessible place. The Commission believes that this recordkeeping requirement will impose little, if any, additional burden on underwriters, because underwriters already are required to keep detailed syndicate account records.[95] Records of such transactions would provide the Commission with an empirical basis for determining whether additional regulation is warranted.

In addition to registered offerings for which a registration statement or a Form 1–A[96] is filed, Rule 17a–2 applies to any other offering if the total proceeds exceed $1,500,000. This threshold is proposed to be increased to $5,000,000 in Rule 17a–2. The Commission believes that raising this threshold would make the rule less burdensome for smaller offerings, and would be consistent with other Securities Act and Exchange Act initiatives.[97]

Q62. Is the expansion of Rule 17a–2 to include recordkeeping of syndicate covering transactions and penalty bids appropriate and what, if any, burdens would be imposed by these new requirements?

Q63. Should offerings with proceeds of $5,000,000 or less be exempt from Rule 17a–2?

F. Rule 105—Short Sales In Connection With An Offering

The Commission adopted Rule 10b–21 in 1988 to address the practice of manipulative short sales prior to a public offering by short sellers who cover their short positions by purchasing securities in the offering. Manipulative short sales could result in a lower offering price, and thus reduce

[88] *See* J. Shayne & L. Soderquist, *Inefficiency in the Market for Initial Public Offerings*, 48 Vand. L. Rev. 965, 983–84 (May 1995).

[89] Rule 100 would define ''syndicate covering transaction'' as the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a syndicate short position.

[90] Rule 100 would define ''penalty bid'' to mean an arrangement that permits the managing underwriter to reclaim a selling concession otherwise accruing to a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

[91] *See* Schedule D of the NASD's By-laws, Part V, Section 3(c), *NASD Manual* (CCH) ¶ 1820.

[92] *See* 17 CFR 228.502(d) and 229.502(d).

[93] *See* 17 CFR 228.508 and 229.508.

[94] Once a ''plain English'' prospectus is implemented, a stabilizing legend may no longer be required on the inside front cover of the prospectus. *See* Task Force Report at 17–18, *supra* note 13.

[95] *See* NASD Rules of Fair Practice, Art. III, Sec. 21, *NASD Manual* (CCH) ¶ 2171. *See also* NASD Rules of Fair Practice, Art. III, Sec. 44, *NASD Manual* (CCH) ¶ 2200D.

[96] 17 CFR 249.1a.

[97] *See, e.g.*, Securities Exchange Act Release No. 35895 (June 27, 1995), 60 FR 35642.

proceeds to the issuer. Rule 10b–21 addresses this practice by prohibiting the covering from the offering of any short sales made during the period beginning at the time a registration statement or Form 1–A is filed and ending at the time that sales may be made pursuant to the registration statement or Form 1–A.

The Commission is proposing Rule 105 to replace Rule 10b–21. Rule 105, like Rule 10b–21, is designed to prevent short sales from being covered with securities obtained from an underwriter, broker, or dealer who is participating in the offering. Rule 105 would differ from Rule 10b–21 because it would cover only those short sales effected in the period commencing five business days prior to the pricing of an offering and ending with such pricing. Reducing the period of the rule's applicability is consistent with the structure of Rules 101 and 102, which provide for shorter restricted periods, and reflects the Commission's belief that such period should be sufficient to dissipate the effects of any manipulative short selling on the price of the offered security.

Commenters expressed divided views on the efficacy of Rule 10b–21. Some believe that the rule impedes legitimate short selling activity. Others maintain that the rule would be more effective if it also covered activity in derivative securities. Since the adoption of Rule 10b–21, several additional regulatory measures have been implemented that may lessen the effects of short selling in connection with an offering. These initiatives, which include permitting passive market making during offerings of Nasdaq securities and implementing a short sale rule for the Nasdaq market,[98] may reduce the need for Rule 105. Short selling to depress an offering price would continue to be covered by the general anti-manipulation provisions of the Securities Act and the Exchange Act.

Q64. Does a special regulation dealing with short selling in connection with an offering continue to be necessary or appropriate?

Q65. Should the prohibitions of Rule 105 extend to short sales of derivative securities? Commenters should discuss how this proposal would be consistent with Rule 101, which would not cover bids or purchases of derivative securities.

Q66. Would the five business day restricted period present compliance difficulties?

Q67. Should the restricted period of Rule 105 parallel the one or five business day restricted periods of Rule 101, which depend on the security's ADTV?

Q68. Should offerings of actively-traded securities (*i.e.*, securities having an ADTV value of at least $1 million) be excluded from Rule 105, as in Rule 101?

IV. Safe Harbor Alternative

Many commenters endorsed recasting the rules as non-exclusive safe harbors from the statutory anti-manipulation provisions of the Exchange Act.[99] They argued that Rule 10b–6 can have a disproportionate impact on those distribution participants and affiliated purchasers who inadvertently run afoul of the rule's prohibitions but do not affect the offered security's price.

The Commission believes that a prophylactic approach to market activities of persons interested in a distribution continues to serve an important role in maintaining the integrity of the capital markets. In the Commission's view, the framework of proposed Regulation M preserves the Commission's strong interest in protecting investors from manipulated offerings, while providing flexibility, clarity, and guidance to offering participants.

The Commission has stated that the ''exceptions [to Rule 10b–6] are not, and never have been, safe harbors,'' and that a lack of improper motive when relying on the rule's exceptions always has been required.[100] A safe harbor from manipulation charges is inappropriate in contexts where it is reasonable to infer that manipulative incentives are present, such as during securities distributions. Also, requiring the Commission to demonstrate the existence of a purpose on the part of persons engaged in any market activity, for example, to ''facilitate the distribution'' of an offered security,[101] would conflict with the goal of precluding improper market activity prior to pricing of offerings. The inclusion of a ''purpose'' element effectively would make enforcement of such a provision an after-the-fact remedy that would in many respects overlap Rule 10b–5. Moreover, it is likely that safe harbor rules would be inappropriate for some securities offerings, such as those involving penny stocks, and may be inconsistent with the Commission's express statutory authority to promulgate rules governing the ''pegging, fixing, or stabilizing'' of the price of certain securities.[102]

It is important to note, moreover, that commenters advocated a safe harbor approach in the context of the current rules. As proposed, several categories of offerings, persons, and activities that are subject to the trading practices rules would not be subject to the prophylactic prohibitions of Regulation M. In addition, the new rules would create a more flexible framework for conducting market activities during distributions. The proposed exception for *de minimis* violations would address the concerns commenters had regarding the impact of Rule 10b–6 on those persons who inadvertently violated the rule through nominal purchases, or unaccepted bids.

Although the Commission does not favor a safe harbor approach, commenters may wish to present arguments supporting a safe harbor framework and to submit draft rule text. Commenters are urged to provide careful analyses of how a safe harbor approach would be utilized and what kinds of transactions would be permitted under a safe harbor. Would safe harbor rules be appropriate in all contexts and, if not, would it be confusing to have a set of safe harbor and prophylactic rules governing substantially similar conduct?

The Commission also requests comment as to whether a safe harbor approach to anti-manipulation regulation would diminish the investor protection goals of the Exchange Act. How would the balance between the capital-raising role of securities offerings and the Commission's investor protection mandate be affected if a safe harbor were extended to the general anti-manipulation provisions?

Support for the safe harbor approach also appears to stem from concerns regarding application of the general anti-manipulation provisions to conduct that would be permitted under the trading practices rules. The Commission requests comment on alternatives to a safe harbor approach that might address uncertainty regarding the reach of the general anti-manipulation provisions in circumstances where the conduct in question otherwise would be permitted under Regulation M. For example, should conduct in compliance with Regulation M be presumed not to violate the general anti-manipulation provisions, subject, of course, to rebuttal?

V. General Request for Comments

Any interested person wishing to submit written comments on any aspect

[98] NASD Rules of Fair Practice, Art. III, Sec. 48, *NASD Manual* (CCH) ¶ 2200H.

[99] Commenters cited Rule 10b–18 as a relevant example of a safe harbor provision. *See supra* Section III.C.6. discussing Rule 10b–18.

[100] *See* Securities Exchange Act Release No. 24003 (January 16, 1987), 52 FR 2994, 2998.

[101] This is a component of the ABA draft proposal.

[102] *See* Section 9(a)(6) of the Exchange Act.

of the proposed rules discussed in this release, as well as on other matters that might have an impact on the proposals contained herein, is requested to do so. In addition to the comments solicited above, commenters are urged to provide their views on the overall structure of proposed Regulation M and whether the format and the rules contained herein provide a beneficial alternative to the trading practices rules. Commenters are encouraged to submit proposed rule text and data together with their written comments. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should refer to file number S7–11–96. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov., and should include the file number on the subject line of the E-mail.

VI. Costs and Benefits of the Proposed Amendments and Their Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed new rules, commenters are requested to provide analyses and data relating to costs and benefits associated with any of the proposals herein. The Commission preliminarily believes that compliance burdens generally will be reduced by the proposed changes. The proposals would reduce significantly trading restrictions on issuers, underwriters, and others with an interest in an offering from those currently in effect and, therefore, should reduce the costs of raising capital.

In addition, Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act.[103] The Commission preliminarily has considered the proposed rules in light of the standards cited in Section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that Regulation M may enhance the posture of U.S. underwriters in relation to foreign broker-dealers in competing for underwriting business in cross-border distributions. The Commission solicits commenters' views regarding the effects of the proposed rules on competition.

VII. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[104] regarding the rules contained in proposed Regulation M and the proposed amendments to Rules 10b–18 and 17a–2 under the Exchange Act and Items 502(d) and 508 of Regulations S–B and S–K.

As discussed more fully in the analysis, some of the issuers and broker-dealers that Regulation M would affect are small entities, as defined by the Commission's rules. In general, Regulation M overall would decrease costs for issuers and broker-dealers participating in an offering, including small businesses.

The analysis discusses the types of possible alternative proposals that the Commission has considered. These include, among others, the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities, and whether such entities could be exempted from any of the proposed rules, or any part thereof. Because small entities will benefit from the less restrictive nature of Regulation M, the Commission does not believe that any of the alternatives are preferable to the rules as proposed. Small issuers will benefit from the changes to the eligibility criteria for Nasdaq passive market making and small broker-dealers will benefit from the 100 share minimum net purchasing capacity provided for all passive market makers. The Commission believes that Regulation M balances the objective of a simplified, streamlined, more flexible regulation with its statutory mandate of investor protection in a manner more appropriate than other alternatives.

In the IRFA, the Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the new rules, and suggest alternatives that would accomplish the objectives of modernizing and streamlining the Commission's trading practices rules.

A copy of the IRFA may be obtained from the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, (202) 942–0772.

VIII. Paperwork Reduction Act

Certain provisions of proposed Regulation M contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[105] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Proposed Regulation M.''

A. Collection of Information Under Regulation M

Proposed Regulation M would require information collection in two general areas. First, various provisions of Regulation M would require persons participating in a distribution to collect certain information to comply with, or to take advantage of certain exceptions under, Rules 101 or 102 or to comply with Rule 103. Second, Rule 104 and related amendments would require disclosure and recordkeeping of persons engaged in stabilization and certain aftermarket activities.

1. Rules 101, 102, and 103

Rules 101 and 102 would require the ADTV to be calculated using the three full consecutive calendar months preceding the filing of the registration statement (or preceding pricing if there is no registration statement or a shelf distribution is involved) to determine which restricted period applies, or whether the security is excepted from the rule. Because the *de minimis* exception to Rule 101 is available for purchases of up to one percent of the security's ADTV, the ADTV calculation also may be made by a distribution participant seeking to take advantage of this exception. To determine which restricted period must be used, or to rely on the actively-traded securities exception or *de minimis* exception, a distribution participant would need to examine publicly available market data to calculate the ADTV. The Commission believes that the syndicate manager would advise other distribution participants of the ADTV of the particular security being distributed. Additionally, the Commission has requested comment on whether prospectus disclosure is necessary to inform investors about the potential market activities of persons relying on the actively-traded securities exception from Rule 101.

Rule 102 would require issuers and selling securityholders to calculate the security's ADTV to determine the appropriate restricted period. In this

[103] *See* 15 U.S.C. 78w(a)(2).

[104] 5 U.S.C. 603.

[105] 44 U.S.C. 3501 *et seq.*

case, the Commission believes that the syndicate manager would provide the security's ADTV to the issuer or selling securityholders. In a small number of self-underwritten offerings, issuers may calculate the ADTV. Rule 103 would employ the notion of ''Nasdaq ADTV,'' which is defined as the average daily trading volume of the security accounted for by a particular market maker, as obtained from the NASD. As the owner and operator of Nasdaq, the NASD has access to this information, and now provides that information to the syndicate manager.

The proposed definition of affiliated purchaser in Regulation M reflects the increasingly complex structure of financial and other conglomerates by recognizing the structural separations and information barriers between distribution participants and their affiliates. Regulation M would provide an exception to the proposed definition of affiliated purchaser where certain information barriers exist. This exception would require the participant to establish, maintain, and enforce written policies and procedures to segregate the flow of information between itself and its affiliates. A distribution participant relying on this exception also would be required to obtain an independent assessment of the operation of its policies and procedures governing its information barriers during any calendar year in which it participates in a distribution.

Rule 101 would provide an exception for *de minimis* violations during the restricted period. This provision would except purchases of less than one percent of the ADTV of the security in distribution. However, this provision is only available where the person making such bid or purchase subject to the exception has established, maintains, and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of Rule 101.

Rule 103 would require passive market makers to notify the NASD in writing that it intends to conduct passive market making. Rule 103 also would require the disclosure required pursuant to Items 502 and 508 of Regulations S–B and S–K with respect to the intended passive market making activities. This disclosure is required under Rule 10b–6A. Because Rule 103 extends the availability of passive market making to offerings of securities that previously were ineligible, it potentially would increase the number of respondents submitting such information for passive market making purposes.

2. Rule 104

Proposed Rule 104 would require disclosure of stabilizing activities in the offering materials and would expand information collection with respect to certain aftermarket activities. In addition, Rule 104 would require any person who places or transmits a bid that such person knows is for the purpose of either stabilizing the price of any security to disclose the purpose of such transaction to the market. Any person placing or transmitting a stabilizing bid also would be required to disclose the bid's purposes to the person to whom the bid is placed or transmitted. In the case of syndicate covering transactions and penalty bids, disclosure must be made to the appropriate SRO. Proposed revisions to Rule 17a–2 under the Exchange Act would require underwriters to keep records of syndicate covering transactions and penalty bids, in addition to stabilizing information.

The stabilizing legend required by paragraph (k) of Rule 10–b7, and Item 502(d) of Regulations S–B and S–K would be replaced by a short legend briefly indicating, in plain language, the transactions that may affect the offered security's price and directing investors to a further discussion of these transactions in the ''plan of distribution'' section of the prospectus. Furthermore, Item 508 of Regulations S–B and S–K governing the plan of distribution disclosure, would be revised to require a brief description of any prospective stabilizing and aftermarket activities, including syndicate covering transactions and the imposition of a penalty bid, and their potential effects on the marketplace. Although these proposed amendments are directed to Items 502(d) and 508 of Regulations S–B and S–K, the actual paperwork burden results from preparing the Commission forms that reference these items, such as Forms S–1, S–2, and S–3 under the Securities Act.[106]

B. Proposed Use of the Information

The information collected pursuant to proposed Regulation M would be used by the Commission, SROs, or investors. The information required pursuant to Rule 17a–2, however, would be maintained solely in the syndicate managers' records, to which the Commission would have access upon request. The Commission would not regularly receive any of the information described above, other than through the filing of registration statements that contain the information in Items 502(d) and 508 of Regulations S–B and S–K.

The notice provided to the NASD pursuant to proposed Rule 103 would serve to alert the NASD that members of the underwriting syndicate may engage in passive market making. Reporting passive market making purchases to the NASD would further assist in its surveillance of passive market making, which is an integral component of passive market making. The Commission would not receive copies of the notices provided to the NASD. Disclosure in the prospectus that the underwriters may engage in passive market making would alert the investors of such potential activity to assist in their investment decisions.

Notifying the market of stabilizing bids, and the SRO of syndicate covering transactions or penalty bids, would provide the market or SRO with information on transactions that may affect the price of the security.

The Commission would use records required pursuant to Rules 104 and related Rule 17a–2 in examinations or investigations of underwriting activities, and for general regulatory oversight. This information may be requested or reviewed by the Commission in connection with its regulatory and enforcement responsibilities. Investors would use the disclosure required in Rule 104 and Items 502(d) and 508 of Regulations S–B and S–K to evaluate a security for investment purposes in light of possible stabilizing and related activities.

C. Respondents

The exclusion from the coverage of Rule 101 for certain affiliates of a distribution participant, when information barriers are established, may be used by every distribution participant. The Commission does not have information on the number of broker-dealers who participate in distributions or on the number of such broker-dealers who have affiliates and would seek to take advantage of this exception. The Commission estimates that the number of respondents in this category would be 100.

The exclusion available for *de minimis* violations of Rule 101 would be available to all distribution participants that maintain a written policy for compliance with Regulation M. The Commission does not have information on the number of broker-dealers who participate in distributions. The Commission estimates that the number of respondents in this category would be 100. To use the actively-traded securities exception or to calculate the restricted periods under Rules 101 and

[106] 17 CFR 239.11, 239.12, and 239.13, respectively.

102, or to engage in aftermarket activities under Rule 104, the Commission believes that the syndicate manager of each relevant offering would collect the required information. Over the past five years, there have been an average of 522 firm commitment offerings per year. In addition, the Commission believes that in approximately 50 self-underwritten offerings per year the issuer would calculate the ADTV.

D. Total Annual Reporting and Recordkeeping Burden

1. Restricted Periods

For each of the estimated 522 firm commitment, public offerings per year, the Commission believes it would take approximately one hour for the managing underwriter to calculate the ADTV, determine the applicable restricted period, and inform other distribution participants, if any. Approximately 522 hours would be required annually for these calculations. In addition, approximately 50 hours would be required annually for issuers to calculate the ADTV for self-underwritten offerings. In many circumstances, however, the collection of information would be unnecessary because satisfaction of the condition would be self-evident (*i.e.,* the ADTV would be extremely high or extremely low).

2. Information Barriers

The Commission estimates that approximately 100 broker-dealers that act as distribution participants in offerings covered by Regulation M may seek to except the activities of an affiliate from the regulations. The Commission estimates that the written policy required for the exemption would take approximately 40 hours to draft and implement. The Commission estimates that the annual audit would take approximately 10 hours. Approximately 4,000 hours would be required by this exemption in the first year and approximately 1,000 hours in each subsequent year. The Commission believes, however, that this policy creating the information barrier would be subsumed under the policies and procedures already put in place by broker-dealers participating in offerings for the purpose of complying with other federal and state securities laws.

3. De Minimis Exception

The Commission estimates that approximately 975 broker-dealers annually will act as distribution participants in offerings covered by Regulation M. The Commission estimates that the written policy required for the *de minimis* exception would take approximately 40 hours to draft and implement. Approximately 39,000 hours would be required by this exemption in the first year.

4. Rule 103

In every firm commitment offering of Nasdaq securities, the underwriters may seek to engage in passive market making. In 1995, 155 Nasdaq offerings involved passive market making pursuant to Rule 10b–6A. The managing underwriter would inform the NASD, receive the data, and inform the syndicate members of their passive market making status. The Commission estimates that the written notice required to be provided to the NASD would involve one hour of preparation. Rule 103, however, makes the passive market making exemption available for a greater number of transactions. There were a total of 375 secondary offerings of Nasdaq securities in 1995, most of which, but not all of which, could have used passive market making under proposed Rule 103. Assuming 375 is a reasonable number of offerings in a typical year and assuming that passive market making would be available under Rule 103 for all of these offerings, the Commission estimates that the total burden of Rule 103 would be 375 hours.

5. Stabilizing and Aftermarket Activities

a. Disclosure of Stabilizing Bids to the Market

The Commission does not have a reasonable basis upon which to estimate how frequently this disclosure will be required because stabilizing bids rarely occur. In all instances where such disclosure would be required, the Commission estimates that it would require 15 minutes.

b. Notice of Penalty Bid

The Commission estimates that disclosing penalty bids would require six minutes per offering. Using 522 offerings, as discussed above, this disclosure would require an estimated 52 hours over the course of a year.

6. Rule 17a–2

The Commission estimates that creating and maintaining records pursuant to this rule would require five hours per offering. Because most of the records required pursuant to this rule already are retained as a matter of practice, the Commission believes that its time estimate should not impose burdens much greater than already exist with respect to Rule 17a–2. Using 522 offerings, as discussed above, this recordkeeping would require an estimated 2,610 hours over the course of a year.

7. Items 502 and 508

The Commission estimates that the disclosure required by the changes to Items 502(d) and 508 of Regulations S–B and S–K would require 30 minutes per firm commitment offering. The Commission expects that this burden will be reduced significantly as respondents become more familiar with the disclosure. If the respondents using Forms S–1, S–2, S–3, S–11, SB–1, SB–2, F–1, F–2, and F–3, which incorporate the disclosure required by Items 502(d) and 508, each conducted a firm commitment offering, disclosing this information would require an estimated 2,391 hours per year.

E. General Information About the Collection of Information

Any collection of information under Regulation M would be a voluntary action to avoid the otherwise prophylactic measures of the rules thereunder. Only Rule 17a–2 imposes a three-year retention period on the collected information. None of the other rules prescribe retention periods. In general, the information collected pursuant to Regulation M would be held by the respondent. The Commission would only gain possession of the information upon its request. Any information collected pursuant to Regulation M would not be confidential and would be publicly available from sources other than the respondent.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) evaluate 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;

(ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and

should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–11–96. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the Federal Register, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

IX. Statutory Basis and Text of Proposed Rules and Amendments

The proposed amendments to Rules 10b–6, 10b–6A, 10b–7, 10b–8, 10b–18, 10b–21, and 17a–2 would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 10(a), 10(b), 13(e), 15(c), 17(a), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78m(e), 78o(c), 78q(a), and 78w(a). The proposed amendments to Items 502(d) and 508 of Regulations S–B and S–K would be adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 6, 7, 8, 10, and 19(a), 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 3, 4, 10, 12, 13, 14, 15, 16, and 23, 15 U.S.C. 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78p, and 78w; and the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 8 and 38(a), 15 U.S.C. 80a–8 and 80a–37(a). Regulation M would be adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 7, 17(a), 19(a), 15 U.S.C. 77g, 77q(a), and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78w(a), and 78dd–1; and the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 23, 30, and 38, 15 U.S.C. 80a–23, 80a–29, and 80a–37.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Broker-dealers, Confidential business information, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Broker-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. Section 228.502 is amended by revising the introductory text of paragraph (d)(1) and paragraph (d)(1)(i) to read as follows:

§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(d)(1) *Stabilizing and other transactions.* (i) Include the following statement, if true, subject to appropriate modification where circumstances require.

Certain persons participating in this offering may engage in transactions that stabilize, maintain, or otherwise affect the price of (identify securities), including (list types of transactions). For a description of these activities, see ''Plan of Distribution.''

* * * * *

3. Section 228.508 is amended by adding paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of distribution.

* * * * *

(j) *Stabilizing and other transactions.* If the underwriters or any selling group members intend to engage in stabilizing, syndicate short covering transactions, penalty bids, or any other transaction during the offering that may stabilize, maintain, or otherwise affect the offered security's price, indicate such intention and briefly describe such transaction(s).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

5. Section 229.502 is amended by revising the introductory text of paragraph (d)(1) and paragraph (d)(1)(i) to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(d)(1) *Stabilizing and other transactions.* (i) Include the following statement, if true, subject to appropriate modification where circumstances require.

Certain persons participating in this offering may engage in transactions that stabilize, maintain, or otherwise affect the price of (identify securities), including (list types of transactions). For a description of these activities, see ''Plan of Distribution.''

* * * * *

6. Section 229.508 is amended by adding paragraph (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(l) *Stabilizing and other transactions.* If the underwriters or any selling group members intend to engage in stabilizing, syndicate short covering transactions, penalty bids, or any other transaction during the offering that may stabilize, maintain, or otherwise affect the security's price, indicate such intention and briefly describe such transaction(s).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 is amended by removing the subauthorities for ''Section 240.10b–6'' and ''Section 240.10b–21'' and the general authority continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

8. Section 240.10b–6 is removed and reserved.

9. Section 240.10b–6A is removed.

10. Sections 240.10b–7 and 240.10b–8 are removed and reserved.

11. Section 240.10b–18 is amended by redesignating paragraphs (a)(3)(i) through (a)(3)(vi) as paragraphs (a)(3)(ii) through (a)(3)(vii), and by adding paragraph (a)(3)(i) and revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

(a) * * *

(3) * * *

(i) Effected during a distribution (as defined in § 242.100 of this chapter) of such stock, or a distribution for which such stock is a reference security, by the issuer or any of its affiliated purchasers;

* * * * *

(5) The term *plan* has the meaning contained in § 242.100 of this chapter;

(6) The term *agent independent of the issuer* has the meaning contained in § 242.100 of this chapter;

* * * * *

12. Section 240.10b–21 is removed and reserved.

13. Section 240.17a–2 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraph (b)(1), the introductory text of paragraph (c), and paragraphs (c)(1) and (d) to read as follows:

§ 240.17a–2 Recordkeeping requirements relating to stabilizing activities.

(a) *Scope of section.* This section shall apply to any person who effects any purchase of a security for the purpose of, or who participates in a syndicate or group that engages in, ''stabilizing,'' as defined in § 242.100 of this chapter, the price of any security to facilitate an offering of any security (other than an ''exempted security,'' as hereinafter defined); or effects a purchase that is a ''syndicate covering transaction,'' as defined in § 242.100 of this chapter; or places or transmits a ''penalty bid,'' as defined in § 242.100 of this chapter:

(1) With respect to which a registration statement has been, or is to be, filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*);

(2) Which is being, or is to be, offered pursuant to an exemption from registration under Regulation A (§§ 230.251 through 230.263 of this chapter) adopted under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Which is being, or is to be, otherwise offered, if the aggregate offering price of the securities being offered exceeds $5,000,000.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) The term *manager* shall mean the person stabilizing or effecting syndicate covering transactions or placing or transmitting a penalty bid for his sole account or for the account of a syndicate or group in which he is a participant, and who, by contract or otherwise, deals with the issuer, organizes the selling effort, receives some benefit from the underwriting that is not shared by other underwriters, or represents any other underwriters in such matters as maintaining the records of the distribution and arranging for allotments of the securities offered.

* * * * *

(c) *Records relating to stabilizing, syndicate covering transactions, and penalty bids required to be maintained by manager.* Any person subject to this section who acts as a manager and stabilizes or effects syndicate covering transactions or places or transmits a penalty bid shall:

(1) Promptly record and maintain in a separate file, for a period of not less than three years, the first two years in an accessible place, the following information:

(i) The name and class of any security stabilized or any security in which syndicate covering transactions have been effected or a penalty bid has been invoked;

(ii) The price, the date, and the time at which each stabilizing purchase or syndicate covering transaction was effected by the manager or by any participant in the syndicate or group;

(iii) The names and the addresses of the members of the syndicate or group;

(iv) Their respective commitments, or, in the case of a standby or contingent underwriting, the percentage participation of each member of the syndicate or group therein; and

(v) The dates when any penalty bid was in effect and the transactions against which any penalties were assessed.

* * * * *

(d) *Notification to manager.* Any person who has a participation in a syndicate account but who is not a manager of such account, and who effects one or more stabilizing purchases or syndicate covering transactions for his sole account or for the account of a syndicate or group, shall within three business days following such purchase notify the manager of the price, date, and time at which such stabilizing purchase or syndicate covering transaction was effected, and shall in addition notify the manager of the date and time when such stabilizing purchase or syndicate covering transaction was terminated. The manager shall maintain such notifications in a separate file, for a period of not less that three years, the first two years in an easily accessible place.

14. Part 242 is added to read as follows:

PART 242—REGULATION M

Sec.

242.100 Definitions.
242.101 Activities by distribution participants.
242.102 Activities by issuers or selling securityholders during a distribution.
242.103 Nasdaq passive market making.
242.104 Stabilizing and other activities in connection with an offering.
242.105 Short selling in connection with a public offering.

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, 80a–37.

§ 242.100 Definitions.

For purposes of this section, the following definitions shall apply:

Affiliated purchaser means:

(1) A person acting, directly or indirectly, in concert with a distribution participant, issuer, or selling securityholder in connection with the acquisition or distribution of any covered security; or

(2) An affiliate who, directly or indirectly, controls the purchases of such securities by a distribution participant, issuer, or selling securityholder, whose purchases are controlled by any such person, or whose purchases are under common control with any such person; or

(3) An affiliate of a distribution participant, issuer, or selling securityholder who regularly purchases securities for its own account or for the account of others, or who recommends or exercises investment discretion with respect to the purchase or sale of securities; *Provided, however,* That this paragraph (3) shall not apply to an affiliate of a distribution participant where the following conditions are satisfied:

(i) The affiliate is a separate and distinct organizational entity from the distribution participant, with no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the distribution participant;

(ii) The affiliate's bids for, purchases of, and inducements to purchase the securities subject to this section are made in the ordinary course of its business; and

(iii) The distribution participant:

(A) Establishes, maintains, and enforces written policies and procedures to segregate the flow of information between itself and its affiliates that might result in activity prohibited by § 242.101(a); and

(B) Obtains an independent assessment of the operation of such policies and procedures during any calendar year in which it participates in a distribution.

Agent independent of the issuer means a trustee or other person who is independent of the issuer. The agent

shall be deemed to be independent of the issuer only if:

(1) The agent is not an affiliate of the issuer; and

(2) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's securities for the plan, the amounts of the securities to be purchased, the manner in which the securities are to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the basis for determining the amount of its contributions to the plan or the basis for determining the frequency of its allocations to the plan, or any formula specified in the plan that determines the amount of securities to be purchased by the agent.

At the market offering means an offering of securities at other than a fixed price.

Average daily trading volume means the world-wide reported average daily trading volume during the three full consecutive calendar months immediately preceding the filing of the registration statement or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, three full consecutive calendar months immediately preceding the pricing. The value of average daily trading volume means the average trading volume multiplied by the security's price in U.S. dollars as of the last day of the most recent month.

Business day refers to a twenty-four hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market.

Completion of participation in a distribution. A person shall be deemed to have completed its participation in a distribution as follows:

(1)(i) An issuer, when the distribution is completed; and

(ii) An underwriter, when such person's participation has been distributed, including all other securities of the same class acquired in connection with the distribution, and any stabilization arrangements and trading restrictions with respect to such distribution of which the person is a party have been terminated; *Provided, however,* That an underwriter's participation will not be deemed to have been completed if it exercises an overallotment option that exceeds the net syndicate short position; and

(iii) Any other person, when such person's participation has been distributed.

(2) A person shall be deemed to have distributed securities acquired by such person for investment.

Covered security means any security that is the subject of a distribution, or any reference security.

Current exchange rate means the current rate of exchange between two currencies, which is obtained from at least one independent entity that provides foreign exchange quotations and information in the ordinary course of its business.

Distribution means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

Distribution participant means an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution.

Eligible security means a Nasdaq security that is the subject of a distribution, other than an at the market offering or conducted other than on a best efforts basis, or is the reference security for such security.

Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Independent bid means a bid by a person who is not a distribution participant, issuer, selling securityholder, or affiliated purchaser.

NASD means the National Association of Securities Dealers, Inc.

Nasdaq means the Nasdaq system as defined in § 240.11Ac1–2(a)(3) of this chapter.

Nasdaq ADTV means the average daily trading volume in an eligible security during the reference period, as obtained from the NASD.

Nasdaq security means a security that is authorized for quotation on Nasdaq, and such authorization is not suspended, terminated, or prohibited.

Net purchases means the amount by which a passive market maker's purchases exceed its sales.

Passive market maker means a market maker that effects transactions in accordance with the provisions of § 242.103(b).

Penalty bid means an arrangement that permits the managing underwriter to reclaim a selling concession otherwise accruing to a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

Plan consists of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, stock appreciation, dividend reinvestment, or similar plan of an issuer or its subsidiaries; or any dividend or interest reinvestment plan or employee benefit plan as defined in § 230.405 of this chapter. For purposes of this paragraph and § 242.102(c) only, the term ''employee'' has the meaning contained in Form S–8 (§ 239.16b of this chapter) relating to employee benefit plans.

Principal market means the single securities market with the largest aggregate reported trading volume for the class of securities in the shorter period of the preceding twelve full consecutive calendar months or the period since the issuer's incorporation. For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share. For purposes of this paragraph, depositary share means a security, evidenced by a depositary receipt, that represents another security, or a multiple or fraction thereof, deposited with a depositary. For purposes of this paragraph, reported refers to prices of securities that are reported pursuant to § 240.11Aa3–1 of this chapter or that are reported to a foreign financial regulatory authority as defined in section 3(a)(52) of the Exchange Act (15 U.S.C. 78c(a)(52)).

Prospective underwriter means a person:

(1) Who has submitted a bid to the issuer or other person on whose behalf the distribution is to be made, and knows or reasonably expects that such bid will be accepted, whether or not the terms and conditions of the underwriting have been agreed upon; or

(2) Who has reached, or reasonably expects to reach, an understanding with the issuer, selling securityholder, or managing underwriter that such person will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon.

Reference period means the three full consecutive calendar months immediately preceding the filing of the registration statement or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to

§ 230.415 of this chapter, three full consecutive calendar months preceding the pricing.

Reference security means a security whose price is, or may in the future be, used to determine, in whole or in significant part, the value of a security that is the subject of a distribution.

Restricted period means the period beginning:

(1) For any security with an ADTV value of $100,000 or more, on the later of one business day prior to the determination of the price of the security to be distributed or such time that a person becomes a distribution participant, and ending upon the completion of such person's participation in the distribution; or

(2) For all other securities, on the later of five business days prior to the determination of the price of the securities to be distributed or such time that a person becomes a distribution participant, and ending upon the completion of such person's participation in the distribution.

Securities Act means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

Selling securityholder means any person on whose behalf a distribution is made, other than the issuer.

Stabilizing means the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security.

Syndicate covering transaction means the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a syndicate short position.

30% ADTV Limit means 30 percent of the market maker's Nasdaq ADTV.

Transaction means a bid or a purchase.

Underwriter means a person who has agreed with an issuer or selling securityholder:

(1) To purchase securities for distribution; or

(2) To distribute securities for or on behalf of such issuer or selling securityholder; or

(3) To manage or supervise a distribution of securities for or on behalf of such issuer or selling securityholder.

§ 242.101 Activities by distribution participants.

(a) Unlawful Activity. In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or to attempt to induce any person to bid for or purchase a covered security during the applicable restricted period.

(b) Excepted Activity. The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Research.* The publication or dissemination, in the ordinary course of business, of any information, opinion, or recommendation, if the conditions of §§ 230.138 or 230.139 of this chapter are met; or

(2) *Transactions complying with certain other sections.* Transactions complying with §§ 242.103 or 242.104; or

(3) *Odd-lot transactions.* Transactions in odd-lots; or

(4) *Exercises of securities.* The exercise of any option or warrant, any right received in connection with a rights offering, or any right or conversion privilege set forth in the instrument governing a security to acquire any security directly from the issuer; or

(5) *Unsolicited brokerage.* Unsolicited brokerage transactions; or

(6) *Basket transactions.* (i) Transactions in connection with a basket of securities in which the security that is the subject of the distribution does not comprise more than five percent of the value of the basket purchased and such basket contains a minimum of 20 securities; or

(ii) Adjustments to such a basket in the normal course of business as a result of a change in the composition of the components of a standardized index; or

(7) *De minimis transactions.* Purchases of less than one percent of the average daily trading volume of the security, or unaccepted bids; *Provided, however,* That the person making such bid or purchase has established, maintains, and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of this section; or

(8) *Transactions in connection with the distribution.* (i) Transactions among distribution participants in connection with the distribution, or purchases of securities from an issuer or selling securityholder necessary to conduct the distribution, effected otherwise than on a securities exchange or through an inter-dealer quotation system; and

(ii) Offers to sell or the solicitation of offers to buy the securities being distributed (including securities acquired in stabilizing), or securities offered as principal by the person making such offer to sell or solicitation of offers to buy; or

(9) *Distributions of 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, if:

(i) Such securities are offered or sold in the United States solely to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in a transaction exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) During a distribution qualifying under paragraph (b)(9)(i) of this section, such securities are offered or sold concurrently to persons not deemed to be ''U.S. persons'' for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter.

(c) Excepted Securities. The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded securities.* Securities with an ADTV value of at least $1 million; or

(2) *Investment grade nonconvertible securities.* Nonconvertible debt securities or nonconvertible preferred securities; *Provided, however,* That at least one nationally recognized statistical rating organization, as that term is used in § 240.15c3–1 of this chapter, has rated the nonconvertible securities being distributed in one of its generic rating categories that signifies investment grade; or

(3) *Exempted securities.* ''Exempted securities'' as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount securities or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (c)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) shall have the meanings specified in such Act.

(d) Exemptive Authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section to any transaction or transactions, either unconditionally or on specified terms and conditions.

§ 242.102 Activities by issuers and selling securityholders during a distribution.

(a) Unlawful Activity. In connection with a distribution of securities, it shall be unlawful for an issuer, selling securityholder, or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or to attempt to induce any person to bid for

or purchase a covered security during the applicable restricted period.

(b) Excepted Activity. The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Odd-lot transactions.* Transactions in odd-lots; or

(2) *Transactions complying with § 270.23c–3.* Transactions complying with § 270.23c–3 of this chapter; or

(3) *Exercises of securities.* The exercise of any option or warrant, any right received in connection with a rights offering, or any right or conversion privilege set forth in the instrument governing a security to acquire any security directly from the issuer; or

(4) *Transactions in connection with the distribution.* Offers to sell or the solicitation of offers to buy the securities being distributed.

(c) Plans. (1) Paragraph (a) of this section shall not apply to distributions of securities by or on behalf of an issuer or a subsidiary of an issuer pursuant to a plan, which are made:

(i) Solely to employees or securityholders of the issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons; or

(ii) To persons other than employees or securityholders, if bids for or purchasers of securities pursuant to such plan are effected solely by an agent independent of the issuer and the securities are from a source other than the issuer.

(2) Bids or purchases of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer.

(d) Excepted Securities. The provisions of this section shall not apply to any of the following securities:

(1) *Exempted securities.* ''Exempted securities'' as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(2) *Face-amount securities or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (d)(2) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) shall have the meanings specified in such Act.

(e) Exemptive Authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section to any transaction or transactions, either unconditionally or on specified terms and conditions.

§ 242.103 Nasdaq passive market making.

(a) Scope of Section. This section permits broker-dealers to engage in market making transactions in eligible securities without being in violation of the provisions of § 242.101, except when a stabilizing bid for such security is in effect pursuant to § 242.104.

(b) Conditions to be Met.

(1) *General limitations.* A passive market maker must effect all transactions in the capacity of a registered market maker on Nasdaq. Except as provided below, a passive market maker shall not display a bid for or purchase an eligible security at a price that exceeds the highest independent bid for the eligible security at the time of the transaction; *Provided, however,* That a passive market maker may purchase an eligible security at a price that exceeds the highest independent bid for such security at the time of the transaction to comply with a rule promulgated by the Commission or NASD governing the execution of customer orders.

(2) *Requirement to lower the bid.* If all independent bids for an eligible security are lowered below the passive market maker's bid, the passive market maker must lower its bid to a level not higher than the then highest independent bid; *Provided, however,* That a passive market maker may continue to maintain a bid and effect purchases at its bid at a price exceeding the then highest independent bid until the passive market maker purchases an amount of the eligible security that equals or, through the purchase of all securities that are part a single order, exceeds two times the minimum quotation size for the security, as determined by NASD rules.

(3) *Purchase limitation.* On each day, a passive market maker's net purchases shall not exceed its 30% ADTV Limit; *Provided, however,* That a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in its 30% ADTV Limit being equalled or exceeded. If a passive market maker's net purchases equal or exceed its 30% ADTV Limit, it shall immediately withdraw its quotations from Nasdaq, and it may not effect any transaction in the eligible security for the remainder of that day, irrespective of any additional sales during that day, unless otherwise permitted by § 242.101.

(4) *Limitation on displayed size.* At all times, the passive market maker's displayed bid size may not exceed the smaller of the minimum quotation size for the eligible security, or the passive market maker's remaining purchasing capacity under this paragraph (b)(4); *Provided, however,* That a passive market maker whose purchasing capacity at any time is between one and 99 shares may display a bid size of 100 shares.

(5) *Identification of a passive market making bid.* The bid displayed by a passive market maker shall be designated as such.

(6) *Notification and reporting to the NASD.* A passive market maker shall notify the NASD in writing in advance of its intention to engage in passive market making. A passive market maker shall submit to the NASD information regarding passive market making purchases in such form as the NASD shall prescribe.

(7) *Prospectus disclosure.* The prospectus for any registered offering in which any passive market maker intends to effect transactions in any eligible security shall contain the information required in §§ 228.502, 228.508, 229.502, and 229.508 of this chapter.

(c) Transactions at Prices Resulting from Unlawful Activity. No transaction shall be made at a price that the passive market maker knows or has reason to know is the result of activity that is fraudulent, manipulative, or deceptive under the Securities Act, the Exchange Act, or any rule or regulation thereunder.

§ 242.104 Stabilizing and other activities in connection with an offering.

(a) Unlawful Activity. It shall be unlawful for any person, directly or indirectly, to effect any stabilizing transaction or any syndicate covering transaction or to place or transmit a penalty bid in connection with an offering of any security, in contravention of the provisions of this section.

(b) Purpose. No stabilizing transaction shall be made except for the purpose of preventing or retarding a decline in the market price of a security.

(c) Priority. To the extent permitted or required by the market where stabilizing occurs, any person stabilizing shall grant priority to any independent bid at the same price irrespective of the size of such independent bid at the time that it is entered.

(d) Control of Stabilizing. No sole distributor or syndicate or group stabilizing the price of a security or any member or members of such syndicate or group shall maintain more than one stabilizing bid in any one market at the same price at the same time.

(e) Stabilizing at Prices Resulting from Unlawful Activity. No stabilizing shall be effected at a price that the person stabilizing knows or has reason to know is in contravention of this section, or is the result of activity that is fraudulent, manipulative, or deceptive under the Securities Act, the Exchange Act, or any rule or regulation thereunder.

(f) Stabilizing Prohibited in at the Market Offerings. No person shall stabilize any at the market offering.

(g) Stabilizing Levels.

(1) *No stabilizing above offering price.* No stabilizing shall be effected in a security at a price above the offering price. If stabilizing is effected before the initial public offering price is determined, and such offering price is higher than the stabilizing bid or purchase price, then stabilizing may be resumed after determination of the public offering price at the price at which stabilizing could then be effected.

(2) *Stabilizing when the principal market is open.* Except as limited by the other provisions of this paragraph (g), no stabilizing shall be effected in any market at a price higher than the stabilizing bid in the principal market for the security, or, if there is no stabilizing bid in the principal market, the highest independent bid for the security in its principal market.

(3) *Stabilizing when the principal market is closed.* Except as limited by the other provisions of this paragraph (g), before the opening of quotations for the security in the market where stabilizing will be effected, no stabilizing shall be effected at a price in excess of the lower of:

(i) The price at which stabilizing could have been effected at the close of the principal market; or

(ii) The most current reported price at which independent transactions in the offered security have been effected in any market after the close of the principal market. After the opening of quotations in the market where stabilizing will be effected, no stabilizing shall be effected at a price higher than the highest independent bid for such security in that market.

(4) *Adjustments to stabilizing price.* (i) A stabilizing bid may be increased to a price no higher than the price at which stabilizing could then be lawfully initiated. A stabilizing bid that is lawful under this section when initiated may be maintained continuously or reduced irrespective of changes in the independent bid of the security.

(ii) If a security goes ex-dividend, ex-rights, or ex-distribution, the price at which such security is being stabilized shall be reduced by an amount equal to the value of the dividend, right, or distribution. If a stabilizing bid is expressed in a currency other than the currency of the principal market for the security, such bid may be initiated, maintained, or adjusted to reflect the current exchange rate. If, in entering, maintaining, or adjusting a bid pursuant to this paragraph (g)(4), the adjusted bid would be at or below the midpoint between two trading differentials, such stabilizing bid shall be adjusted downward to the lower differential.

(5) *Special prices.* Any stabilizing price that otherwise meets the requirements of this section need not be adjusted to reflect special prices available to any group or class of persons (including employees or holders of warrants or rights).

(h) Disclosure and Notification. (1) Any person placing or transmitting a bid that such person knows is for the purpose of stabilizing the price of any security shall provide prior notice of such transaction to the market on which such transaction is effected, and disclose the purpose of such transaction to the person with whom the bid is placed or is transmitted.

(2) Any person effecting a syndicate covering transaction or placing or transmitting a penalty bid shall provide prior notice of such syndicate covering transaction or penalty bid to the self-regulatory organization with direct authority over the market on which such syndicate covering transaction is effected or such penalty bid is placed or transmitted.

(3) Any person subject to this section who sells to, or purchases for the account of, any person any security where the price of such security may be or has been stabilized or where a syndicate covering transaction may be or has been effected for such security or where a penalty bid may be or has been in effect, shall give the purchaser at or before the completion of the transaction, a prospectus, offering circular, confirmation, or other writing containing a statement similar to that comprising the statement provided for in Item 502(d) of Regulation S–B (§ 228.502(d) of this chapter) or Item 502(d) of Regulation S–K (§ 229.502(d) of this chapter).

(i) Recordkeeping Requirements. A person subject to this section shall keep the information and make the notification required by § 240.17a–2 of this chapter.

(j) Excepted Securities. The provisions of this section shall not apply to any of the following securities:

(1) *Exempted securities.* ''Exempted securities,'' as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(2) *Rule 144A eligible securities.* Any distribution of securities eligible for resale under § 230.144A(d)(3) of this chapter, if:

(i) Such securities are offered or sold in the United States solely to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in a transaction exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) During a distribution qualifying under paragraph (j)(2)(i) of this section, such securities are offered or sold concurrently to persons not deemed to be ''U.S. persons'' for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter.

(k) Exemptive Authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section to any transaction or transactions, either unconditionally or on specified terms and conditions.

§ 242.105 Short selling in connection with a public offering.

(a) Unlawful Activity. In connection with a distribution of securities offered for cash (''offered securities'') pursuant to a registration statement or a notification on Form 1–A (§ 239.90 of this chapter) filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the shorter of:

(1) The period beginning five business days before the pricing of the offered securities and ending with the pricing; or

(2) The period beginning with such filing and ending with the pricing.

(b) Excepted Offerings. This section shall not apply to offerings filed under § 230.415 of this chapter or to offerings that will not be conducted on a firm commitment basis.

(c) Exemptive Authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section to any transaction or transactions, either unconditionally or on specified terms and conditions.

Dated: April 11, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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April 18, 1996

Part IV

Department of Education

Bilingual Education: Comprehensive School Grants Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.290U]

Bilingual Education: Comprehensive School Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program.

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7114 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act)). 20 U.S.C. 7424 and 7426.

Purpose of Program: This program provides grants to implement schoolwide bilingual education programs or special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all or virtually all limited English proficient (LEP) children and youth in one or more schools with significant concentrations of these children and youth.

Eligible Applicants: One or more local educational agencies (LEAs), or one or more LEAs in collaboration with an institution of higher education, community-based organizations, other LEAs, or a State educational agency.

Deadline for Transmittal of Applications: May 28, 1996.

Deadline for Intergovernmental Review: July 29, 1996.

Available Funds: $10 million.

Estimated Range of Awards: $150,000–$350,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act— Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Description of Program

Funds under this program are to be used to reform, restructure, and upgrade all relevant operations and programs, within a school, that serve LEP children and youth. Before carrying out a project assisted under this program, a grantee shall plan, train personnel, develop curriculum, and acquire or develop materials. In addition, grantees are authorized, under this program, to improve the education of LEP children and youth and their families by: implementing family education programs, improving the instructional program for LEP children, compensating personnel who have been trained—or are being trained—to serve LEP children and youth, providing tutorials and academic or career counseling for LEP children and youth, and providing intensified instruction.

Priority

The priority in the notice of final priority for this program, as published in the Federal Register on October 30, 1995 (60 FR 55245) in a notice of final priority for this program, applies to this competition.

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that serve only schools in which the number of LEP students, in each school served, equals at least 25 percent of the total student enrollment.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 7114 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Act.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (23 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (12 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on August 10, 1995 (60 FR 40980).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.290U, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and three copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Washington, DC 20202–4725.

or

(2) Hand deliver the original and three copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.290U), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(C) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden, guidance on addressing the EDGAR selection criteria, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

a. Estimated Public Reporting Burden.

b. Guidance on Addressing the EDGAR Selection Criteria.

c. Group Application Certification.

d. Student Data.

e. Project Documentation.

f. Program Assurances.

g. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

h. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: This form is intended for the use of grantees and should not be transmitted to the Department.

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See

notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

k. Notice to All Applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and THREE copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a complete application has been received.

FOR FURTHER INFORMATION CONTACT: Harry Logel, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–5530. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 7424.

Dated: April 9, 1996.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4000–01–P

Appendix

Part I

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 0 U

TITLE: Bilingual Education: Comprehensive School Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. **Please read all instructions before completing form.**

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Part III—Application Narrative

INSTRUCTIONS FOR APPLICATION NARRATIVE

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should--

1. Begin with an Abstract, that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Applicants should note the non-regulatory guidance provided on subsequent pages in regard to addressing the EDGAR selection criteria. Under the listed EDGAR criteria, selected provisions are quoted from the authorizing statute in order to indicate where applicants may appropriately address these provisions. These provisions are statutory requirements and must be addressed in order to receive a grant.

The narrative must be limited to no more than 45 double-spaced, typed pages (on one side only), including appendices. This limit applies to the pages containing the narrative and any accompanying tables, graphs, and charts; regardless of the pagination shown on these pages, the total number of these pages must not exceed 45 sheets. The page limit does not apply to the application forms, assurances, certifications, and attachments to those forms, assurances, and certifications. Applications that exceed the page limit specified above will not be considered for funding.

Additional Materials

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885-0528. (Expiration Date: April 1998) The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, S.W., Washington D.C. 20202-6510.

GUIDANCE ON ADDRESSING THE EDGAR SELECTION CRITERIA

(1) Meeting the purposes of the authorizing statute. (See subsection 75.210(b)(1) of EDGAR.)

(a) PURPOSE.--The purpose of this section is to provide financial assistance to eligible entities to implement schoolwide bilingual education programs or special alternative instruction programs for reforming, restructuring, and upgrading all relevant programs and operations, within an individual school, that serve all (or virtually all) children and youth of limited English proficiency in schools with significant concentrations of such children and youth.

(20 U.S.C. 7424(a))

(2) Extent of need for the project. (See subsection 75.210(b)(2) of EDGAR.)

(1) IN GENERAL.--An application for a grant under this subpart shall contain the following:

(A) A description of the need for the proposed program, including data on the number of children and youth of limited-English proficiency in the school or school district to be served and the characteristics of such children and youth, such as language spoken, dropout rates, proficiency in English and the native language, academic standing in relation to the English-proficient peers of such children and youth, and, where applicable, the recency of immigration.

(20 U.S.C. 7426(g)(1)(A))

The Secretary shall give priority to applications under this subpart that describe a program that--

(1) enrolls a large percentage or large number of limited English proficient students;

(2) takes into account significant increases in limited English proficient children and youth, including such children and youth in areas with low concentrations of such children and youth;

(20 U.S.C. 7430)

(3) Plan of operation. (See subsection 75.210(b)(3) of EDGAR.)

(1) IN GENERAL. -- An application for a grant under this subpart shall contain the following:

(B) A description of the program to be implemented and how such program's design--

(I) relates to the linguistic and academic needs of the children and youth of limited-English proficiency to be served;

(ii) is coordinated with other programs under this Act, the Goals 2000: Educate America Act and other Acts, as appropriate, in accordance with section 14306 [of the Elementary and Secondary Education Act, as amended];

(iii) involves the parents of the children and youth of limited-English proficiency to be served;

(iv) ensures accountability in achieving high academic standards; and

(v) promotes coordination of services for the children and youth of limited-English proficiency to be served and their families.

(C) A description, if appropriate, of the applicant's collaborative activities with institutions of higher education, community-based organizations, local or State educational agencies, private schools, nonprofit organizations, or businesses in carrying out the proposed program.

(20 USC 7426(g)(1)(B) and (C))

(2) ADDITIONAL INFORMATION.--Each application for a grant under section 7114-7115[1] shall--

(A) describe--

(I) current services the applicant provides to children and youth of limited-English proficiency;

(ii) what services children and youth of limited-English proficiency will receive under the grant that such children or youth will not otherwise receive;

(iii) how funds received under this subpart will be integrated with all other Federal, State, local, and private resources that may be used to serve children and youth of limited-English proficiency;

(iv) specific achievement and school retention goals for the children and youth to be served by the proposed program and how progress toward achieving such goals will be measured; and

(v) current family education programs if applicable; and

(B) provide assurances that --

(I) the program funded will be integrated with the overall educational program; and

(ii) the application has been developed in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in such programs.

---

[1] The Comprehensive School Grants program is authorized by section 7114 of the Elementary and Secondary Education Act, as amended.

(20 U.S.C. 7426(g)(2))

(3) student evaluation and assistance procedures in the program are valid, reliable, and fair for limited English proficient students, and that limited English proficient students who are disabled are identified and served in accordance with the requirements of the Individuals with Disabilities Education Act;

(5) the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of students of limited-English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under this subpart is reduced or no longer available;

(6) the applicant provides for utilization of the State and national dissemination sources for program design and in dissemination of results and products.

(20 U.S.C. 7426(h)(3), (5) and (6))

(1) PRIORITY.--The Secretary shall give priority to applications which provide for the development of bilingual proficiency both in English and another language for all participating students.

(4) CONSIDERATION.--In approving applications under this subpart, the Secretary shall give consideration to the degree to which the program for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate local and State educational agency, or businesses.

(5) DUE CONSIDERATION.--The Secretary shall give due consideration to applications providing training for personnel participating in or preparing to participate in the program which will assist such personnel in meeting State and local certification requirements and that, to the extent possible, describe how college or university credit will be awarded for such training.

(20 U.S.C. 7426(i)(1), (4), and (5))

Each recipient of a grant under this subpart shall use the grant in ways that will build such recipient's capacity to continue to offer high-quality bilingual and special alternative education programs and services to children and youth of limited-English proficiency once Federal assistance is reduced or eliminated.

(20 U.S.C. 7428)

Entities receiving grants under this title shall remain eligible for grants for subsequent activities which extend or expand and do not duplicate those activities supported by a previous grant under this title. In considering applications for grants under this title, the Secretary shall take into consideration the applicant's record of accomplishments under previous grants under this title.

(20 U.S.C. 7574)

(4) Quality of key personnel. (See subsection 75.210(b)(4) of EDGAR.)

(E) An assurance that the applicant will employ teachers in the proposed program that, individually or in combination, are proficient in English, including written, as well as oral, communication skills.

(20 U.S.C. 7426(g)(1)(E))

(h) APPROVAL OF APPLICATIONS.--An application for a grant under this subpart may be approved only if the Secretary determines that--

(1) the program will use qualified personnel, including personnel who are proficient in the language or languages used in instruction;

(20 U.S.C. 7426(h)(1))

(5) Budget and cost effectiveness. (See subsection 75.210(b)(5) of EDGAR.)

(4) Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of such Federal funds, would have been expended for special programs for children of limited English proficient individuals and in no case to supplant such State and local funds, except that nothing in this paragraph shall be construed to preclude a local educational agency from using funds under this title for activities carried out under an order of a court of the United States or of any State respecting services to be provided such children, or to carry out a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 with respect to services to be provided such children;

(20 U.S.C. 7426(h)(4))

(6) Evaluation plan. (See subsection 75.210(b)(6) of EDGAR.)

(a) EVALUATION.--Each recipient of funds under this subpart shall provide the Secretary with an evaluation, in the form prescribed by the Secretary, of such recipient's program every two years.

(b) USE OF EVALUATION.--Such evaluation shall be used by a grant recipient--

(1) for program improvement;

(2) to further define the program's goals and objectives; and

(3) to determine program effectiveness.

(c) EVALUATION COMPONENTS.--Evaluations shall include--

(1) how students are achieving the State student performance standards, if any, including data comparing children and youth of limited-English proficiency with nonlimited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, where applicable, native language) proficiency;

(2) program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of the program's staff professional development, and appropriateness of the language of instruction;

(3) program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency;...

(20 U.S.C. 7433)

(7) Adequacy of resources. (See subsection 75.210(b)(7) of EDGAR.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

STUDENT DATA

Name of Local Educational Agency

SECTION A

NOTE: This section must be completed by applicants under the following programs:

- **Program Enhancement Grants**
- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

1. Total number of limited English proficient (LEP) students in the school district	
2. Total number of students in the school district	
3. Percentage of LEP students (line 1 divided by line 2)	%

SECTION B

NOTE: This section must be completed by applicants under the following program:

- **Comprehensive School Grants**

Name of project school	(1) Total number of LEP students in the school	(2) Total number of students in the school	(3) % of LEP students (Column (1) divided by column (2))
			%
			%
			%

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents as specified under the program pertaining to this application.

- **Program Enhancement Grants**
- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

- A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158.
If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372.

§75.156 When an applicant under §75.155 must submit its application to the State; proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

- Evidence of compliance with the Federal requirements for participation of students enrolled in private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

§75.119 Information needed if private school students participate.
If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.
(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.. 1221e-3(a)(1))

PROGRAM ASSURANCES

NOTE: **The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.**

- As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- **Program Enhancement Grants**
- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under this program.

- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.

(Authority: 20 U.S.C. 7426(g)(1))

- **Comprehensive School Grants**
- **Systemwide Improvement Grants**

- Will integrate the proposed project with the applicant's overall educational program.

- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g)(2))

- **Teachers and Personnel Grants**

- Will include, if applicable, as part of a project implementing a master's- or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7476(a)(3))

Authorized Representative		**Applicant Organization**
Signature	**Title**	
Typed Name	**Date Signed**	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
- ☐ a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:
- ☐ a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:
- ☐ a. initial filing
- b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity Registrant
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

13. Type of Payment *(check all that apply):*
- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e. deferred
- ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. ~~Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying~~ entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). ~~Check~~ all boxes ~~that~~ apply. If this is a material change report, enter the cumulative amount of payment ~~made~~ or planned to be made.

12. Check the appropriate box(es). ~~Check~~ all boxes that apply. If payment ~~is made~~ through an in-kind contribution, specify the nature and value of the in-kind ~~payment~~.

13. Check the appropriate box(es). Check all boxes ~~that apply.~~ If other, specify nature.

14. Provide a specific and detailed ~~description~~ of the services that the lobbyist has performed, or will be expected to perform, and the date(s) ~~of any~~ services rendered. Include all preparatory and related activity, not just time spent in actual contact ~~with~~ Federal officials. Identify the Federal official(s) or employee(s) ~~contacted~~ or the officer(s), ~~employee(s)~~, or Member(s) of Congress that were contacted.

15. ~~Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 96–9523 Filed 4–17–96; 8:45 am]
BILLING CODE 4000–01–C

federal register

Thursday
April 18, 1996

Part V

Department of Education

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Applications for New Awards for Fiscal Year 1996; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.258]

Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Even Start Family Literacy Program for Indian tribes and tribal organizations is designed to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: June 11, 1996.

Available Funds: The Department estimates that about $1.2 million will be available for new projects after funding continuation awards in FY 1996, contingent upon final congressional action on the FY 1996 budget.

Estimated Range of Awards: $75,000–$200,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The EDGAR as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: Under the authority of section 1202(a)(1)(C) of the Elementary and Secondary Education Act (ESEA), the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants for projects that—

(1) Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations;

(2) Are implemented through cooperative activities that build on existing community resources to create a new range of services for federally recognized Indian tribes and tribal organizations;

(3) Promote achievement of the National Education Goals one, five, and eight that address school readiness, student achievement, and parent involvement in the education of their children; and

(4) Assist children and adults to achieve to challenging State content standards and challenging State student performance standards.

Eligible participants. Eligible participants are children and their parents who also meet the following conditions specified in section 1206(a) of the ESEA:

(1) The parent or parents must be eligible for participation in an adult education program under the Adult Education Act; or

(2) For a parent or parents within the State's compulsory school attendance age range, a local educational agency must provide (or ensure the availability of) the basic education component; and

(3) The child or children must be younger than eight years of age.

Note: Family members of eligible participants described in paragraphs one through three, above, also may participate in Even Start Family Literacy Program activities when appropriate to serve Even Start purposes. In addition, section 1206(b) of the ESEA permits families to remain eligible for Even Start Family Literacy services until all family members become ineligible for participation. For example, in the case of a family in which the parent or parents have become ineligible due to educational advancement, eligibility would continue until all children in the family reach age eight.

Budget period. Under 34 CFR § 75.112 and 34 CFR § 75.117, an eligible applicant must propose a project period and provide budgetary information for each year of that proposed project period in its initial application. The budgetary information provided should include an amount for all key project components with an accompanying breakdown of any subcomponents. A written justification for all requested amounts should be provided.

An applicant is also required under 34 CFR 75.112(b) to describe how and when, in each budget period of the project, it plans to meet each objective of the project.

Note: This information will be used by the Assistant Secretary, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether to make a continuation award for the subsequent budget year. Under 34 CFR § 75.253 a grantee can receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.

Federal and local funding. An Even Start Family Literacy project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local project share). The Federal share of the project may not exceed—

- 90 percent of the total cost of the project in the first year;
- 80 percent in the second year;
- 70 percent in the third year;
- 60 percent in the fourth year; and
- 50 percent in any subsequent year.

The Federal share for any grantee receiving a grant for a second grant cycle may not exceed 50 percent. The local share of the project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded by the ESEA.

Indirect costs. Even Start Family Literacy Program funds generally may not be used for the indirect costs of a project.

Eligible recipients of an Even Start Indian tribe and tribal organization grant, however, may request the Secretary to waive this requirement if the recipient demonstrates to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start Family Literacy Program.

National Evaluation: The Department is conducting a national evaluation of Even Start Family Literacy projects. Grantees are required to participate in the Department's national evaluation and to conduct a separate independent local evaluation consistent with the grantee's responsibilities under 34 CFR § 75.590. The Department encourages grantees to develop a local evaluation plan that is consistent with the national

evaluation. It is not expected that the application will include a complete local evaluation plan as grantees will not be familiar with the national evaluation plan prior to award of the grant.

The Secretary suggests that each applicant budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 should designate $5,000 for this purpose; a project with an estimated cost of over $120,000 should designate $10,000 for these activities. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. The Secretary also recommends that projects budget for the cost of travel to Washington, DC, and two nights' lodging for the project director and the project evaluator, for their participation in annual evaluation meetings.

Selection Criteria:

(a)(1) The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(2) The maximum composite score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b)(2) *The Criteria.*—(1) *Meeting the purposes of the authorizing statute.* (20 points). The Secretary reviews each application to determine how well the project will meet the purpose of the Even Start Family Literacy Program for federally recognized Indian tribes and tribal organizations, which under sections 1201 and 1202(a)(1)(C) of the ESEA is to help break the cycle of poverty and illiteracy by awarding grants for projects that—

- Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations;
- Are implemented through cooperative projects that build on existing community resources to create a new range of services for Indian tribes and tribal organizations;
- Promote achievement of the National Education Goals; and
- Assist children and adults from low-income families to achieve to challenging State content standards and challenging State student performance standards.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

Note: Applicants may address this criterion in any way that is reasonable, given the purpose of the Indian Even Start program. Applicants may, for example, address such factors as the following: the number of children and families in the area who need Even Start services, the lack of availability of comprehensive family literacy services for that population, other resources that will be used to benefit project participants, and any other factors that the applicant considers relevant to the extent of need for the project.

(3) *Plan of Operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note: Applicants may address this criterion in any way that is reasonable. Concerning design of the project, the Secretary believes that an effective application would incorporate, at a minimum, the following program elements that each project is required to have by section 1205 of the ESEA:

(a) Identification and recruitment of families most in need of services provided under the Even Start Family Literacy Program, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators.

(b) Screening and preparation of parents, including teenage parents and children, to enable those parents to participate fully in the activities and services provided under the Even Start Family Literacy Program, including testing, referral to necessary counselling, other developmental and support services, and related services.

(c) Design that accommodates the participants' work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources, but are necessary for participation in the activities assisted under the Even Start Family Literacy Program, such as—

- Scheduling and location of services to allow joint participation by parents and children;
- Child care for the period that parents are involved in the project; and
- Transportation to enable parents and their children to participate in the project.

(d) High-quality instructional programs that promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in the regular school programs.

(e) Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered through the Even Start Family Literacy Program.

(f) Providing and monitoring of integrated instructional services to participating parents and children through home-based programs.

(g) Operation on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months.

(h) Coordination with—

- Programs assisted under other parts of Title I and other programs under the ESEA;
- Any relevant programs under the Adult Education Act, the Individuals with Disabilities Education Act, and the Job Training Partnership Act; and
- The Head Start program, volunteer literacy programs, and other relevant programs.

(i) Ensuring that the proposed project will serve those families most in need of the activities and services provided by the Even Start Family Literacy Program.

(j) An independent evaluation of the project.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Staff training.* (5 points) The Secretary reviews each application to determine how well the project provides special staff training, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered under the Even Start Family Literacy Program.

(6) *Screening and preparation of families.* (5 points) The Secretary reviews each application to determine how well the project includes screening and preparation of parents, including teenage parents and children, to enable those parents to participate fully in the Even Start activities and services, including testing, referral to necessary counselling, other developmental and support services, and related services.

(7) *High-quality instruction.* (10 points) The Secretary reviews each application to determine how well the project includes high-quality instructional programs that will promote adult literacy and empower parents to support the educational growth of their children, developmentally appropriate early childhood educational services, and preparation of children for success in regular school programs.

(8) *Budget and cost effectiveness.* (2 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(9) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(10) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.258), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C. 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: Patricia McKee (CFDA #84.258), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to all Applicants (Section 427 of the General Education Provisions Act).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., Room 4400, Portals Building, Washington, DC 20202–6132. Telephone Number: (202) 260–0991. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary

grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 6362(a)(1)(C).

Dated: April 4, 1996.

Gerald N. Tirozzi,

Assistant Secretary, Elementary and Secondary Education.

BILLING CODE 4000–01–P

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application ☐ Construction ☐ Non-Construction
Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 8
TITLE: Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE_____
b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

INSTRUCTIONS FOR PART III--APPLICATION NARRATIVE

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should--

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

3. Provide the following in response to the attached "Notice to all Applicants": (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation; or (2) a separate statement that contains that information;

4. Provide a copy of the signed set of assurances specified in section 14306(a) of the ESEA (20 USC 8856(a)) that the applicant has filed with its SEA and that is applicable to this grant application; and

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0540. The time required to complete this information collection is estimated to average 15 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Patricia McKee, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Room 4400, Portals Building, Washington D.C. 20202-6132.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying ~~Entity~~ Registrant
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

15. ~~Continuation Sheet(s) SF-LLL-A attached:~~ ~~☐ Yes~~ ~~☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. ~~Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

12. ~~Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~

13. ~~Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~

14. ~~Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

15. ~~Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 96–9522 Filed 4–17–96; 8:45 am]
BILLING CODE 4000–01–C

federal register

Thursday
April 18, 1996

Part VI

Postal Service

39 CFR Part 111

Classification Reform; Implementation Standards; Final Rule

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Supplementary final rule.

SUMMARY: This supplementary final rule sets forth the remaining Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC95–1, Classification Reform I. These standards address the specific aspects of the final rule published in the Federal Register on March 12, 1996 (61 FR 10068–10217), on which the Postal Service had sought additional comments.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On March 24, 1995, pursuant to its authority under 39 U.S.C. 3621, et seq., the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on a number of mail classification reform proposals (Classification Reform). The PRC designated the filing as Docket No. MC95–1. The PRC published a notice of the filing, with a description of the Postal Service's proposals, on April 3, 1995, in the Federal Register (60 FR 16888–16893).

Following two earlier advance notices of proposed rulemaking seeking comments from the public (60 FR 34056–34069, June 29, 1995, and 60 FR 45298–45323, August 30, 1995), the Postal Service published for public comment in the Federal Register a proposed rule (60 FR 66582–66703, December 22, 1995) that included a complete listing of changes to the standards in the DMM that it proposed to adopt if the Classification Reform proposals requested by the Postal Service in PRC Docket No. MC95–1 were recommended by the PRC and approved by the Governors of the Postal Service.

Pursuant to 39 U.S.C. 3624, on January 26, 1996, the PRC issued its Recommended Decision on Docket No. MC95–1 to the Governors of the Postal Service. The PRC recommendations included revisions to some of the mail classification structures and rates requested by the Postal Service. Pursuant to 39 U.S.C. 3625, the Governors acted on the PRC's recommendations on March 4, 1996. With the exception of the PRC's separate courtesy envelope mail and bulk parcel post proposals, the Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of July 1, 1996, for those rate and classification changes to take effect. (Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Classification Reform I, Docket No. MC95–1, Board of Governors Resolution No. 96–2.)

To implement the Governors' decision, the Postal Service published a final rule containing the DMM standards adopted by the Postal Service in the March 12, 1996, Federal Register (61 FR 10068–10217). Except as specifically noted therein, the revised DMM standards take effect July 1, 1996. As explained in that final rule, because the PRC's Recommended Decision, as approved by the Governors, made significant changes to the mail classification structure requested by the Postal Service, it was necessary to change some elements of the proposed rule when producing the final rule.

To the extent that the final rule established standards not previously published for public comment, the Postal Service determined to seek and consider additional input from customers. That further opportunity for public comment was limited to matters newly introduced in the final rule, that were not mandated by the rate and classification provisions, and that were significant in their impact on customers compared with the corresponding elements of the proposed rule recommended by the PRC and approved by the Governors. Comments were solicited for these specific provisions:

1. New standards applied to Regular Periodicals similar to those adopted in the final rule for First-Class Mail and Standard Mail:

a. All pieces in an automation rate mailing must be delivery point barcoded (for letter-size pieces) or ZIP+4 or delivery point barcoded (for flat-size pieces).

b. Presort and other preparation standards must be met, including a 150-piece minimum for preparing trays of automation rate letter-size mail.

c. All 5-digit ZIP Codes used in the addresses on nonautomation rate Regular Periodicals must be verified annually for accuracy. Mailers must certify this verification at the time of mailing.

d. Letter-size reply envelopes and cards enclosed in automation rate pieces must meet specific standards for automation compatibility. Mailers must certify this automation compatibility at the time of mailing.

2. Standards for documentation produced by Presort Accuracy Validation and Evaluation (PAVE)-certified software and for standardized documentation produced otherwise.

Because the list of provisions on which comment was sought was limited and straightforward, because mailers were expected to have little difficulty evaluating the impact of those limited provisions on their operations and preparing comments quickly, and because the Postal Service wanted to ensure that mailers have sufficient time to make any necessary changes to their operations before the July 1, 1996, implementation date, the Postal Service set March 27, 1996, as the closing date for comments on the specific matters identified in the final rule.

Part A of this supplementary final rule provides an analysis of comments received and the Postal Service responses. Part B provides policy information about plant-verified drop shipments. Significant changes made to the final rule since its issuance, including the excerpted text of revised DMM standards that have been amended based on comments, are at the end of this notice.

A. Summary of Comments

1. General Information

The Postal Service received 77 pieces of correspondence offering comments on the identified aspects of the final rule. (Of that number, 18 pieces were form letters received from employees of one company; these letters are treated as a single comment. Another 14 letters, based on a different form letter, were submitted by 14 different companies; these letters are treated as individual comments.) Commenters included mailers, printers, industry consultants, individual publishers, and major mailer associations.

Of those items on which comment was sought, all but two commenters wrote on issues relevant to Periodicals. Comments on Periodicals are discussed in section 2 below. Only two commenters wrote about the portion of the final rule concerning standardized documentation. One of those two commenters was a major billing service; the other, a list and data management service. Their comments are discussed in section 3.

Although comment was sought on only the specific listed issues and not on other aspects of the final rule, many commenters submitted comments on other issues. This group of comments is discussed in section 4.

2. Periodicals

a. 100% Barcoding

Of the comments on those specific points for which comment was sought, 38 commenters focused on the Postal Service's proposal that automation rate Regular Periodicals mailings must be 100% barcoded. Commenters generally supported the concept of efficient mail and the Postal Service's desire to optimize the volume of such mail, but they generally disagreed with the feasibility of the Postal Service's proposed implementation of a 100% barcoding standard for Regular Periodicals and an implementation date for this standard. Seven of those commenters suggested that carrier route presorted pieces count toward the percentage of barcoded pieces, two urged inclusion of firm packages, and three recommended counting 5-digit barcoded pieces toward the required percentage. Twenty-eight commenters offered various timetables on which the Postal Service could ''ramp up'' to a higher percentage of barcoded pieces in Regular Periodicals mailings, but few accepted an eventual 100% environment. One commenter advocated retaining the current ''85% rule,'' whereas six other commenters stated that the Postal Service should defer requiring 100% barcoding until it can provide ZIP+4 codes for all addresses that a mailer submits for address matching and coding.

The Postal Service has identified efficient mail as a major expected result of Classification Reform and has publicized that expectation since the earliest phases of the reform process. Moreover, the Postal Service has invested heavily in barcode-based automated systems as a strategy to drive cost from its mail processing operations, another objective set early in the reform process and strongly supported by customers. The rates adopted as a result of Docket No. MC95–1 underwrite mailers' efforts and investments in producing the efficient 100% barcoded mailstream needed to allow automated systems to yield their planned cost and service benefits.

Throughout the years that the Postal Service's Classification Reform proposals were developed, a clear message was maintained, not only about the need for and benefits of a pure barcoded mailstream, but also for heightened awareness that quality address information is the key enabling factor for successful address matching and barcoding. In view of this clear record, the Postal Service has determined not to retain standards supporting the current inefficient mailstream (e.g., the ''85% rule'') and not to adopt new standards that compromise achievement of its automation objectives.

For example, allowing inclusion of carrier route presort pieces or pieces bearing a 5-digit barcode in the percentage of barcoded mail does not offer a benefit consistent with the Postal Service's automation goal. Although presorting mail by carrier route enables movement of that mail directly to the carrier with minimal en route distribution, such preparation has no effect on the rest of the mailing (i.e., the remaining copies of an issue of a publication not sorted to carrier routes) and does not increase the volume of mail compatible with automation. Moreover, the 100% barcoding standard would apply only to automation rate pieces (an automation rate is not available for carrier route sorted pieces), making the coexistence of a separate carrier route sorted mailstream essentially irrelevant regardless of its volume. As a result, the final rule will not allow the quantity of mail prepared for carrier route rates to count toward the required percentage of a mailing that must be barcoded.

Firm packages and pieces bearing only a 5-digit barcode will not be included either. Aside from the likely incompatibility of their wrapping material with automated processing, firm packages often exceed the physical size restrictions of automated equipment and, if included in automation rate mailings, would require culling for separate processing. This scenario is inconsistent with an efficient mailstream and argues for the exclusion of firm packages from an automated mailing (both physically and as a contributor toward the 100% barcoding level). The final rule will continue the exclusion of firm packages.

Five-digit barcoded pieces represent no assurance of quality in the mailpiece address. Otherwise, a ZIP+4 code could have been determined and translated into a delivery point barcode (or a ZIP+4 barcode on a flat-size piece). Therefore, despite the limited processing benefit of a 5-digit barcode, the Postal Service remains convinced that quality addressing and the best possible depth of code should remain the sole objectives of automation rate mailers. The final rule will retain the specification for a delivery point barcode (or, for a flat, a ZIP+4 barcode).

Concerns are unfounded that nonbarcoded mail will be excluded from the mailstream. Nonbarcoded mail will still be acceptable but will have to be mailed separately from barcoded mail. However, in line with the basic theme of Classification Reform that mail should pay rates more closely aligned with the cost of the mail, nonbarcoded mail (other than carrier route sorted mail) will be subject to rates that are higher than those available for barcoded pieces. Without excluding them from the mail, nonbarcoded pieces not sorted to carrier routes are clearly priced in a manner that encourages the mailer to evaluate ways to move such pieces into the more efficient and economical barcoded mailstream.

Throughout the years that Classification Reform was developed, the Postal Service conducted a dialogue with the mailing industry regarding address quality. During that time, customers defined various challenges that they perceived as limiting their ability to reach the quality standards proposed by the Postal Service. In response, the Postal Service worked to find solutions, either within existing address management strategies or by new methods tailored to the needs of specific customers.

Throughout this time, there were concerns that the entirety of customer address lists could not be matched to postal databases. Many customers argued, as did the commenters mentioned above, that standards for a 100% barcoded mailstream should be deferred until the Postal Service can ''guarantee to code and match 100% of all addresses,'' as stated by one commenter. In response, the Postal Service determined to work with customers to rectify hindrances, within the customer's address files or elsewhere, so that 100% coding could be achieved. The Postal Service has not accepted a less-than-100% barcoded mailstream as an alternative.

The Postal Service does not accept the general statement of some commenters that noncodable addresses are caused by deficiencies in the Postal Service's database or in the matching software used to compare customer address lists with that database. Rather, the Postal Service continues to affirm that a ZIP+4 code is available for every known and recorded delivery address, including addresses at institutions that have worked with the Postal Service to establish an internal address system, and that the inability to barcode some mail is based on address quality problems. Although the reasons vary for which specific addresses frustrate efforts at ZIP+4 matching (and, in some cases, resist easy identification), the Postal Service disagrees that most customers cannot meet the challenge of 100% matching after application of sufficient diagnostic measures. To that end, the Postal Service restates its

commitment to work with customers in identifying and applying the necessary tools to permit 100% coding of address lists.

The Postal Service believes that such concerted effort is worthwhile to generate the efficiencies of a pure barcoded mailstream. Given that benefit, the Postal Service cannot agree that it is prudent or necessary to defer standards for 100% barcoding until all known address problems are resolved. Because of the importance of address quality and its central role in producing a barcoded mailstream, the Postal Service has determined to apply a 100% barcoding standard to automation rate Regular Periodicals just as it has to automation rate First-Class Mail and Standard Mail. The final rule will therefore retain this basic standard.

However, despite the many months of general discussion about 100% barcoding, the Postal Service is aware that Regular Periodicals mailers have experienced a belated introduction to the 100% barcoding standard. (It was because of this awareness that comments were accepted on the cited aspects of the final rule.) Although the Postal Service does not believe that the address management challenges facing Regular Periodicals are any more daunting than those facing mailers of First-Class Mail and Standard Mail, it acknowledges that Regular Periodicals mailers need time to implement internal adjustments to upgrade address quality and codability, to modify internal production systems, and to make other changes necessary to produce pure barcoded mailings. Therefore, while remaining firm that standards for mailstream efficiency (barcoding) and address quality should apply equally to all classes of mail, the Postal Service has concluded that mailers of all classes of mail should be afforded a comparable period during which to prepare to meet those standards. Therefore, the Postal Service will not fully implement the 100% barcoding standard for automation rate Regular Periodicals until January 1, 1997.

From July 1, 1996, through December 31, 1996, up to 10% of the pieces in an automation rate Regular Periodicals mailing may bear only a 5-digit barcode (if a flat) or a ZIP+4 barcode or no barcode (if a letter). However, all pieces will have to meet the applicable standards for physical automation compatibility and barcode quality. Nonbarcoded pieces must be claimed at nonautomation rates and presorted with the barcoded pieces. Carrier route pieces, firm pieces, and pieces not bearing a delivery point barcode (or, if a flat, a ZIP+4 barcode) may not be counted toward the temporary 90% barcoded minimum. (In effect, this continues the existing mixed mailstream, only at a 90/10 level rather than the 85/15 level in place through June 30, 1996.) Beginning January 1, 1997, all pieces in an automation rate Regular Periodicals mailing must meet the same barcoding standard applicable to automation rate First-Class Mail and other-than-Nonprofit Standard Mail (i.e., letter-size mail must bear a delivery point barcode; flat-size mail must bear a ZIP+4 barcode or delivery point barcode).

b. Unique 3–Digit Cities

One commenter suggested that the Postal Service return to package-based rates for letter-size Periodicals until a DMCS change can be made to allow all 3-digit mail to qualify for the 3/5 rates. (Only unique 3-digit cities are eligible for 3/5 (Level B) rates today. The Postal Service requested a redefinition of the rate to apply 3/5 rates to all 3-digit sortations, but this was not recommended by the PRC.) Barring that, the commenter argued, the Postal Service should allow the inclusion of unique 3-digit cities in scheme groups where applicable.

The Postal Service has reconsidered its original position on this matter and has amended the final rule (DMM E241.2.1a) to allow pieces for a unique 3-digit city to qualify for the 3/5 rate, regardless of volume, when included in a scheme group (where applicable) if those pieces are separated from the remainder of the scheme group's mail.

c. Enclosed Reply Pieces

Three commenters opposed the standard for enclosed reply pieces, i.e., that enclosed letter-size reply cards and envelopes bear the correct FIM and delivery point or ZIP+4 barcode (as applicable). The commenters were particularly concerned over inserted pieces whose production was ''beyond [their] control,'' i.e., produced by a third party for inclusion in their publications. One commenter worried that mail would be held ''hostage'' if an enclosed piece does not meet the applicable standards or that the Postal Service will ''punish'' publications for their enclosures.

The Postal Service does not believe fears of punishment are warranted. The commenters correctly noted the problems with materials provided by third parties for enclosure in publications, but this circumstance has parallels in First-Class Mail and many Standard Mail situations as well. In all cases, responsible persons, including at least one of the commenters, identified the need for preparatory steps to preclude problems with provided materials. The Postal Service deferred implementing the standard for enclosed reply mail until January 1, 1997, to provide sufficient time to correspond with and educate suppliers and printers that prepare third-party enclosures. Accordingly, the final rule will retain the provisions for enclosed reply pieces, effective January 1, 1997.

d. 150-Piece Minimum

Four commenters opposed the imposition of 150-piece presort eligibility and preparation standards for automation rate letter-size Periodicals. These comments are similar to comments received from some preparers of First-Class Mail and Standard Mail during the comment period following the December 22 proposed rule and addressed at some length in the Postal Service's March 12 final rule. From a physical or mail processing perspective, automation rate letter-size mail is comparable regardless of class, and the reasons for which the Postal Service applied a 150-piece minimum for automation rate First-Class Mail and Standard Mail are equally valid for similar mailpieces mailed at Periodicals rates. Therefore, because the issues raised by these commenters have already been answered with respect to mail for other classes, the final rule will retain the 150-piece standard for automation rate Periodicals.

e. Six-Piece Minimum Per Sack

Three commenters raised concerns over the six-piece minimum per sack, arguing that they will be unable to continue preparing smaller sack volumes to some 5-digit destinations that, they feel, give their publications a better service opportunity than when prepared in 3-digit or lesser destination sacks with six or more pieces. (Standards were announced in the final rule that required preparation of a sack/tray regardless of volume for each 3-digit served by the origin SCF (mail processing plant), and permitted such a sack/tray for each entry point for drop shipment mailers. This provision is also applicable to Periodicals.) The Postal Service understands customers' desire for good service and appreciates their efforts to facilitate such service by going beyond the required level of preparation. However, in this case, the Postal Service balanced the potential benefits of sacks with fewer than six pieces against the costs of handling so little mail per sack and determined that it is preferable to retain the minimum volume prescribed in the final rule. The Postal Service will strive, on a case-by-

case basis, to resolve any service problem that results from this required minimum volume.

f. Presort Changes

Three commenters stated concerns over changes in sortation (elimination of SCF packages, elimination of the optional city sort, and changes to sortation standards generally). The Postal Service has repeatedly publicized its intention to implement major network changes at the same time that Classification Reform is implemented. Accordingly, sortation standards for all reformed classes of mail align with the simpler mail processing and distribution network. SCF and optional city sortations are two examples of levels no longer useful and, like state and mixed states sortations, were eliminated under Classification Reform. Because of the clear need to align customers' sortation with the pattern of the postal distribution network, and the impracticability of phasing in a fundamental network change or operating two networks concurrently, the implementation of new sortation standards must proceed as prescribed in the final rule.

g. Barcoded Labels

One commenter asked for a 10% to 15% allowance for nonbarcoded sack/tray labels. In response to comments on the December 22 proposed rule, the Postal Service deferred implementation of the barcoded label standard for automation rate mailings until January 1, 1997. At that point, the Postal Service expects to improve its ability to handle such mail more economically by distributing trays and sacks according to the barcode printed on the sack or tray labels. Allowing a significant portion of that mailstream to have nonbarcoded labels would not only dilute the benefit of the remaining labels but also retain needless costs for the mail inside the sacks and trays. Consequently, the final rule will retain the standard for barcoded sack and tray labels, effective January 1, 1997.

h. Other Issues

(1) One commenter asked the Postal Service to permit the continued use of ''second-class'' on wrappers and polywrap enclosing publications. Because MC95–1 renamed second-class mail as Periodicals, the Postal Service will not amend its standards to permit ''second-class'' on wrappers and other enclosures. However, requests to exhaust stock of enclosure material already preprinted with ''second-class'' will be adjudicated on a case-by-case basis.

(2) Three commenters questioned the need for a separate Form 3553, Coding Accuracy Support System (CASS) Report, for mailings made repeatedly from the same list (e.g., a list used by a daily newspaper). Although the basic standard for generation and submission of Form 3553 will be retained as stated in the final rule, the Postal Service will consider how this standard can be most sensibly implemented in cases where regular mailings are submitted for a relatively stable address list.

(3) Two commenters questioned the availability of ''working'' pallets for each entry point. The DMM standards for palletization were revised in a separate rulemaking concluded before the final rule on Classification Reform was announced, but were shown in their entirety in the March 12 notice. ''Working'' pallets may be prepared by the mailer, subject to the general 10% limit on such pallets, and may be deposited at those post offices that are appropriate for the mail contained on the pallet. To eliminate any confusion over the definition of ''working'' pallet, the DMM standards will be amended to remove ''working'' in favor of ''mixed BMC'' or ''mixed ADC,'' as appropriate.

(4) One commenter questioned the correct rate for Standard Mail (A) enclosed in Periodicals claimed at a carrier route presort rate. The applicable standards were not significantly altered in the final rule and continue to allow the enclosure to pay the corresponding rate paid for the host piece. Therefore, enclosed Standard Mail (A) would be charged the basic carrier route (nonautomation) rate if enclosed in a publication claimed at the carrier route Periodicals rates.

(5) One commenter claimed the rate increase for some Periodicals was greater than stated by the PRC. He also urged elimination of ''unique 3-digit city'' as a factor in presort or rate eligibility. The Postal Service did not request retention of ''unique 3-digit city'' in its filing, but the PRC retained this distinction in its Recommended Decision. A consideration of the reasons for that action is beyond the scope of this rulemaking.

(6) Two commenters suggested that the rules for address matching should be interpreted to allow the matched list to be valid for 90 days beyond the ''last permissible use'' date of the Postal Service file, rather than 90 days after the date of matching. The Postal Service discussed this issue extensively in its proposed and final rules and determined to set the date of matching as the start of the 90-day clock.

(7) Although the list of issues on which comments were sought did not include tabloid-size publications' eligibility for automation rates, both groups of form letters contained a statement on that subject, and the comments of one association, prepared by an executive of one of the form letter commenters, also mentioned tabloid-size publications. The one company whose employees submitted a total of 18 identical letters urged the Postal Service to accelerate deployment of a next-generation flat sorter (the FSM 1000) to process tabloids. The remaining group of comments cited the ''injustice'' of excluding tabloids from barcoded rates. Those commenters' letter stated that it is unfair for tabloids to pay higher rates ''when we have followed the requirements for Periodical Class mail.''

Although this is not an issue on which comments were sought, the Postal Service will respond. The final rule will contain no change either to redefine the physical characteristics of an automation-compatible flat or to extend automation rate eligibility to incompatible flat-size pieces. The Postal Service will not consider allowing any publication that is incompatible with current automated flat mail processing equipment (the FSM 881) to have access to automation rates. Such a suggestion offers no benefit to the Postal Service and would improperly extend a cost avoidance discount to mail that does not offer any compensatory opportunity for cost reduction in postal handling. The Postal Service is deploying the FSM 1000 on a timetable that meets the operational needs of the Postal Service. Any enlargement of the current dimensions for automation-compatible flats will need to await the general availability of the FSM 1000.

As always, the Postal Service will continue to work with mailers to assist them to qualify for the most favorable rates for which they are potentially eligible. However, the Postal Service notes that all Periodicals mailers, including those of tabloid-size publications, already benefit from favorable rates as a result of their compliance with the basic standards for Periodicals eligibility. Mailers who desire to participate in the added price or service benefits of automation should weigh those benefits against the value of the current format of their publications and make an appropriate business decision within their own best interests.

3. Documentation

Only two commenters responded to the Postal Service's standard that documentation of mailings, where required to support postage statement data, had to be produced from software certified by Presort Accuracy Validation

and Evaluation (PAVE) or in a standardized format. Examples of standardized documentation were published as part of the final rule.

One commenter, a major billing service claiming to have submitted its own form of computer-generated mailing documentation for PAVE certification, states that the final rule has caused ''PAVE certification [to be] taken away and made the sole property of hardware and software vendors,'' forcing that company ''to comply with what the [software] vendors and the Postal Service have agreed.''

The other commenter, a large list and data management service, stated that the timetable for implementation of standardized documentation of Periodicals mailings was too short. Noting how much time in advance of the issue date a publication's address and presort data are developed, the current absence of completed Postal Service specifications for standardized documentation for Periodicals, and the time needed for software vendors to produce and distribute presort software once postal specifications are released, the commenter argued that software could not be developed in time to produce issues of publications that will appear on January 1, 1997. Instead, the commenter urged delay in implementing standardized documentation for Periodicals until September 1, 1997.

The Postal Service has required documentation in support of postage statements for many years. Recently, it required documentation to describe the volume of pieces at various presort levels within automation rate mailings and the number of pieces with or without a barcode. As early as 1976, presort rates necessitated some form of proof by the mailer that mailings contained the same number of properly prepared, qualifying pieces as claimed at the reduced rate on the postage statement. In view of this history, the Postal Service does not believe that producing accurate documentation, keyed to the mailing that it accompanies, should be a significant task for most customers, especially given most contemporary business mailers' heavy dependence on computer systems for many aspects of mail production.

With the advent of complex mailings, which in recent years include combinations of rate categories, presort levels, and entry discounts, the role of documentation has become increasingly significant both as a source of information for use in completing postage statements and as a tool for postal verification. As a result, the importance of accuracy has been matched by the importance of usability and clarity. If documentation is ambiguous or cumbersome to review, attempts to relate it to the physical mailing are frustrating if not unsuccessful, bringing into question how well the information is mirrored on the postage statement and defeating the purpose for the documentation's generation and submission for use by the Postal Service to verify the mailing. Therefore, the Postal Service has increasingly emphasized clarity and consistency in documentation, both in content and in format. Mailers have been required to meet specific documentation standards for many years, especially those mailers who mail at automation rates. As a result of this experience, the Postal Service does not believe that the documentation standards in the final rule present a significant hurdle for those customers already generating quality mailing documentation.

Moreover, it is only reasonable to expect that the Postal Service's extensive discussions of documentation standards would be with those parties whose products will produce the documentation: providers of software to the mailing industry. These discussions have been neither exclusive nor private, and they have been designed to set criteria for documentation that are achievable by computer software generally, regardless of whose software is used, including software developed proprietarily by independent mailers. Because of the generality of the criteria for standardized documentation and the essential level of quality that those criteria demand, the Postal Service does not agree that those criteria are burdensome or beyond the ability of its customers. The Postal Service expects each customer to decide on a cost-benefit basis whether to produce software in-house or purchase it from the commercial market. No customer is being forced either to abandon proprietary software or to purchase software from a vendor. Standardized documentation, including that generated by PAVE-certified presort software, is a generic commodity and a reasonable product to expect from a customer producing automation mailings. As a result, the Postal Service finds no basis to amend the final rule to recraft its definition of standardized documentation's content or format.

Regarding the timeframe for implementing standardized documentation requirements, the Postal Service must conclude that mailers and vendors attentive to the Classification Reform process are well aware of the reasons for a July 1 implementation date and what they each must do to be ready on that date. Although individual circumstances may necessitate individual consideration, the Postal Service finds no reason to conclude that, through application of adequate resources, most if not all customers cannot have the necessary software ready and in use when Classification Reform is implemented (or, for mailers of Periodicals, on January 1, 1997). Therefore, the final rule will not be amended to delay implementation of standards for documentation generated by PAVE-certified software or produced in a standardized format.

4. Other Issues

a. AUTO Marking on Automation Mail

Six correspondents submitted statements that they would have difficulty complying with the standard for the marking of automation rate First-Class Mail and Standard Mail (i.e., that each piece be marked ''AUTO'' (or ''AUTOCR'' if carrier route presort) and that no other piece bear that marking if not paid at that rate). One commenter complained about the requirement that ''AUTO'' must be shown in all uppercase letters. This was not an issue open for further comment. The Postal Service will note, however, that marking of mail is essential for accurate identification and cost ascertainment when sampling the mailstream, and the effort to provide such a marking is necessary so that future automation mail rates will be based on a more accurate determination of the cost of that mail. Therefore, the Postal Service believes that measures required of customers to apply the appropriate markings on mail are consistent with and responsive to customers' overall desire for cost-based rates.

The Postal Service recognizes that various mailer systems could produce the required markings if additional alternative methods were provided beyond those in the final rule. Accordingly, the DMM standards shown below incorporate new revisions to permit placement of ''AUTO'' or ''AUTOCR'' in a mailer or manifest keyline (where appropriate). Placement of these markings will be allowed in an MLOCR date correction, meter drop shipment, or manifest keyline if preceded by two asterisks. To correct an incorrectly applied ''AUTO'' or ''AUTOCR'' marking, the Postal Service has also amended the final rule to allow the mailer to add the marking ''Single-Piece'' or ''SNGLP'' below or to the left of the postage area, in a line above the

address, or in an ink-jet applied date line.

The Postal Service also recognizes that some customers' systems might require relatively significant adjustments in order to identify the correct marking for a mailpiece and/or apply it and/or suppress an incorrect marking. Because producing the desired mailpiece marking might need creative solutions in some cases, the Postal Service will continue to discuss its marking standards with affected customers on a case-by-case basis. It must be emphasized, however, that such discussions will be solely to develop solutions about how to meet the marking standards.

b. Exception for Letter-Size Pieces at Automation Rate for Flats

One commenter objected to the time limit on that portion of the final rule in which the Postal Service provided an exception for Standard Mail letter-size pieces prepared to qualify for the automation rate for flats. In effect, that exception allowed an entire job to be prepared as flats on pallets if the Regular rate portion was 10% or less of the combined volume of the Enhanced Carrier Route and automation rate pieces. (The final rule incorrectly showed this as 15%; that error is among the corrections noted below.) The Postal Service allowed this exception through the end of 1996 to give customers preparing such mail ample opportunity to redesign and modify production lines to prepare thereafter all letter-size mail in trays regardless of the rate paid for it.

The consistent preparation of letter-size mail in trays is an important objective of the Postal Service in implementing Classification Reform. Such preparation is an element of the standardization and efficiency that reform is intended to provide.

However, because of the problems cited by mailers of this specific type of mail, commonly called ''fletters'' or ''slim jim catalogs,'' the Postal Service has determined to explore further with the industry how to achieve the intended benefit for the Postal Service while minimizing disruption for mailers. Pending further review of the preparation of this type of letter-size mail, the exception cited above will continue in effect without an expiration date.

c. Use of CDS for Sequenced Mail

One commenter pointed out that the Postal Service's requirement that a mailer document use of CASS-certified software for matching carrier route codes is irrelevant if the mailer uses the Postal Service's own Computerized Delivery Sequence (CDS) product when producing walk-sequenced Enhanced Carrier Route mailings.

A mailer who uses CDS is provided Form 3553 with each product update so that the mailer can submit the necessary documentation with mailings. Rather than establish a separate procedure for CDS users, the Postal Service will continue to interpret DMM E632.1.4 (''another AIS product'') to include CDS among the appropriate tools for carrier route coding.

d. Postage Statement

One commenter, a major billing service, objected to the ''requirement for a single postage statement.'' The Postal Service is unable to identify the genesis of this comment but must emphasize that the commenter is incorrect. The final rule allows customers to report many separate groups of mail (commonly called ''mailings'') on a single statement but does not require that this be done. Customers retain the right to prepare a separate statement with each group of mail if that is their practice or preference.

e. Strapping of Trays

One commenter asked for a delay in implementing the standards for tray strapping. The Postal Service explained in earlier phases of this rulemaking the reasons for the required strapping of trays. Those reasons remain and, as a result, the standards will be implemented as announced in the final rule.

f. Other Issues

Various commenters offered observations or asked questions on other issues beyond the scope of this phase of the final rulemaking and, as such, will not be responded to in this supplementary final rule. However, the Postal Service remains interested in answering the questions and concerns of its customers. Mailers are asked to direct their questions to their respective area or district Classification Reform Implementation Coordinator; Manager, Business Mail Entry; or Rates and Classification Service Center, as appropriate.

B. Plant-Verified Drop Shipments

The Postal Service also has formulated its policy concerning the rates and preparation standards that will apply to any plant-verified drop shipment (PVDS) that is prepared for entry during the period immediately surrounding the implementation date for Classification Reform (July 1, 1996) as follows:

1. PVDS verified and paid for before July 1, 1996, will be accepted into the mailstream through July 5, 1996, if presented with appropriate documentation of verification and payment.

2. PVDS may be verified and paid for beginning June 1, 1996, under the rates and preparation standards that take effect July 1, 1996, if the shipment is not accepted into the mailstream until July 1, 1996, or later.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. The following substantive changes are made to the Domestic Mail Manual. (This list is to show significant revisions only and is not intended to detail amendments for typographical correction, organizational consistency, or editorial clarity.)

A ADDRESSING

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A900 Customer Support Services

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A950 Coding Accuracy Support System (CASS)

1.0 BASIC INFORMATION

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1.2 Requirement

[Amend 1.2 by replacing ''CASS certification'' with ''CASS certification (including Multiple Accuracy Support System (MASS))'' to read as follows:]

Any mailing claimed at an automation rate must be produced from address lists properly matched and coded with CASS-certified address matching methods listed below. Mailers using multiline optical character readers (MLOCRs) to print delivery point barcodes on mailpieces (or for flats, ZIP+4 barcodes) must also obtain CASS certification (including Multiline Accuracy Support System (MASS)) for the address matching software used on their MLOCRs.

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5.0 DOCUMENTATION

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5.5 Using Single Lists

[Amend 5.5 by replacing ''within 1 year'' with ''within 6 months'' in the second sentence to read as follows:] When a mailing is produced from all or part of a single address list, the mailer must submit one Form 3553 and other required documentation reflecting the summary output information for the entire list, as obtained when the list was coded. When the same address list is used to make other mailings within 6 months of the date it was matched and coded, an original or a copy of the computer-generated Form 3553 must be submitted with each.

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C CHARACTERISTICS AND CONTENT

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C800 Automation-Compatible Mail

C810 Letters and Cards

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8.0 ENCLOSED REPLY CARDS AND ENVELOPES

8.1 Basic Standard

[Revise 8.1 to read as follows:]

Effective January 1, 1997, all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation First-Class Mail, automation Regular Periodicals, and automation Regular and Enhanced Carrier Route Standard Mail must meet the applicable standards in 1.0 through 7.0, bear a facing identification mark meeting the standards in 8.2, and bear the correct delivery point barcode (or, for business reply mail (BRM), the correct ZIP+4 barcode) for the delivery address on the reply piece as defined by the USPS, subject to the barcode standards in C840. Mailers must certify that these standards have been met when the corresponding mail is presented to the USPS. BRM pieces must also meet the applicable standards in S922.

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E ELIGIBILITY

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E100 First-Class Mail

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E130 Nonautomation Rates

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3.0 PRESORTED RATES

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3.3 Address Qualify

[Revise 3.3 to read as follows:]

Effective January 1, 1997, addresses appearing on all pieces claimed at the Presorted rate must be updated within 6 months before the mailing date by a USPS-approved address update tool (e.g., the ''Address Correction Endorsement,'' ACS, or NCOA). Additional alternatives currently under development (such as FASTforward SM) may be used to meet this standard when they have received final approval. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. If a USPS-approved address update tool is used, a valid update is obtained regardless of the class of mail on which the address is placed. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 6-month period following its must recent update.

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E140 Automation Rates

1.0 BASIC STANDARDS

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1.3 Address Quality

[Revise 1.3 to read as follows:]

Effective January 1, 1997, addresses appearing on all pieces claimed at the automation rates must be updated within 6 months before the mailing date by a USPS-approved address update tool (e.g., the ''Address Correction Endorsement,'' ACS, or NCOA). Additional alternatives currently under development (such as FASTforward SM) may be used to meet this standard when they have received final approval. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. If a USPS-approved address update tool is used, a valid update is obtained regardless of the class of mail on which the address is placed. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 6-month period following its must recent update.

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1.5 Enclosed Reply Cards and Envelopes

[Revise 1.5 to read as follows:]

Effective January 1, 1997, all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation First-Class Mail must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS.

2.0 RATE APPLICATION

2.1 Letters or Cards

[Amend 2.1 by revising 2.1d to read as follows:]

First-Class automation rates apply to each piece that is sorted under M810 into the corresponding qualifying groups:

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d. Pieces in origin/entry 3-digit/scheme trays containing fewer than 150 pieces and all pieces in AADC and mixed AADC trays qualify for the Basic automation rate.

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E200 Periodicals

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E230 Nonautomation Rates

E231 Regular Periodicals

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3.0 3/5 RATES

[Amend 3.0 by revising 3.0a to read as follows:]

Subject to M210, 3/5 rates apply to:

a. Letter-size pieces in 5-digit or unique 3-digit packages of six or more pieces each, either placed in 5-digit or unique 3-digit trays or in an overflow unique 3-digit tray.

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5.0 WALK-SEQUENCE DISCOUNTS

5.1 Eligibility

[Revise 5.1 to read as follows:]

The High Density or Saturation rates apply to each walk-sequenced piece in a carrier route mailing, eligible under 2.2 and prepared under M210, that also meets the corresponding addressing and density standards in 5.4. High Density and Saturation rate mailings must be prepared in carrier walk sequence according to schemes prescribed by the USPS (see M050).

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E240 Automation Rates

E241 Regular Periodicals

1.0 BASIC STANDARDS

1.1 All Pieces

[Amend 1.1 by revising 1.1g to read as follows:]

All pieces in an automation Regular Periodicals mailings must:

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g. Except under 1.3, bear an accurate barcode meeting the standards in C840, either a DPBC (if a letter) or a ZIP+4 barcode or DPBC (if a flat), either on the piece or on an insert showing through a barcode window.

1.2 Enclosed Reply Cards and Envelopes

[Revise 1.2 to read as follows:]

Effective January 1, 1997, all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation Regular Periodicals must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS.

1.3 Temporary Exception to Barcoding

[Add 1.3 to read as follows:]

From July 1, 1996, through December 31, 1996, up to 10% of the pieces in an automation Periodicals mailing of flat-size pieces may bear only a 5-digit barcode (subject to C840); and up to 10% of the pieces in an automation Periodicals mailing of letter-size pieces may be prepared without a barcode or with only a ZIP+4 barcode (subject to C840). Pieces within this 10% allowance must be combined and presorted correctly with the balance of the mailing. Postage for pieces in the 10% allowance must be paid at the applicable nonautomation Regular Periodicals rate and supported by documentation such as that required under M893 (letter-size) or M897 (flat-size).

2.0 RATE APPLICATION

2.1 Letters

[Amend 2.1 by revising 2.1a and 2.1b to read as follows:]

Automation rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Pieces for a unique 3-digit destination that is part of a 3-digit scheme group in L003 qualify for the 3/5 automation rate when placed in a 3-digit scheme tray if grouped separately from pieces for other 3-digit areas.

b. Pieces in origin/entry 3-digit/scheme trays containing fewer than 150 pieces and groups of 150 or more pieces in other 3-digit, 3-digit scheme, or AADC trays or any pieces in mixed AADC trays qualify for the Basic automation rate.

2.2 Flats

[Amend 2.2 by revising 2.2a to read as follows:]

Automation rates apply to each flat-size piece that is sorted under M820 into the corresponding qualifying groups:

a. Pieces in 5-digit or unique 3-digit packages of 6 or more pieces each qualify for the 3/5 automation rate.

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E600 Standard Mail

E610 Basic Standards

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E612 Additional Standards for Standard Mail (A)

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4.0 BULK RATES

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4.9 Preparation

[Amend 4.9 by revising 4.9c to read as follows:]

Each Nonprofit, Regular, or Enhanced Carrier Route rate mailing must be prepared under these general standards:

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c. The same mailing may not contain both automation and nonautomation rate pieces except as permitted under E649.

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[Revise heading of E641 to read as follows:]

E640 Automation Rates

E641 Regular and Enhanced Carrier Route Standard Mail

1.0 AUTOMATION REGULAR RATES

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1.2 Enclosed Reply Cards and Envelopes

[Revise 1.2 to read as follows:]

Effective January 1, 1997, all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation Regular Standard Mail must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS.

1.3 Rate Application—Letters and Cards

[Amend 1.3 by revising 1.3c to read as follows:]

Regular automation rates apply to each piece that is sorted under M810 into the corresponding qualifying groups:

* * * * *

c. Pieces in origin/entry 3-digit/scheme trays containing fewer than 150 pieces and all pieces in full or overflow AADC trays and in all mixed AADC trays qualify for the Basic automation rate.

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[Revise the heading of 2.0 to read as follows:]

2.0 AUTOMATION ENHANCED CARRIER ROUTE RATES

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2.4 Enclosed Reply Cards and Envelopes

[Redesignate current 2.4 as 2.5 and add new 2.4 to read as follows:]

Effective January 1, 1997, all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation Enhanced Carrier Route Standard Mail must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS.

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E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

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2.0 VERIFICATION

2.1 Place

[Amend 2.1 by revising 2.1b to read as follows:]

As directed by the postmaster, the mailer must present destination entry mailings to USPS employees for verification either:

* * * * *

b. At the destination post office or business mail entry unit.

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M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

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1.4 Mailing

[Revise 1.4 to read as follows:]

A mailing is a group of pieces within the same class of mail and processing category that may be sorted together under the applicable standards. Other specific standards may define whether separate mailings may be combined, palletized, reported, or deposited together. These types of mail may not be part of the same mailing despite being in the same class and processing category: automation and nonautomation mail (except as permitted by the ''85% rule'' where applicable); automation Enhanced Carrier Route rate and other mail; any

combination of Enhanced Carrier Route, Regular, and/or Nonprofit Standard Mail; 3/5 and carrier route Nonprofit Standard Mail.

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M012 Endorsements and Markings

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2.0 METHOD

2.1 Placement

[Amend 2.1 by revising 2.1b to read as follows:]

Unless otherwise directed or permitted by standard, placement of markings is subject to these standards:

* * * * *

b. Other rate markings (e.g., ''AUTO,'' ''Carrier Route Presort,'' ''ECRLOT'') may be placed in the locations shown in 2.1a; or in the address area on the line immediately above the address or, preferably, two lines above the address if the marking appears alone, or if no other information appears on the line with the marking except postal optional endorsement line information under M013 or postal carrier route package information under M014. If preceded by two asterisks, the ''AUTO'' or ''AUTOCR,'' or ''Single Piece'' or ''SNGLP'' information may also be placed in the line above or two lines above the address in a mailer keyline or a manifest keyline, or placed above the address and below the postage in an MLOCR ink jet printed date correction/meter drop shipment line. Alternatively, the mailer may apply ''AUTO'' or ''AUTOCR'' to the left of the DPBC or below the postage.

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[Remove current 2.2 and 2.3 and renumber 2.4 and 2.5 as 2.2 and 2.3, respectively.]

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M013 Optional Endorsement Lines

1.0 USE

1.1 Basic Standards

[Amend chart by revising left column under Carrier Route and SCF to read as follows:]

Carrier Route

(Automation First-Class Mail and automation Enhanced Carrier Route Standard Mail)

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SCF

(Preferred Periodicals, Nonprofit Standard Mail, and bound printed matter only)

* * * * *

M014 Carrier Route Information Lines

1.0 BASIC INFORMATION

[Amend 1.0 by removing ''carrier route'' in the last sentence to read as follows:]

Packages for individual carrier routes, rural routes, highway contract routes, post office box sections, or general delivery units may be prepared without facing slips if prepared with optional endorsement lines under M013 or with carrier route information lines under 2.0. These standards apply to automation Carrier Route rate First-Class, carrier route and Level I/K Periodicals, automation Basic Carrier Route rate and Enhanced Carrier Route Standard Mail, and carrier route bound printed matter mailings. Carrier route information lines may be on all pieces in a mailing, regardless of presort level.

2.0 FORMAT AND CONTENT

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2.4 Other Contents

[Amend 2.4 by revising 2.4c to read as follows:]

Other elements of the carrier route information line include:

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c. The carrier route information line may also contain the basic markings required by standard for the class of mail and rate claimed, prepared under M012.

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M030 Containers

M031 Labels

1.0 SACK AND TRAY LABELS

1.1 Basic Standards

[Revise 1.1 to read as follows:]

Only sack labels may be used for sacks, only tray labels for trays. Machine-printed labels (available from the USPS) ensure legibility. Legible hand-printed labels are acceptable. Illegible labels are not acceptable. Container labels for automation rate mailings are subject to M032.

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4.0 PALLET LABELS

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[Revise heading of 4.9 to read as follows:]

4.9 Automation and Carrier Route Rates

[Amend 4.9 by removing heading of 4.10 and adding text from 4.10, redesignating 4.11 through 4.14 as 4.10 through 4.13, and revising the first sentence of 4.9 to read as follows:]

Pallets containing copalletized automation rate (barcoded) and carrier route rate mailings must show the words BARCODED/CARRIER ROUTES (or authorized abbreviation) on the contents line. Pallets containing automation-rate flat-size mail must show the word BARCODED on the contents line. The word BARCODED must not be abbreviated on the contents line.

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[Revise the heading of 5.0 to read as follows:]

5.0 SECOND LINE CODES

[Revise 5.0 to read as follows:]

The codes shown below must be used as appropriate on Line 2 of sack, tray, and pallet labels.

[Replace the chart heading ''Identifier'' with ''For these content types'' and the heading ''Abbreviations'' with ''Use these codes''; add ''Barcoded'' and ''BC'' on the first line; replace ''Irregular Parcels'' and ''IRREG'' (Standard Mail only)'' with ''Irregular Parcels'' and ''IRREG (First-Class and Standard Mail only)''; replace ''Standard Mail'' and ''3C/4C'' with ''Standard Mail'' and ''STD.''']

M032 Barcoded Labels

1.0 BARCODED TRAY LABELS

1.1 Standards

[Revise 1.1 to read as follows:]

Effective January 1, 1997, barcoded tray labels are required for automation rate mailings of First-Class, Regular Periodicals, and Regular and Enhanced Carrier Route Standard Mail letter-size pieces and for First-Class flat-size pieces. Barcoded tray labels may be used earlier and may be used on any other mailing. Mailer-produced barcoded tray labels must meet the standards below. Revisions to preprinted barcoded labels (e.g., handwritten changes) are not permitted.

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2.0 BARCODED SACK LABELS

2.1 Standards

[Revise 2.1 to read as follows:]

Effective January 1, 1997, barcoded sack labels meeting the standards in this section are required for automation rate Regular Periodicals and Standard Mail flat-size pieces prepared in sacks. These sack labels may be used earlier and may be used for other Periodicals and Standard Mail prepared in sacks. Revisions to preprinted barcoded labels (e.g., handwritten changes) are not permitted.

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M033 Sacks and Trays

1.0 BASIC STANDARDS

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1.3 Tray Sizes

[Amend 1.3 by revising 1.3a to read as follows:]

These approximate measurements define the tray sizes that apply to all mail preparation standards:

a. Letter trays:

(1) 2-foot MM trays: 21 inches long by 10 inches wide (inside bottom dimensions) by 4–5/8 inches high.

(2) 1-foot MM trays: 10–1/4 inches long by 10 inches wide (inside bottom dimensions) by 4–5/8 inches high.

(3) 2-foot EMM trays: 21–3/4 inches long by 11–1/2 inches wide (inside bottom dimensions) by 6–1/8 inch high.

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1.6 Exception

[Revise 1.6 to read as follows:]

If the processing and distribution manager gives a written waiver, strapping is not required for mixed ADC or mixed AADC letter trays of First-Class Mail; any letter tray placed on a 5-digit, 3-digit, or SCF pallet secured with stretchwrap; or any letter tray that originates and destinates in the same SCF (mail processing plant) service area.

1.7 Origin/Entry SCF/Plant Sacks and Trays

[Revise 1.7 to read as follows:]

Except for Nonprofit Standard and Preferred Periodicals mailings, after all required carrier route, 5-digit, 3-digit (and, where permitted, 3-digit/scheme) sacks/trays are prepared, a 3-digit (or 3-digit/scheme) sack/tray must be prepared to contain any remaining mail for each 3-digit (or 3-digit/scheme) area served by the SCF (mail processing plant) serving the post office where the mail is verified, and may be prepared for each 3-digit (or 3-digit/scheme) area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving where the mail is verified, e.g., a PVDS deposit site). In all cases, only one less-than-full sack/tray may be prepared for each 3-digit (or 3-digit/scheme) area.

2.0 FIRST-CLASS, REGULAR PERIODICALS, AND REGULAR AND ENHANCED CARRIER ROUTE STANDARD MAIL

2.1 Letter Tray Preparation

[Amend 2.1 by revising 2.1b and 2.1i to read as follows:]

Pieces must be prepared to result in the fewest practical number of packages (where required) and trays to contain the mail sorted to a destination. Letter tray preparation uses terms defined in M011 and is subject to these further standards:

* * * * *

b. Regardless of minimum volumes that may be allowed or required per tray, each tray prepared must be filled before filling of the next tray is begun, with the contents in multiple trays relatively balanced. A tray with less mail may be prepared only if permitted by the standards in 2.1c, 2.1d, and 2.1e and for the rate claimed. Subject to availability, 2-foot trays must be used whenever available, except that 1-foot trays must be used for lesser volume or as less-than-full trays.

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i. As a general exception, pieces do not have to be grouped by 3-digit ZIP Code prefix in AADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

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M040 Pallets

M041 General Standards

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4.0 PALLET BOXES

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4.3 Securing

[Amend 4.3 by revising 4.3a to read as follows:]

Pallet boxes must be secured to the pallet with strapping, banding, stretchable plastic, shrinkwrap, or other material that ensures that the pallet can be safely unloaded from vehicles, transported, and processed as a single unit to the point where the contents are distributed with the load intact if:

a. The pallet and its contents are transported by the USPS from the office where the mail is accepted to another postal facility where the contents are distributed, and

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5.0 PREPARATION

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5.2 Required Preparation

[Revise 5.2 to read as follows:]

A pallet must be prepared to a required sortation level when there are 500 pound of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. Up to 10% of the total pallets in any mailing or job may be mixed BMC (Standard Mail) or mixed ADC (Periodicals). Such pallets must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are accepted into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer levels of sortation under M045, as appropriate.

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M045 Palletized Mailings

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2.0 PACKAGES

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2.4 Size—Standard Mail (B)

[Amend 2.4 by revising 2.4c to read as follows:]

Package size: 10-pound or 1,000-cubic-inch minimum (whichever occurs first), 40-pound maximum, except that:

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c. Packages must be prepared to carrier route sortations if the carrier route bulk bound printed matter rate is claimed. Mail at other rates must be sorted to 5-digit, 3-digit, optional SCF, ADC, BMC, and mixed ADC destinations, as appropriate.

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5.0 PALLETS OF PACKAGES, BUNDLES, AND TRAYS OF LETTER-SIZE MAIL

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5.5 Securing Trays

[Revise 5.5 to read as follows:]

Trays must be sleeved and strapped under M033, except that if the processing and distribution manager gives a written waiver, strapping is not required for mixed ADC or mixed AADC letter trays of First-Class Mail; any letter tray placed on a 5-digit, 3-digit, or SCF pallet secured with stretchwrap; or any letter tray that originates and destinates in the same SCF (mail processing plant) service area.

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M100 First-Class Mail (Nonautomation)

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M130 Presorted First-Class

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2.0 BASIC PREPARATION—LETTER-SIZE OR CARD-SIZE PIECES

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2.2 Tray Preparation

[Amend 2.2 by revising 2.2b to read as follows:]

Tray size, preparation sequence, and labeling:

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b. 3-digit: required (full trays except for required origin/optional entry 3-digit(s)); no overflow; use L002, Column A, for Line 1.

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3.0 OPTIONAL PREPARATION—UPGRADABLE LETTER-SIZE OR CARD-SIZE PIECES

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3.2 Tray Preparation

[Amend 3.2 by revising 3.2b to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required (full trays except for required origin/optional entry 3-digit(s)); no overflow; use L002, Column A, for Line 1.

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4.0 PREPARATION OF FLAT-SIZE PIECES

4.2 Tray Preparation

[Amend 4.2 by revising 4.2b to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required (full trays except for required origin/optional entry 3-digit(s)); no overflow; use L002, Column A, for Line 1.

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5.0 PREPARATION OF PARCELS

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5.3 Sack Preparation

[Amend 5.3 by revising 5.3b to read as follows:]

Sack size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required (10-pound minimum except for required origin/optional entry 3-digit(s)); no overflow; use L002, Column A, for Line 1.

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6.0 DOCUMENTATION

[Amend 6.0 by revising the last sentence to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by documentation produced by PAVE- or MAC-certified software, or standardized documentation meeting the standards in P012. Documentation of postage is not required if the correct rate is affixed to each piece or each piece is of identical weight and the pieces are separated by rate when presented for acceptance.

M200 Periodicals (Nonautomation)

M210 Regular Periodicals

1.0 BASIC STANDARDS

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1.3 Firm Packages

[Revise 1.3 to read as follows:]

A firm package is two or more copies for the same address placed in one package. If each copy has a delivery address, each may be claimed as a separate piece for presort and on the postage statement, or the firm package may be claimed as one piece. A firm package sorted and claimed as one piece must be accompanied by (but must be physically separate from) five other pieces packaged to the same destination to satisfy a six-piece package requirement when applicable, regardless of the number of copies in the firm package.

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2.0 PACKAGE PREPARATION

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2.2 Carrier Route Packages

[Revise 2.2 to read as follows:]

Carrier route packages may be placed only in (on) carrier route or 5-digit carrier routes sacks or trays (or pallets). Mailers may choose to prepare carrier route packages at a higher level of route saturation (e.g., only if there are at least 15 pieces per route). Under this option, smaller packages of six or more pieces per carrier route not prepared for carrier route rates must be prepared for and paid at another applicable rate.

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3.0 SACK PREPARATION (FLATS)

3.1 Sack Preparation

[Amend 3.1 by revising 3.1d to read as follows:]

Sack size, preparation sequence, and labeling:

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d. 3-digit: required at 24 pieces (no minimum for required origin/optional entry 3-digit(s)), optional with one six-piece package minimum; use L002, Column A, for Line 1.

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4.0 TRAY PREPARATION (LETTER-SIZE PIECES)

4.1 Tray Preparation

[Amend 4.1 by revising 4.1d to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

d. 3-digit: required at 24 pieces (no minimum for required origin/optional entry 3-digit(s)), optional with one six-piece package minimum; use L002, Column A, for Line 1.

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M290 Preferred Periodicals

1.0 BASIC STANDARDS

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1.4 Firm Packages

[Revise 1.4 to read as follows:]

A firm package is two or more copies for the same address placed in one package. If each copy has a delivery address, each may be claimed as a separate piece for presort and on the postage statement, or the firm package may be claimed as one piece. A firm package sorted and claimed as one piece must be accompanied by (but must be physically separate from) five other pieces packaged to the same destination to satisfy a six-piece package requirement when applicable, regardless of the number of copies in the firm package.

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M600 Standard Mail (Nonautomation)

M610 Single-Piece and Nonautomation Regular Standard Mail (A)

1.0 SINGLE-PIECE RATES

[Revise 1.0 to read as follows:]

Each piece must be legibly marked ''Standard'' or ''STD,'' or may also be marked ''Single-Piece'' or ''SNGLP'' under P600 to correct an incorrect rate marking. Unmarked pieces are treated as First-Class Mail and charged postage at the applicable First-Class rate.

2.0 BASIC STANDARDS—REGULAR NONAUTOMATION RATES

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2.3 Exception—Standard Mail (A)

[Amend 2.3 by removing ''Limited'' in the heading and the introductory text in italics: The following exception is applicable until January 1, 1997; after that time, preparation will be based solely on the standards for the rate claimed and the processing category of the pieces, whether the same standards apply to other pieces claimed at other

rates and produced as part of the same mailing job:''; change 15% to 10% in the last sentence to read as follows:]

When a Standard Mail (A) mailing job could, by size, qualify for Regular Standard Mail automation rates as either letters or flats, if part of the job is prepared as palletized flats at automation rates for flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route rates and Regular nonletter nonautomation rates if the number of Regular nonletter nonautomation rate pieces does not exceed 10% of the total number of pieces in the entire mailing job.

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3.0 BASIC PREPARATION—REGULAR NONAUTOMATION RATE LETTER-SIZE PIECES

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3.2 Tray Preparation

[Amend 3.2 by revising the introductory text and 3.2c to read as follows:]

Only mail eligible for the 3/5 rate (i.e., 150 or more pieces in total for the 3-digit area) may be prepared in 5-digit and 3-digit trays under 3.2a and 3.2b. Tray size, preparation sequence, and labeling:

* * * * *

c. Origin 3-digit(s): required (no minimum); optional for entry 3-digit(s) (no minimum); use L002, Column A, for Line 1.

* * * * *

4.0 OPTIONAL PREPARATION—UPGRADABLE REGULAR NONAUTOMATION RATE LETTER-SIZE PIECES

* * * * *

4.2 Tray Preparation

[Amend 4.2 by revising the introductory text and 4.2c to read as follows:]

Only mail eligible for the 3/5 rate (i.e., 150 or more pieces in total for the 3-digit area) may be prepared in 5-digit and 3-digit trays under 4.2a and 4.2b. Tray size, preparation sequence, and labeling:

* * * * *

c. Origin 3-digit(s): required (no minimum); optional for entry 3-digit(s) (no minimum); use L002, Column A, for Line 1.

* * * * *

5.0 PREPARATION—REGULAR NONAUTOMATION RATE FLAT-SIZE PIECES AND ALL IRREGULAR PARCELS

* * * * *

5.7 Sack Preparation

[Amend 5.7 by revising 5.7b to read as follows:]

Sack size (subject to 5.4, 5.5, and 5.6), preparation sequence, and labeling:

* * * * *

b. 3-digit: required (minimum of 125 pieces/15 pounds, smaller volume not permitted, except for required origin/optional entry 3-digit(s)); use L002, Column A, for Line 1.

* * * * *

M620 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

1.1 All Mailings

[Amend 1.1 by revising 1.1e to read as follows:]

All nonautomation rate Enhanced Carrier Route mailings are subject to these general standards (automation rate Enhanced Carrier Route mailings must be prepared under M810):

* * * * *

e. Subject to M012, all pieces must be marked ''Bulk Rate'' or ''Blk. Rt.'' In addition, Basic, High Density, and Saturation rate pieces must each be marked ''ECRLOT,'' ''ECRWSH,'' or ''ECRWSS,'' respectively, either in the optional endorsement line under M013 or in the carrier route information line under M014. Pieces not claimed at the corresponding rate must not bear the ''ECRLOT,'' ''ECRWSH,'' or ''ECRWSS'' marking unless paid at single-piece rate and a corrective single-piece rate marking is applied under P600.

* * * * *

1.4 Exception—Standard Mail (A)

[Amend 1.4 by removing ''Limited'' in the heading and the introductory text in italics: The following exception is applicable until January 1, 1997; after that time, preparation will be based solely on the standards for the rate claimed and the processing category of the pieces, whether the same standards apply to other pieces claimed at other rates and produced as part of the same mailing job:''; change 15% to 10% in the last sentence to read as follows:]

When a Standard Mail (A) mailing job could, by size, qualify for Regular Standard Mail automation rates as either letters or flats, if part of the job is prepared as palletized flats at automation rates for flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route rates and Regular nonletter nonautomation rates if the number of Regular nonletter nonautomation rate pieces does not exceed 10% of the total number of pieces in the entire mailing job.

* * * * *

2.0 PACKAGE PREPARATION

* * * * *

2.6 Sack Preparation

[Amend 2.6 by revising 2.7b to read as follows:]

Sack size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required at 10 pieces/20 pounds/1,000 cubic inches (no minimum for required origin/optional entry 3-digit(s)); smaller volume permitted; use L002, Column A, for Line 1.

* * * * *

M690 Nonprofit Standard Mail

M692 Basic and 3/5 Presort

* * * * *

3.0 SACK PREPARATION

* * * * *

3.2 Machinable, Irregular Parcels

[Revise 3.2 to read as follows:]

If a mailing consists of both machinable and irregular parcels, a 5-digit sack must be prepared when there are 10 pounds of mail for a 5-digit ZIP Code destination. Sacks containing less than 10 pounds of mail may be prepared.

* * * * *

3.5 Presort and Labeling

[Amend 3.5 by revising 3.5e to read as follows:]

Sack presort sequence and labeling:

* * * * *

e. Mixed ADC (required); for Line 1, use MXD followed by the city/state/ZIP of the ADC serving the 3-digit ZIP Code of the entry post office, as shown in L004 (for flats) or L604 (for irregular parcels), as applicable.

3.6 Line 2

[Amend M692.3.6 by removing 3.6b and redesignating 3.6c as 3.6b and 3.6d as 3.6c to read as follows:]

Line 2: STD, processing category, and:

a. 5-digit sacks of machinable and irregular parcels: MACH AND IRREG.

b. Mixed ADC sacks: MIXED ADC.

c. As required by the applicable labeling list, Line 2 processing code information must be right-justified under the ZIP Code on Line 1.

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail (Except Preferred Periodicals and Nonprofit Standard Mail)

1.0 BASIC STANDARDS

* * * * *

1.2 Mailings

[Revise 1.2 to read as follows:]

All pieces in a mailing must meet the standards in C810 and must be sorted together to the finest extend required. A single automation rate mailing may include pieces prepared at 5-Digit, 3-Digit, 3/5, and Basic automation rates, as applicable; all may be reported on the same postage statement and documentation. The definitions of a mailing and permissible combinations are in M011.

1.3 Marking

[Revise 1.3 to read as follows:]

First-Class pieces must be marked ''First-Class'' or ''Presorted First-Class''; Standard Mail must be marked ''Bulk Rate'' or ''Blk. Rt.'' In addition, pieces must be marked ''AUTO'' (or ''AUTOCR'' for carrier route rate pieces, as appropriate). Periodicals require no markings. Pieces not claimed at an automation rate must not be marked ''AUTO'' or ''AUTOCR'' unless paid at single-piece rate and a corrective single-piece rate marking is applied under P100 or P600.

1.4 General Preparation

[Revise 1.4 to read as follows:]

Grouping, packaging, and labeling are not generally required or permitted, except packaging is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays; pieces must be grouped as specified in 2.0 and 3.0; and package labels are required only for Regular Periodicals.

1.5 Carrier Route

[Revise 1.5 to read as follows:]

Carrier route groups may be placed in only carrier route or 5-digit carrier routes trays. Preparation of mail to qualify for automation carrier route rates is optional for First-Class and Standard Mail (A) pieces, subject to E140 and E641.

* * * * *

2.0 PREPARATION—FIRST-CLASS AND STANDARD MAIL (A)

* * * * *

2.2 Tray Preparation

[Amend 2.2 by revising 2.2d and 2.2e to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

d. 3-digit/scheme: required (150-piece minimum except no minimum for required origin/optional entry 3-digit(s)/scheme); overflow allowed; for Line 1, use L002, Column B.

e. AADC: required (150-piece minimum); overflow allowed; group pieces by 3-digit ZIP Code prefix (or 3-digit/scheme if applicable); use L801 for Line 1.

* * * * *

3.0 PREPARATION—PERIODICALS

3.1 Tray Preparation

[Revise 3.1 to read as follows:]

Tray size, preparation sequence, and labeling:

a. 5-digit: required (150-piece minimum); overflow allowed; use 5-digit ZIP Code destination of pieces for Line 1, preceded for military mail by the prefixes under M031.

b. 3-digit/scheme: required (150-piece minimum except no minimum for required origin/optional entry 3-digit(s)/scheme); overflow allowed; for Line 1, use L002, Column B.

c. AADC: required (150-piece minimum); overflow allowed; group pieces by 3-digit ZIP Code prefix (or 3-digit/scheme if applicable); use L801 for Line 1.

d. Mixed AADC: required (no minimum); group pieces by AADC; for Line 1, use L802 (mail entered by the mailer at an ASF or BMC) or L803, as appropriate.

* * * * *

4.0 DOCUMENTATION

[Revise 4.0 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by documentation produced by PAVE-certified (or, except for Periodicals, MAC-certified) software or standardized documentation under P012. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Combined mailings of Periodicals publications must also be documented under M210. Periodicals are not subject to the standard for supporting documentation produced by PAVE-certified software or standardized documentation under P012 until January 1, 1997.

M820 Flat-Size Mail (Except Preferred Periodicals and Nonprofit Standard Mail)

1.0 BASIC STANDARDS

* * * * *

1.2 Mailings

[Amend 1.2 by revising the second sentence to read as follows:]

All pieces in a mailing must meet the standards in C820 and must be sorted together to the finest extent required. A single automation rate mailing may include pieces prepared at 5-Digit, 3-Digit, 3/5, and Basic automation rates, as applicable; all may be reported on the same postage statement and documentation. The definitions of a mailing and permissible combinations are in M011.

* * * * *

1.4 Marking

[Revise 1.4 to read as follows:]

First-Class pieces must be marked ''AUTO'' and either ''First-Class'' or ''Presorted First-Class.'' Standard Mail must be marked ''AUTO'' and either ''Bulk Rate'' or ''Blk. Rt.'' Periodicals require no markings. Pieces not claimed at an automation rate must not be marked ''AUTO'' unless paid at single-piece rate and a corrective single-piece rate marking is applied under P100 or P600.

1.5 Exception—Standard Mail (A)

[Amend 1.5 by removing ''Limited'' in the heading and the introductory text in italics: The following exception is applicable until January 1, 1997; after that time, preparation will be based solely on the standards for the rate claimed and the processing category of the pieces, whether the same standards apply to other pieces claimed at other rates and produced as part of the same mailing job:''; and by replacing ''15%'' with ''10%'' in the last sentence to read as follows:]

When a Standard Mail (A) mailing job could, by size, qualify for Regular Standard Mail automation rates as either letters or flats, if part of the job is prepared as palletized flats at automation rates for flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route rates and Regular nonletter nonautomation rates if the number of Regular nonletter nonautomation rate pieces does not exceed 10% of the total number of pieces in the entire mailing job.

* * * * *

2.0 PREPARATION—FIRST-CLASS MAIL

* * * * *

2.2 Tray Preparation

[Amend 2.2 by revising 2.2b to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required full trays, no overflow, except no minimum for required origin/optional entry 3-digit(s); use L002, Column A, for Line 1.

* * * * *

3.0 PREPARATION—PERIODICALS

* * * * *

3.2 Sack Preparation

[Amend 3.2 by revising 3.2b to read as follows:]

Sack size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required at 24 pieces, optional with one six-piece minimum, except no minimum for required origin/optional entry 3-digit(s); use L002, Column A, for Line 1.

* * * * *

4.0 PREPARATION—STANDARD MAIL

* * * * *

4.3 Sack Preparation

[Amend 4.3 by revising 4.3b to read as follows:]

Sack size, preparation sequence, and labeling:

* * * * *

b. 3-digit: required (125-piece/15-pound minimum, smaller volume not permitted, except no minimum for required origin/optional entry 3-digit(s)); use L002, Column A, for Line 1.

* * * * *

5.0 DOCUMENTATION

[Revise 5.0 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by documentation produced by PAVE-certified (or, except for Periodicals, MAC-certified) software or standardized documentation under P012. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Combined mailings of Periodicals publications must also be documented under M210. Periodicals are not subject to the standard for supporting documentation produced by PAVE-certified software or standardized documentation under P012 until January 1, 1997.

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P012 Documentation

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2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, REGULAR PERIODICALS, AND REGULAR STANDARD MAIL

* * * * *

2.3 Rate Level Column Headings

[Amend 2.3 by revising 2.3 to read as follows:]

The actual name of the rate level (or corresponding abbreviation) is used for column headings required by 2.2 and shown below:

* * * * *

c. Enhance Carrier Route Standard Mail

Rate	Abbreviation
Saturation	WS
High Density	HD
Basic	CR
Basic Automation [letters]	CB

2.4 Tray, Sack, Pallet, Package Sortation Level

[Revise 2.4 to read as follows:]

The actual sortation level (or corresponding abbreviation) is used for the tray, sack, pallet, or package sortation levels required by 2.2 and shown below:

Sortation level	Abbreviation
Carrier Route	CRD
5-Digit Carrier Routes	CR5
5-Digit	5DG
3-Digit	3DG
3-Digit Scheme [barcoded letters].	3DGS
ADC	n/a
AADC	n/a
Mixed ADC	MADC
Mixed AADC	MAAD
SCF [pallets]	n/a
BMC or ASF	n/a
Mixed BMC (working)	MBMC

* * * * *

P023 Precanceled Stamps

1.0 BASIC INFORMATION

* * * * *

1.5 Amount of Postage

[Revise 1.5 to read as follows:]

The value of precanceled stamps affixed to each piece in a mailing must be either the exact amount due or another amount permitted by standard. If the exact amount is not affixed to each piece, documentation meeting the basic standards in P012 and those applicable to the rate claimed must be submitted with the mailing unless excepted by P100 or P600. Refunds for overpayment must meet the standards in P014.

* * * * *

P030 Postage Meters and Meter Stamps

1.0 BASIC INFORMATION

* * * * *

1.7 Amount of Postage

[Revise 1.7 to read as follows:]

The value of meter stamps affixed to each piece in a mailing must be either the exact amount due or another amount permitted by standard. If the exact amount is not affixed to each piece, documentation meeting the basic standards in P012 and those applicable to the rate claimed must be submitted with the mailing unless excepted by P100 and P600. Refunds for overpayment must meet the standards in P014.

* * * * *

P100 First-Class Mail

1.0 BASIC INFORMATION

* * * * *

1.2 Postage Payment, Documentation

[Revise 1.2 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing paid by permit imprint or claimed at other than the single-piece First-Class or Priority Mail rate. The postage statement must be supported by documentation as required by P012 and the rate claimed unless the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance.

2.0 SINGLE-PIECE RATES

* * * * *

2.5 Pieces Presented With Automation or Presort Rate Mailings

[Revise 2.5 to read as follows:]

Regardless of the method of postage payment, pieces of single-piece rate First-Class Mail may be presented with and reported on the same postage statement as pieces claimed at automation or presort rates if the single-piece rate pieces are physically separated from the automation or

presort rate pieces; bear no rate marking, are marked only ''First-Class,'' or (if not affixed with full single-piece rate postage) are marked ''Single-Piece'' or ''SNGLP'' under M012 in addition to any other marking; and either have additional postage affixed to yield the correct amount on each piece or (if prepared with a corrective rate marking) all additional postage is paid at the time of mailing.

* * * * *

4.0 PRESORTED RATES

* * * * *

4.2 Postage Affixed, Generally

[Amend 4.2 by revising 4.2b and 4.2c to read as follows:]

Unless permitted by other standards or RCSC authorization, when precanceled postage or meter stamps are used, all pieces in a single mailing must bear postage under one of these conditions:

* * * * *

b. A precanceled stamp or the full correct postage at the lowest First-Class first ounce rate applicable to the mailing job, and full postage on metered pieces for any additional ounces(s) (or nonstandard surcharge, if applicable); postage documentation may be required by standard.

c. Postage in an amount not less than the lowest available First-Class first ounce letter or card rate (as applicable) in the mailing job if authorized by the RCSC, plus full postage on metered pieces for any extra ounce(s); postage documentation may be required by standard.

* * * * *

5.0 AUTOMATION RATES

* * * * *

5.2 Postage Affixed, Generally

[Amend 5.2 by revising 5.2a and 5.2c to read as follows:]

Unless permitted by other standards or RCSC authorization, when precanceled postage or meter stamps are used, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

a. Each metered piece weighing more than 1 ounce must bear the correct additional postage to pay for the additional ounce(s).

* * * * *

c. Each piece must bear a precanceled stamp or meter postage in the exact amount or at the lowest rate applicable to pieces in the mailing job. If exact postage is not affixed, all additional postage must be paid at the time of mailing with an advance deposit account or with a meter strip affixed to the required postage statement.

* * * * *

P600 Standard Mail

1.0 BASIC INFORMATION

* * * * *

1.2 Postage Payment, Documentation

[Revise 1.2 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each Standard Mail mailing paid by permit imprint or claimed at any bulk rate. The postage statement must be supported by documentation as required by P012 and the rate claimed unless the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance.

1.3 Pieces Presented With Automation or Presort Rate Mailings

[Revise 1.3 to read as follows:]

Regardless of the method of postage payment, pieces of single-piece rate Standard Mail (A) may be presented with and reported on the same postage statement as pieces claimed at automation or presort rates if the single-piece rate pieces are physically separated from the automation or presort rate pieces; either are marked ''Standard'' or ''STD'' or (if not affixed with full single-piece rate postage) are marked ''Single-Piece'' or ''SNGLP'' under M012 in addition to any other marking; and either have additional postage affixed to yield the correct amount on each piece or (if prepared with a corrective rate marking) all additional postage is paid at the time of mailing.

* * * * *

3.0 AUTOMATION RATES

* * * * *

3.2 Meter or Precanceled Stamps

[Amend 3.2 by revising 3.2a to read as follows:]

In a metered or precanceled stamp mailing:

a. Each piece must bear a precanceled stamp or meter postage in the exact postage or at the lowest rate applicable to pieces in the mailing job. If exact postage is not affixed, all additional postage must be paid at the time of mailing with an advance deposit account or with a meter strip affixed to the required postage statement.

* * * * *

R RATES AND FEES

* * * * *

R600 Standard Mail

* * * * *

8.0 Special Standard Mail

[Amend 8.0 by replacing ''Level A Presort'' with ''5-Digit'' and ''Level B Presort'' with ''BMC.''']

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–9595 Filed 4–17–96; 8:45 am]

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Thursday
April 18, 1996

Part VII

Postal Service

39 CFR Part 111

Experimental First-Class and Priority Mail Small Parcel Automation Rate Category Implementation Standards; Changes in Domestic Mail Classifications and Rates; Final Rule and Notice

POSTAL SERVICE

39 CFR Part 111

Experimental First-Class and Priority Mail Small Parcel Automation Rate Category; Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1.

EFFECTIVE DATE: April 28, 1996.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199, or Susan Duchek, (202) 268–2990.

SUPPLEMENTARY INFORMATION: On December 19, 1995, pursuant to its authority under 39 U.S.C. 3621, et seq., the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on an experimental rate category for specific types of nonpresorted barcoded First-Class and Priority Mail. The PRC designated the filing as Docket No. MC96–1. The PRC published a notice of the filing, with a description of the Postal Service's proposals, on December 27, 1995, in the Federal Register (60 FR 66999–67000).

The Postal Service's Request to the PRC proposed that the Postal Service be permitted to establish automation rate categories and 4-cent-per-piece discounts for certain nonpresorted bulk barcoded First-Class and Priority Mail small parcels entered for outgoing primary distribution at three test sites on a 2-year experimental basis. Eligible parcels would be processed on small parcel and bundle sorters (SPBSs) equipped with barcode scanners. Currently, such SPBSs are installed at only three postal facilities: the Southeastern, PA, Processing and Distribution Center (P&DC); the Philadelphia, PA, Airport Mail Center (AMC); and the St. Petersburg, FL, P&DC. These facilities will be the test sites for the experiment.

A mailer wishing to prepare test mailings will be required to submit a written application to the Manager, Customer Mail Preparation, USPS Headquarters, at least 14 days before the earliest requested mailing date. The application must describe the mailpieces to be presented; preparation level and containerization mode (as applicable); typical daily and annual volumes and a schedule of mailings; deposit sites for mailings; postage payment method; sites of any corresponding authorizations for precanceled stamps, postage meters, or permit imprints. The mailer must also submit enough sample barcoded parcels to the plant manager of the test site where pieces are to be processed so that the accuracy and readability of the barcodes can be determined. If the barcodes on the submitted parcels are found accurate, correctly prepared, and readable, mailings may begin when approved by the Manager, Customer Mail Preparation, subject to the conditions in the authorization letter. The complete standards for participation are set forth in the DMM revision that follows.

The goals of the Postal Service in requesting and conducting the experiment are: (1) To determine whether it is feasible to offer an automation discount for nonpresorted barcoded First-Class and Priority Mail small parcels; (2) to gauge mailer interest and acceptance of this type of discount; and (3) to confirm that the use of a barcode scanner with an SPBS provides significant sortation quality and productivity enhancements when comparing the automated processing of nonpresorted barcoded small parcels with the manual keying of the same or similar pieces. The 4-cent discount is based on the estimated cost difference between keying a nonbarcoded parcel and scanning a barcoded parcel.

Pursuant to 39 U.S.C. 3624, the PRC on March 13, 1996, issued to the Governors of the Postal Service its Recommended Decision on the Postal Service's Request. The PRC recommendation substantially followed the mail classification structure and rates requested by the Postal Service. After reviewing the PRC's Recommended Decision and its consequences for the Postal Service and postal customers, the Governors, pursuant to 39 U.S.C. 3625, acted on the PRC's recommendations on April 1, 1996. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1. The Governors determined to approve the PRC's recommendations, and the Board of Governors set an implementation date of April 28, 1996, for those rate and classification changes to take effect. A notice announcing the Governors' Decision and the final Domestic Mail Classification Schedule and Rate Schedule changes is published elsewhere in this issue of the Federal Register.

This final rule contains the DMM standards adopted by the Postal Service to implement the Governors' decision. Those standards take effect April 28, 1996. The final rule reflects the criteria presented by the Postal Service in its pleadings before the PRC. As described above, the Postal Service is limiting this experimental rate category to those pieces of nonpresorted First-Class and Priority Mail that are outside the parameters of existing automation (i.e., letter and flat sorting machines equipped with barcode readers). Moreover, because this experiment focuses on the value of the mailer's worksharing effort not in presorting the mail but in barcoding the mail, the final rule excludes pieces prepared for a presort discount from concurrent eligibility for an automation discount.

The final rule also presents the technical standards for the barcode formats readable by the automated equipment on which mail will be processed during this experiment. Although these standards have not previously been published in the DMM, they are based on existing industry standards and have been used in nonpostal applications for some time. Therefore, the Postal Service finds no need to solicit comment on those standards or to delay implementation of this experiment pending their evaluation.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Add new G090 to the Domestic Mail Manual as follows:

G GENERAL INFORMATION

* * * * *

G090 Experimental Classifications and Rates

G091 Barcoded Small Parcels

1.0 BASIC ELIGIBILITY

1.1 Applicability

The standards in G091 apply to pieces claimed at the experimental automation rates for First-Class and Priority Mail small parcels. All pieces in an automation rate small parcel mailing under G091 must:

a. Meet the basic standards for First-Class Mail and Priority Mail in E110 and E120, respectively, and the specific standards in 2.0 through 7.0.

b. Be part of a single mailing of at least 50 pieces of either First-Class Mail or Priority Mail, eligible for and claimed at the automation rate for small parcels. The same mailing may not contain both First-Class and Priority Mail pieces.

c. Meet the applicable physical standards in 2.0.

d. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code.

e. Meet the address quality and coding standards in 4.0, A800, and A950.

f. Bear an accurate barcode meeting the standards in 3.0.

g. Be marked and prepared as specified in 5.0.

h. Meet the documentation and postage payment standards in 6.0 and P012.

i. Be deposited at a post office served by one of the test sites designated in 1.4.

1.2 Rate Application

Each piece in an automation small parcel rate mailing qualifies for the corresponding single-piece First-Class or single-piece Priority Mail rate shown in 7.0.

1.3 Participation in Test

Participation in the test is subject to these conditions:

a. A mailer wishing to participate in preparing test mailings under G091 must submit a written application to the Customer Mail Preparation manager (for address, see G043) at least 14 days before the earliest requested mailing date. The application must describe the mailpieces to be presented; preparation level and containerization mode (as applicable); typical daily and annual volumes and a schedule of mailings; deposit sites for mailings; postage payment method; sites of any corresponding authorizations for precanceled stamps, postage meters, or permit imprints. The mailer must also submit sample barcoded parcels to the plant manager of the test site where pieces are to be processed so that the accuracy and readability of the barcodes can be determined; the plant manager will specify the sample size. The mailer is notified of any corrective action.

b. If the barcodes on the submitted parcels are found accurate, correctly prepared, and readable, mailings may begin when approved by the Customer Mail Preparation manager, subject to the conditions in the authorization letter; no further notice is required except as specified under 6.0.

c. An authorization is subject to amendment on 10 days' written notice to the mailer and ends automatically at the end of the test period (April 28, 1998). The mailer may end participation on 10 days' written notice to the Customer Mail Preparation manager. The USPS may terminate an authorization on 10 days' written notice to the mailer for failing to meet the eligibility standards in G091 or in accordance with a material change in the terms and conditions of the experimental classification. The mailer may file a written appeal of a denied application or revoked authorization, within 30 days of receipt of the notice of denial or revocation, with the Marketing Systems vice president (for address, see G043), who issues the final agency decision.

1.4 Test Sites

As specified in the authorization letter, mail prepared under G091 must be entered at a post office for which outgoing primary distribution is performed as follows:

a. For Priority Mail, at either the St. Petersburg, FL, Processing and Distribution Center (P&DC) (3-digit ZIP Code area 337 and 5-digit ZIP Codes 33504, 34634, 34635, 34640–34649, and 34664–34666) or the Philadelphia, PA, Airport Mail Center (080–084, 189–194, and 197–199).

b. For First-Class Mail, at either the St. Petersburg, FL, P&DC (3-digit ZIP Code area 337 and 5-digit ZIP Codes 33504, 34634, 34635, 34640–34649, and 34664–34666) or the Southeastern, PA, P&DC (3-digit ZIP Code areas 189, 193, and 194).

2.0 PHYSICAL CHARACTERISTICS

2.1 Automation Compatibility

Only pieces that do not meet the dimensional and other physical standards in C810 or C820 may be claimed at the automation small parcel rates, subject to 2.2 and 2.3. Pieces must not have loose string, packaging material, or other protrusions that might snag or jam in processing equipment or impede or damage the mail or mail processing equipment. Pieces may not be prepared in envelopes or as unenclosed bound or unbound pages. Pieces may be prepared in padded mailing envelopes or in paper or plastic containers if the wrapper and dunnage can protect the contents during automated processing.

2.2 Measurement

The dimensions of an irregularly shaped piece are based on the size of the smallest cube that could contain the piece when placed in a stable position for processing. The dimensions of other pieces are those of the largest surface area of another surface area that faces up when the piece is oriented for stable processing.

2.3 Dimensions and Weight

All pieces are subject to these size and weight limits:

a. The two horizontal dimensions (length and width) must be no less than 3.5 by 5 inches but no more than 12 by 15.5 inches.

b. The vertical dimension (thickness) must be no more than 8 inches but:

(1) More than 0.25 inch if the horizontal dimensions are 6.125 by 11.5 inches or less; or

(2) At least 0.01 inch if the horizontal dimensions are more than 6.125 by 11.5 inches.

c. The maximum weight of a piece must be no more than 20 pounds.

3.0 BARCODE CHARACTERISTICS

3.1 Basic Standards

Every addressed piece mailed at the automation small parcel rates must bear the correct 6-digit barcode (a 5-digit ZIP Code and a 1-digit verifier character) in Interleaved 2 of 5, Code 39, or Code 128 format. Technical specifications for these three barcode formats appear in Uniform Symbology Specification (USS) documents USS–I2/5, USS–39, and USS–128, respectively, available from Automatic Identification Manufacturers (AIM), Material Handling Institute, Inc., 1326 Freeport Rd., Pittsburgh, PA 15238–3131. Only one 6-digit barcode ending in a ''9'' character may appear on the mailpiece. The barcode must be located as specified in 4.1. No printing may appear in an area 0.125 inch above, below, and on either side of the barcode, regardless of location.

3.2 Dimensions

Narrow bars and spaces must be at least 0.013 inch wide; wide bars and spaces, at least 0.030 inch wide. All bars must be at least 0.75 inch high. The gap between characters must equal the narrow bar width if Code 39 is used.

The ratio of wide to narrow bar width may be in one of two ranges:

a. If only one 6-digit barcode appears on the address side of the mailpiece, the ratio must be between 1.9:1 and 3.2:1, inclusive, for the Interleaved 2 of 5 and Code 39 formats.

b. If more than one 6-digit barcode appears on the address side of the mailpiece, the ratio must be between 1.9:1 and 2.2:1, inclusive, regardless of barcode format.

3.3 Verifier

The verifier character must be the last digit of the 6-digit barcode. The correct verifier digit is always 9. The verifier appears only as part of the barcode and is not printed as part of the human-readable ZIP Code.

3.4 Reflectance

When measured in the red spectrum (633 nanometers ± 5%) by a USPS or USPS-licensed reflectance meter, the minimum white bar (space) reflectance (Rs) must be 25%, and the maximum black bar reflectance (Rb) must be less than 30%. The minimum print reflectance difference (Rs-Rb) is 35%.

4.0 ADDRESS INFORMATION

4.1 Address

The address and barcode must be on the mailpiece side with the largest surface area, except that the address and barcode must be on the top surface of the mailpiece when its shape requires specific orientation for stability during automated processing. The delivery address and/or the barcode may be printed on an attachment or on an enclosure in a window envelope, subject to the reflectance standards in 3.4.

4.2 Numeric Barcode

In addition to the ZIP Code or ZIP+4 code included in the delivery address, human-readable characters representing the numeric equivalent of the barcode (but omitting the verifier character), preceded by the word ''ZIP,'' must be printed near the barcode but outside the barcode clear zone in a type size equal to or larger than that used in the delivery address.

4.3 Address Quality

Effective January 1, 1997, addresses appearing on all pieces claimed at automation rates must be updated within 6 months before the mailing date by a USPS-approved address update tool (e.g., the ''Address Correction Endorsement,'' ACS, or NCOA). Mailers must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. If a USPS-approved address update tool is used, a valid update is obtained regardless of the class of mail on which the address is placed. An address meeting this standard may be used in mailings at any other rate to which the standard applies throughout the 6-month period following its most recent update.

5.0 MAIL PREPARATION

The standards in 5.0 apply exclusively to pieces claimed at the experimental automation rates for First-Class and Priority Mail small parcels. Pieces are subject to the basic eligibility standards in E100 applicable to First-Class or Priority Mail and the general standards in M010, M020, and M030. Mail may be deposited at an eligible entry post office, regardless of destination. No packaging is required or permitted. No sortation or package labeling is required. First-Class pieces must be marked ''EX-AUTO'' and either ''First-Class'' or ''Priority Mail,'' as appropriate. Pieces must be prepared in sacks or other containers labeled as directed by the test site plant manager. Use the city/state/ZIP for that facility on Line 1. For Line 2, use FCM PP BC WKG; if required by the plant manager, the applicable processing code must be right-justified on Line 2 under the ZIP Code on Line 1.

6.0 POSTAGE PAYMENT AND DOCUMENTATION

Full postage must be affixed to each piece by meter or precanceled stamps, or paid by permit imprint, under an authorization issued by the entry post office (which must be an eligible facility listed in 1.4); plant-verified and other forms of drop shipment may not be used to deposit mail at an authorized entry post office. A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing. No other documentation is required.

7.0 RATES AND FEES

7.1 First-Class Mail

First-Class Mail weighing 1 ounce or less may be subject to a nonstandard surcharge under E100. Pieces weighing 11 ounces or less not mailed as Priority Mail:

Weight Increment	Rate
First ounce or fraction of an ounce	$0.28
Each additional ounce or fraction of an ounce	0.23

7.2 Priority Mail

Single-piece Priority Mail rates for barcoded small parcels:

Weight Not Over (pounds) [2 3]	Zone [1]					
	L, 1, 2 & 3	4	5	6	7	8
1	2.96	2.96	2.96	2.96	2.96	2.96
2	2.96	2.96	2.96	2.96	2.96	2.96
3	3.96	3.96	3.96	3.96	3.96	3.96
4	4.96	4.96	4.96	4.96	4.96	4.96
5	5.96	5.96	5.96	5.96	5.96	5.96
6	6.31	6.86	7.06	7.16	7.76	7.96
7	6.61	7.46	8.06	8.36	9.16	9.76
8	6.91	7.96	8.96	9.46	10.36	11.56
9	7.36	8.56	9.76	10.56	11.26	12.96
10	7.76	9.26	10.51	11.36	12.11	14.01
11	8.21	9.86	11.31	12.16	12.96	15.06
12	8.66	10.51	12.06	12.96	13.86	16.11
13	9.06	11.16	12.76	13.76	14.71	17.16
14	9.51	11.81	13.56	14.51	15.56	18.21
15	9.96	12.41	14.31	15.31	16.46	19.26
16	10.36	13.11	15.01	16.11	17.31	20.31
17	10.81	13.71	15.76	16.91	18.16	21.36
18	11.26	14.31	16.46	17.71	19.01	22.41

Weight Not Over (pounds) [2 3]	Zone [1]					
	L, 1, 2 & 3	4	5	6	7	8
19	11.66	15.01	17.21	18.51	19.91	23.46
20	12.11	15.61	17.91	19.26	20.76	24.51

[1] Add $4.95 for each pickup stop.
[2] The 2-pound rate is charged for matter sent in a ''flat rate'' envelope provided by the USPS.
[3] Parcels weighing less than 15 pounds but measuring more than 84 inches in length and girth combined are charged a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the Federal Register as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–9594 Filed 4–17–96; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Changes in Domestic Mail Classifications and Rates

AGENCY: Postal Service.

ACTION: Notice of implementation of changes to the Domestic Mail Classification Schedule and accompanying rate changes.

SUMMARY: This notice sets forth the changes to the Domestic Mail Classification Schedule and the accompanying rate changes to be implemented as a result of the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1.

EFFECTIVE DATE: April 28, 1996.

FOR FURTHER INFORMATION CONTACT: Susan M. Duchek, (202) 268–2990.

SUPPLEMENTARY INFORMATION: On December 19, 1995, pursuant to its authority under 39 U.S.C. 3621 *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on an experimental rate category for specific types of barcoded First-Class and Priority Mail. The PRC designated the filing as Docket No. MC96–1. The PRC published a notice of the filing, with a description of the Postal Service's proposals, on December 27, 1995, in the Federal Register (60 FR 66999–67000).

The Postal Service's Request to the PRC proposed that the Postal Service be permitted to establish automation rate categories and 4-cent per piece discounts for certain bulk barcoded First-Class and Priority Mail small parcels entered for processing at three test sites on a 2-year experimental basis. Eligible parcels would be processed on small parcel and bundle sorters (SPBSs) equipped with barcode scanners. Currently, such SPBSs are installed at only three postal facilities: the Southeastern, PA, Processing and Distribution Center (P&DC); the Philadelphia, PA, Airport Mail Center (AMC); and the St. Petersburg, FL, P&DC. These facilities will be the test sites for the experiment.

The goals of the Postal Service in requesting and conducting the experiment are (1) to determine whether it is feasible to offer an automation discount for First-Class and Priority Mail small parcels; (2) to gauge mailer interest and acceptance of this type of discount; and (3) to confirm that the use of barcode scanners with the SPBS provides significant productivity enhancements when comparing the automated processing of barcoded small parcels with the manual keying of the same or similar pieces. The 4-cent discount is based on the estimated cost difference between keying a nonbarcoded parcel and scanning a barcoded parcel.

Pursuant to 39 U.S.C. 3624, the PRC on March 13, 1996, issued to the Governors of the Postal Service its Recommended Decision on the Postal Service's Request. The PRC recommendation substantially emulated the mail classification structure and rates requested by the Postal Service. After reviewing the PRC's Recommended Decision and its consequences for the Postal Service and postal customers, the Governors, pursuant to 39 U.S.C. 3625, approved the PRC's recommendations on April 1, 1996. Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1. The final Domestic Mail Classification Schedule and Rate Schedule changes approved by the Governors are set forth below.

Also, on April 1, 1996, the Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to implement the rate and classification changes approved by the Governors effective at 12:01 a.m. on April 28, 1996 (Resolution No. 96–3). Attachment A to the Decision of the Governors contained changes to the existing Domestic Classification Schedule and its attendant rate schedules. Attachment B to the Decision of the Governors contained changes to the Domestic Classification Schedule and its attendant rate schedules consistent with implementation of Docket No. MC95–1, classification reform. In accordance with Resolution 96–3, the changes set forth in Attachment A will take effect at 12:01 a.m. on April 28, 1996, to be superseded by the changes set forth in Attachment B, which will take effect at 12:01 a.m. on July 1, 1996. Implementing regulations also become effective at 12:01 a.m. on April 28, 1996, as noted elsewhere in this issue.

Attachment A—Changes From Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1 (effective at 12:01 a.m. on April 28, 1996)

April 1, 1996.

Changes to the Domestic Mail Classification Schedule

Amend Classification Schedule 100, First-Class Mail, by inserting the italicized text, as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class Mail regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.0203, 100.0204, 100.0205, 100.0206, *100.0207*, 100.021, 100.0211, or 100.023.

100.0207 Prebarcoded Parcels

Prebarcoded First-Class Mail parcels consist of properly prepared First-Class Mail individual, nonpresorted parcels which are presented in mailings of 50 or more pieces; bear a barcode as prescribed by the Postal Service; meet the parcel machinability and address readability specifications prescribed by the Postal Service; and are presented for mailing in a manner which does not require cancellation.

This provision is applicable only to mailings entered for processing at no more than six facilities designated by the Postal Service. This provision expires at 12:01 a.m. on April 28, 1998.

100.0233 Prebarcoded Priority Mail Parcels

Prebarcoded Priority Mail parcels consist of properly prepared Priority Mail individual, nonpresorted parcels which are presented in mailings of 50 or more pieces; bear a barcode as prescribed by the Postal Service; meet the parcel machinability and address readability specifications prescribed by the Postal Service; and are presented for mailing in a manner which does not require cancellation.

This provision is applicable only to mailings entered for processing at no more than six facilities designated by the Postal Service. This provision expires at 12:01 a.m. on April 28, 1998.

100.047 Pieces mailed under sections 100.0202, 100.0203, 100.0204, 100.0205, 100.0206, *100.0207*, 100.0211, and 100.023 must be prepared as follows:

[No changes are proposed for subsections a. or b. of 100.047.]

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates or prebarcoded First-Class Mail parcel rates or prebarcoded Priority Mail parcel rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

[No changes are proposed for subsection d. of 100.047.]

Changes to Domestic Postage Rates

Amend Rate Schedule 100, First-Class Mail, by inserting the italicized portions, as follows:

RATE SCHEDULE 100—FIRST-CLASS MAIL

Mail Type	Postage Rate Unit	Rate (cents) [1]
Letters		
Nonpresort	First ounce	
Basic		32.0
ZIP + 4 Letters		[2 3] 30.5
Pre-barcoded flats		[9] 29.5
Pre-barcoded parcels	(experimental)	[10] 28.0
Nonstandard Surcharge		11.0
	Additional ounce	[4] 23.0
Presort [5]	First ounce	
3 and 5 digit [6]		
Basic		27.4
ZIP + 4 Letters		[3] 26.7
Pre-barcoded Letters		26.4
3 digit		
Pre-barcoded Letters		25.8
5 digit		
Pre-barcoded flats		25.8
3/5 Digit		
Carrier route [7]		25.4
Nonstandard surcharge		5.0
	Additional ounce	[4] 23.0
Cards		
Nonpresort.		
Basic		20.0
ZIP + 4		[2 3] 18.9
Pre-barcoded		[8] 18.6
Presort		
3 and 5 digit [6]		
Basic		17.9
ZIP + 4		[3] 17.3
Pre-barcoded—3 digit		17.0
Pre-barcoded—5 digit		16.3
Carrier Route [7]		16.0

Notes:

[1] The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-Digit ZIP Code or each piece of a group of 50 or more pieces destined for the same 3-Digit ZIP Code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $85.00 must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Nonpresorted ZIP + 4 mail must be properly prepared and submitted in mailings of at least 250 pieces.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Rate applies through 11 ounces. Heavier pieces are subject to Priority Mail rates.

[5] For presorted mailings weighing more than 2 ounces, subtract 4.6 cents per piece.

[6] Mail presorted to ZIP Code and prepared in mailings of 500 pieces or more as prescribed by Postal Service.

[7] Mail presorted to carrier route and prepared in mailings of 500 pieces or more as prescribed by the Postal Service.

[8] Nonpresorted and pre-barcoded cards must be properly prepared and submitted in mailings of at least 250 pieces.

[9] Nonpresorted pre-barcoded flat mail must be properly prepared and submitted in mailings of at least 250 pieces.

[10] Nonpresorted pre-barcoded parcels must be properly prepared and submitted in mailings of at least 50 pieces.

Amend Rate Schedule 103, Priority Mail, by inserting the italicized portions, as follows:

RATE SCHEDULE 103—PRIORITY MAIL*

[Dollars]

Weight not Exceeding (Pounds)	L,1,2,3	4	5	6	7	8
1	3.00	3.00	3.00	3.00	3.00	3.00

RATE SCHEDULE 103—PRIORITY MAIL*—Continued

[Dollars]

Weight not Exceeding (Pounds)	L,1,2,3	4	5	6	7	8
2	3.00	3.00	3.00	3.00	3.00	3.00
3	4.00	4.00	4.00	4.00	4.00	4.00
4	5.00	5.00	5.00	5.00	5.00	5.00
5	6.00	6.00	6.00	6.00	6.00	6.00
6	6.35	6.90	7.10	7.20	7.80	8.00
7	6.65	7.50	8.10	8.40	9.20	9.80
8	6.95	8.00	9.00	9.50	10.40	11.60
9	7.40	8.60	9.80	10.60	11.30	13.00
10	7.80	9.30	10.55	11.40	12.15	14.05
11	8.25	9.90	11.35	12.20	13.00	15.10
12	8.70	10.55	12.10	13.00	13.90	16.15
13	9.10	11.20	12.80	13.80	14.75	17.20
14	9.55	11.85	13.60	14.55	15.60	18.25
15	10.00	12.45	14.35	15.35	16.50	19.30
16	10.40	13.15	15.05	16.15	17.35	20.35
17	10.85	13.75	15.80	16.95	18.20	21.40
18	11.30	14.35	16.50	17.75	19.05	22.45
19	11.70	15.05	17.25	18.55	19.95	23.50
20	12.15	15.65	17.95	19.30	20.80	24.55
21	12.60	16.35	18.70	20.10	21.65	25.60
22	13.00	16.95	19.40	20.90	22.55	26.65
23	13.45	17.55	20.15	21.70	23.40	27.70
24	13.85	18.25	20.85	22.50	24.25	28.75
25	14.30	18.85	21.60	23.25	25.15	29.85
26	14.75	19.50	22.30	24.05	26.00	30.90
27	15.15	20.15	23.00	24.85	26.85	31.95
28	15.60	20.80	23.75	25.65	27.70	33.00
29	16.05	21.40	24.45	26.45	28.60	34.05
30	16.45	22.10	25.20	27.20	29.45	35.10
31	16.90	22.70	25.90	28.00	30.30	36.15
32	17.35	23.40	26.65	28.80	31.20	37.20
33	17.75	24.00	27.35	29.60	32.05	38.25
34	18.20	24.60	28.10	30.40	32.90	39.30
35	18.60	25.30	28.80	31.20	33.75	40.35
36	19.05	25.90	29.55	31.95	34.65	41.40
37	19.50	26.55	30.25	32.75	35.50	42.45
38	19.90	27.20	31.00	33.55	36.35	43.50
39	20.35	27.80	31.70	34.35	37.25	44.55
40	20.80	28.45	32.40	35.15	38.10	45.60
41	21.20	29.10	33.15	35.90	38.95	46.65
42	21.65	29.75	33.85	36.70	39.85	47.70
43	22.10	30.35	34.60	37.50	40.70	48.80
44	22.50	31.05	35.30	38.30	41.55	49.85
45	22.95	31.65	36.05	39.10	42.40	50.90
46	23.35	32.35	36.75	39.85	43.30	51.95
47	23.80	32.95	37.50	40.65	44.15	53.00
48	24.25	33.55	38.20	41.45	45.00	54.05
49	24.65	34.25	38.95	42.25	45.90	55.10
50	25.10	34.85	39.65	43.05	46.75	56.15
51	25.55	35.50	40.35	43.85	47.60	57.20
52	25.95	36.15	41.10	44.60	48.50	58.25
53	26.40	36.80	41.80	45.40	49.35	59.30
54	26.85	37.40	42.55	46.20	50.20	60.35
55	27.25	38.05	43.25	47.00	51.05	61.40
56	27.70	38.70	44.00	47.80	51.95	62.45
57	28.10	39.35	44.70	48.55	52.80	63.50
58	28.55	40.00	45.45	49.35	53.65	64.55
59	29.00	40.60	46.15	50.15	54.55	65.60
60	29.40	41.30	46.90	50.95	55.40	66.65
61	29.85	41.90	47.60	51.75	56.25	67.75
62	30.30	42.50	48.35	52.50	57.10	68.80
63	30.70	43.20	49.05	53.30	58.00	69.85
64	31.15	43.80	49.75	54.10	58.85	70.90
65	31.60	44.45	50.50	54.90	59.70	71.95
66	32.00	45.10	51.20	55.70	60.60	73.00
67	32.45	45.75	51.95	56.50	61.45	74.05
68	32.90	46.35	52.65	57.25	62.30	75.10
69	33.30	47.05	53.40	58.05	63.20	76.15
70	33.75	47.65	54.10	58.85	64.05	77.20

***Notes:**

[1] The 2 pound rate is charged for matter sent in a ''flat rate'' envelope provided by the Postal Service.
[2] Add $4.95 for each pickup stop.
[3] Pieces presented in mailings of at least 300 pieces and meeting applicable Postal Service regulations for presorted Priority Mail receive the 11 cents per-piece discount.
[4] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.
[5] *Pieces presented in mailings of at least 50 pieces and meeting applicable Postal Service regulations for pre-barcoded Priority Mail parcels receive a discount of 4 cents per piece (experimental).*

Attachment B Changes From Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1 (effective at 12:01 a.m. on July 1, 1996)

Changes to the Domestic Mail Classification Schedule

Amend First-Class Mail Classification Schedule, by inserting the italicized text, as follows:

Retitle 221.3 as follows:

221.3 Automation Rate Categories—Letters and Flats

Add:

221.40 Automation Rate Category—Parcels

221.41 Prebarcoded Parcel Rate Category. The prebarcoded parcel rate category applies to Letters and Sealed Parcels subclass nonpresorted mail that:

a. Is prepared in a mailing of at least 50 pieces;

b. Bears a barcode as prescribed by the Postal Service;

c. Is marked and presented as prescribed by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service.

This provision is applicable only to mailings entered for processing at no more than six facilities designated by the Postal Service. This provision expires at 12:01 a.m. on April 28, 1998.

223.4 Prebarcoded Priority Mail Parcel Rate Category. The prebarcoded Priority Mail Parcel rate category applies to Priority Mail subclass nonpresorted mail that:

a. Is prepared in a mailing of at least 50 pieces;

b. Bears a barcode as prescribed by the Postal Service;

c. Is marked and presented as prescribed by the Postal Service; and

d. Meets the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service.

This provision is applicable only to mailings entered for processing at no more than six facilities designated by the Postal Service. This provision expires at 12:01 a.m. on April 28, 1998.

[Renumber 223.4–6 as 5–7.]

Changes to Domestic Postage Rates

Amend First-Class Mail, Rate Schedule 221, Letters and Sealed Parcels, by inserting the italicized portions, as follows:

FIRST-CLASS MAIL RATE SCHEDULE 221—LETTERS AND SEALED PARCELS

Postage Rate Unit	Rate/(cents)
Letters & Sealed Parcels	
Regular	
Single Piece: First ounce	32.0
Presort [1]	29.5
Pre-barcoded Parcels (experimental) [11]	28.0
Additional Ounce	[2] 23.0
Nonstandard Surcharge	
Single Piece	11.0
Presort	5.0
Automation—Presort [1]	
Letters [3]	
Basic Presort [4]	26.1
3–Digit Presort [5]	25.4
5–Digit Presort [6]	23.8
Carrier Route Presort [7]	23.0
Flats [8]	
Basic Presort [9]	29.0
3/5–Digit Presort [10]	27.0
Additional Ounce	[2] 23.0
Nonstandard Surcharge	5.0

Notes:
[1] A mailing fee of $85.00 must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate. For presorted mailings weighing more than 2 ounces, subtract 4.6 cents per piece.
[2] Rate applies through 11 ounces. Heavier pieces are subject to Priority Mail rates.
[3] Rates apply to bulk-entered mailings of at least 500 letter-size pieces, which must be delivery point barcoded and meet other preparation requirements prescribed by the Postal Service.
[4] Rate applies to letter-size Automation-Presort category mail not mailed at 3–Digit, 5–Digit, or Carrier Route rates.
[5] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations as prescribed by the Postal Service.
[6] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations as prescribed by the Postal Service.
[7] Rate applies to letter-size Automation-Presort category mail presorted to carrier routes specified by the Postal Service.
[8] Rates apply to bulk-entered mailings of at least 500 flat-size pieces, each of which must be delivery-point barcoded or bear a ZIP+4 barcode, and must meet other preparation requirements prescribed by the Postal Service.
[9] Rate applies to flat-size Automation-Presort category mail not mailed at the 3/5–Digit rate.

[10] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

[11] *Nonpresorted pre-barcoded parcels must be properly prepared and submitted in mailings of at least 50 pieces.*

Amend First-Class Mail, Rate Schedule 223, Priority Mail Subclass, by inserting the italicized portions, as follows:

FIRST-CLASS MAIL RATE SCHEDULE 223—PRIORITY MAIL SUBCLASS*

[Dollars]

Weight not Exceeding (Pounds)	L,1,2,3	4	5	6	7	8
1	3.00	3.00	3.00	3.00	3.00	3.00
2	3.00	3.00	3.00	3.00	3.00	3.00
3	4.00	4.00	4.00	4.00	4.00	4.00
4	5.00	5.00	5.00	5.00	5.00	5.00
5	6.00	6.00	6.00	6.00	6.00	6.00
6	6.35	6.90	7.10	7.20	7.80	8.00
7	6.65	7.50	8.10	8.40	9.20	9.80
8	6.95	8.00	9.00	9.50	10.40	11.60
9	7.40	8.60	9.80	10.60	11.30	13.00
10	7.80	9.30	10.55	11.40	12.15	14.05
11	8.25	9.90	11.35	12.20	13.00	15.10
12	8.70	10.55	12.10	13.00	13.90	16.15
13	9.10	11.20	12.80	13.80	14.75	17.20
14	9.55	11.85	13.60	14.55	15.60	18.25
15	10.00	12.45	14.35	15.35	16.50	19.30
16	10.40	13.15	15.05	16.15	17.35	20.35
17	10.85	13.75	15.80	16.95	18.20	21.40
18	11.30	14.35	16.50	17.75	19.05	22.45
19	11.70	15.05	17.25	18.55	19.95	23.50
20	12.15	15.65	17.95	19.30	20.80	24.55
21	12.60	16.35	18.70	20.10	21.65	25.60
22	13.00	16.95	19.40	20.90	22.55	26.65
23	13.45	17.55	20.15	21.70	23.40	27.70
24	13.85	18.25	20.85	22.50	24.25	28.75
25	14.30	18.85	21.60	23.25	25.15	29.85
26	14.75	19.50	22.30	24.05	26.00	30.90
27	15.15	20.15	23.00	24.85	26.85	31.95
28	15.60	20.80	23.75	25.65	27.70	33.00
29	16.05	21.40	24.45	26.45	28.60	34.05
30	16.45	22.10	25.20	27.20	29.45	35.10
31	16.90	22.70	25.90	28.00	30.30	36.15
32	17.35	23.40	26.65	28.80	31.20	37.20
33	17.75	24.00	27.35	29.60	32.05	38.25
34	18.20	24.60	28.10	30.40	32.90	39.30
35	18.60	25.30	28.80	31.20	33.75	40.35
36	19.05	25.90	29.55	31.95	34.65	41.40
37	19.50	26.55	30.25	32.75	35.50	42.45
38	19.90	27.20	31.00	33.55	36.35	43.50
39	20.35	27.80	31.70	34.35	37.25	44.55
40	20.80	28.45	32.40	35.15	38.10	45.60
41	21.20	29.10	33.15	35.90	38.95	46.65
42	21.65	29.75	33.85	36.70	39.85	47.70
43	22.10	30.35	34.60	37.50	40.70	48.80
44	22.50	31.05	35.30	38.30	41.55	49.85
45	22.95	31.65	36.05	39.10	42.40	50.90
46	23.35	32.35	36.75	39.85	43.30	51.95
47	23.80	32.95	37.50	40.65	44.15	53.00
48	24.25	33.55	38.20	41.45	45.00	54.05
49	24.65	34.25	38.95	42.25	45.90	55.10
50	25.10	34.85	39.65	43.05	46.75	56.15
51	25.55	35.50	40.35	43.85	47.60	57.20
52	25.95	36.15	41.10	44.60	48.50	58.25
53	26.40	36.80	41.80	45.40	49.35	59.30
54	26.85	37.40	42.55	46.20	50.20	60.35
55	27.25	38.05	43.25	47.00	51.05	61.40
56	27.70	38.70	44.00	47.80	51.95	62.45
57	28.10	39.35	44.70	48.55	52.80	63.50
58	28.55	40.00	45.45	49.35	53.65	64.55
59	29.00	40.60	46.15	50.15	54.55	65.60
60	29.40	41.30	46.90	50.95	55.40	66.65
61	29.85	41.90	47.60	51.75	56.25	67.75
62	30.30	42.50	48.35	52.50	57.10	68.80
63	30.70	43.20	49.05	53.30	58.00	69.85

FIRST-CLASS MAIL RATE SCHEDULE 223—PRIORITY MAIL SUBCLASS *—Continued

[Dollars]

Weight not Exceeding (Pounds)	L,1,2,3	4	5	6	7	8
64	31.15	43.80	49.75	54.10	58.85	70.90
65	31.60	44.45	50.50	54.90	59.70	71.95
66	32.00	45.10	51.20	55.70	60.60	73.00
67	32.45	45.75	51.95	56.50	61.45	74.05
68	32.90	46.35	52.65	57.25	62.30	75.10
69	33.30	47.05	53.40	58.05	63.20	76.15
70	33.75	47.65	54.10	58.85	64.05	77.20

*** Notes:**

[1] The 2 pound rate is charged for matter sent in a ''flat rate'' envelope provided by the Postal Service.

[2] Add $4.95 for each pickup stop.

[3] Pieces presented in mailings of at least 300 pieces and meeting applicable Postal Service regulations for presorted Priority Mail receive the 11 cents per-piece discount.

[4] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

[5] *Pieces presented in mailings of at least 50 pieces and meeting applicable Postal Service regulations for pre-barcoded Priority Mail parcels receive a discount of 4 cents per piece (experimental).*

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–9596 Filed 4–17–96; 8:45 am]

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federal register

Thursday
April 18, 1996

Part VIII

Department of Housing and Urban Development

Comprehensive Improvement Assistance Program; Funding Availability for Fiscal Year 1996; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4037–N–01]

Notice of Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 1996.

SUMMARY: This Notice informs Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 public housing units and, therefore, are eligible to apply and compete for CIAP funds, of the requirements and application deadline date for FY 1996 CIAP funding and the expected availability of up to $257 million of CIAP funds. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: The CIAP Application is due on or before 3:00 p.m. local time on June 17, 1996 at the HUD Field Office with jurisdiction over the HA, Attention: Director, Office of Public Housing (OPH), or Administrator, Office of Native American Programs (ONAP).

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, DC 20410. Telephone (202) 708–1640. (This is not a toll free number.)

IHAs may contact Deborah M. LaLancette, Director, Housing Management Division, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 Seventh Street, SW., B–133, Washington, DC 20410. Telephone (202) 755–0088. (This is not a toll free number.)

Hearing or speech impaired individuals may call HUD's TTY number (202) 708–4595. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Allocation Amounts

(a) The Congress has not yet enacted the FY 1996 appropriations for HUD. However, HUD is publishing this notice in order to give potential applicants adequate time to prepare applications. The amount of funds announced in this NOFA is an estimate of the amount that may be enacted in 1996. HUD is not bound by the estimate set forth in this notice. The estimated amount may be adjusted downward based on the enacted 1996 appropriation.

(1) Modernization funds are allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded ABT study of modernization needs. This allocation results in CIAP agencies receiving approximately 10.49% and CGP agencies receiving approximately 89.51% of the total funds available.

(i) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes, and items that are necessary for the long-term viability of a specific housing development.

(ii) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes.

(2) The modernization funds available to CIAP agencies are allocated between Public Housing at approximately 91.8505% and Indian Housing at approximately 8.1495%. This allocation also is based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%).

(b) *Sub-assignment of Funds to Field Offices of Public Housing (OPH).* Headquarters has determined the distribution of Public Housing CIAP funds for each Field OPH, based on the relative shares of backlog and accrual needs for CIAP PHAs, adjusted as necessary.

(1) The Field OPH Director shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Public Housing CIAP become available, Headquarters will allocate the funds to one or more Field OPHs based on their relative shares of modernization need, approvable applications, and PHA capability to carry out the modernization.

(3) If a Field OPH does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field OPHs based on approvable applications and PHA capability to carry out the modernization.

Of the amount available for Public Housing, 1% will be set aside to carry out goals related to pending civil rights litigation (e.g., Young v. Cisneros), which is subject to judicial oversight. The following table shows the percentage distribution of CIAP funds for PHAs, excluding IHAs, assigned by Headquarters to each Field OPH:

Office of Public Housing (OPH)	Percent of public housing funds
New England:	
Massachusetts State Office	2.6187
Connecticut State Office	.9266
New Hampshire State Office	1.5066
Rhode Island State Office	.7365
New York/New Jersey:	
Buffalo Area Office	2.1551
New Jersey State Office	2.7271
New York State Office	1.1576
Mid-Atlantic:	
Maryland State Office	.4142
West Virginia State Office	1.4359
Pennsylvania State Office	1.1444
Pittsburgh Area Office	1.2048
Virginia State Office	.5756
District of Columbia Office	.1686
Southeast:	
Georgia State Office	5.3561
Alabama State Office	4.7698
South Carolina State Office	.9216
North Carolina State Office	3.0244
Mississippi State Office	1.7112
Jacksonville Area Office	2.9639
Knoxville Area Office	.9171
Kentucky State Office	4.7691
Tennessee State Office	1.8640
Midwest:	
Illinois State Office	3.5943
Cincinnati Area Office	.4374
Cleveland Area Office	.5098
Ohio State Office	1.1247
Michigan State Office	2.0393
Grand Rapids Area Office	3.0354
Indiana State Office	1.2262
Wisconsin State Office	2.8249
Minnesota State Office	2.9713
Southwest:	
New Mexico State Office	1.3454
Texas State Office	5.4523
Houston Area Office	1.1773
Arkansas State Office	3.0053
Louisiana State Office	3.9795
Oklahoma State Office	1.9327
San Antonio Area Office	2.6835
Great Plains:	
Iowa State Office	1.4211
Kansas/Missouri State Office	3.8535
Nebraska State Office	1.2155
St. Louis Area Office	2.2640
Rocky Mountain:	
Colorado State Office	3.5448
Pacific/Hawaii:	
Los Angeles Area Office	1.2057
Arizona State Office	1.2634
Sacramento Area Office	.2747
California State Office	1.5927
Northwest/Alaska:	
Oregon State Office	1.2688
Washington State Office	1.6876

Office of Public Housing (OPH)	Percent of public housing funds
Total	100.0000

(c) *Sub-assignment of Funds to Offices of Native American Programs (ONAP).* Headquarters has determined the distribution of Indian Housing CIAP funds for each ONAP, based on the relative shares of backlog and accrual needs for CIAP IHAs, adjusted as necessary. The fund assignment will cover Indian Housing and any Public Housing owned and operated by IHAs.

(1) The ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Indian Housing CIAP become available, Headquarters will allocate the funds to one or more ONAPs based on their relative shares of modernization need, approvable applications, and IHA capability to carry out the modernization.

(3) If an ONAP does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more ONAPs based on approvable applications and IHA capability to carry out the modernization.

The following table shows the percentage distribution of CIAP funds for IHAs, assigned by Headquarters to each ONAP:

Office of Native American Programs (ONAP)	Percent of Indian housing funds
Eastern/Woodlands	14.8444
Southern Plains	12.3324
Northern Plains	13.3174
Southwest	29.9263
Northwest	24.4868
Alaska	5.0927
Total	100.0000

II. Purpose and Substantive Description

(a) *Authority.* Sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). A final rule further streamlining the CIAP regulation, 24 CFR Part 968, Subparts A and B, for PHAs and 24 CFR Part 950, Subpart I, for IHAs, was published on March 5, 1996.

(b) *Program Highlights.*

(1) *Departmental Priority.* Improving Public and Indian Housing is one of the Department's major priorities. Accordingly, a review has been made of the entire Public and Indian Housing Program. Specifically, the Department is very concerned about several aspects of the Modernization Program, as follows:

(i) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant, substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy due to improved design promoting the blend of public housing into the surrounding neighborhood or to additional amenities improving the quality of life.

(ii) *Expediting the Program.* HAs are reminded that they are expected to obligate all funds within two years and to expend all funds within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer implementation schedule (Part III of the CIAP Budget) is approved by the Field Office due to the size or complexity of the program. Failure to obligate funds in a timely manner may result in the termination of the program and recapture of the funds.

(iii) *Resident Involvement and Economic Uplift.* HAs are required to explore and implement through all feasible means the involvement of residents, including duly-elected resident councils, in every aspect of the CIAP, from planning through implementation. HAs shall use Section 3 provisions to the maximum feasible extent. HAs are encouraged to seek ways to employ Section 3 residents in all aspects of the CIAP's operation and to develop means to promote contracting opportunities for businesses in Section 3 areas. Refer to 24 CFR 85.36(e) regarding the provision of such opportunities.

(iv) *Elimination of Vacant Units.* HAs are encouraged to apply for CIAP funds to address vacant units where the work does not involve routine maintenance, but will result in re-occupancy.

(2) *Relationship to Technical Review Factors.* The Departmental goal of improving Public and Indian Housing is reflected in the technical review factors, set forth in section IV(c)(5), on which the Field Office scores each HA's CIAP Application. Based on the HA's total score, the Field Office then ranks each HA to determine selection for Joint Review. The technical review factors emphasize the following Departmental initiatives to improve Public and Indian Housing:

(i) Restoration of vacant units to occupancy;

(ii) Resident capacity-building and resident involvement in HA operations, including opportunities for resident management and homeownership;

(iii) Job training and employment opportunities for residents and contracting opportunities for Section 3 businesses;

(iv) Drug elimination initiatives;

(v) Partnership with local government; and

(vi) Provision of appropriate replacement housing, as described in paragraph (c) below.

(c) *Expansion of Eligible Activities.*

(1) *FY 1995 and Prior FY Modernization Funds.* The FY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FY 1995 and prior FY funds. These activities include: new construction or acquisition of additional public housing units, including replacement units; modernization activities related to the public housing portion of housing developments held in partnership or cooperation with non-public housing entities; and other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI), such as community services.

(2) *FY 1996 Modernization Funds.* The Continuing Resolution provides for the continuation of the Department's programs and activities. Funding provided under the Continuing Resolution is subject to the authority and conditions of the 1995 appropriation, including the FY 1995 Rescissions Act. Therefore, FY 1996 funds provided under the Continuing Resolution may be used for the eligible activities set forth in subparagraph (1) of this paragraph with prior HUD approval.

III. Application Preparation and Submission by HA

(a) *Planning.* In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical

improvement needs should be reviewed against the modernization standards, as set forth in HUD Handbook 7485.2, as revised, and any cost-effective energy conservation measures, identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. See section II(b)(1)(i). In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information. The term ''Field Office'' includes the ONAP.

(b) *Resident Involvement and Local/Tribal Official Consultation Requirements.*

(1) *Residents/Homebuyers.* The CIAP regulations at §§ 968.215 or 950.624 require the HA to establish a Partnership Process to ensure full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(i) Before submission of the CIAP Application, consultation with the residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization regarding its intent to submit an application and to solicit resident comments;

(ii) Reasonable opportunity for residents to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(iii) Written response to residents indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review. If the Joint Review is conducted off-site, a copy is mailed to the Field Office;

(iv) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP Budget; and

(v) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local/Tribal Officials.* Before submission of the CIAP Application, consultation with appropriate local/tribal officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(c) *Contents of CIAP Application.* Within the established deadline date, the HA shall submit the CIAP Application to the Field Office, with a copy to appropriate local/tribal officials. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(1) *Form HUD–52822, CIAP Application,* in an original and two copies, which includes:

(i) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in § 968.115 or § 950.603; description of work items required to correct identified deficiencies; and the estimated cost. Where the HA has not included some of its developments in the CIAP Application, the Field Office may not consider funding any nonemergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs. Following is an example of the general description:

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs; storm windows and doors; and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility in 2 units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of $90,000.

Development 1–3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility in 3 units; and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

(ii) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. Examples of management improvements include, but are not limited to the following areas:

(A) the management, financial, and accounting control systems of the HA;

(B) the adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(C) the adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(iii) a certification that the HA has met the requirements for consultation with local/tribal officials and residents/homebuyers and that all developments included in the application have long-term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(2) *A narrative statement,* in an original and two copies, addressing each of the technical review factors in section IV(c)(5) and, where applicable for Public Housing, the bonus points in section IV(c)(6).

(3) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements,* in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(4) *SF–LLL, Disclosure of Lobbying Activities,* in an original only, required of HAs established under State law, only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers, Members of Congress and their staff regarding specific grants or contracts. The HA determines if the submission of the SF–LLL is applicable.

(5) *Form HUD–2880, Applicant/Recipient Update/Disclosure Report,* in an original only, required of HAs established under State law.

(6) *At the option of the HA,* photographs or video cassettes showing the physical condition of the developments.

IV. Application Processing by Field Office

(a) *Completeness Review (Corrections to Deficient Applications).* To be eligible for processing, the CIAP Application must be physically received by the Field Office by the time and date specified in this NOFA. Immediately after the application deadline, the Field Office shall perform a completeness review to determine whether an application is complete, responsive to the NOFA, and acceptable for technical processing.

(1) If either Form HUD–52822, CIAP Application, or the narrative statement on the technical review factors is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing. The Field Office shall immediately notify the HA in writing.

(2) If Form HUD–50071, Certification for Contracts, Grants, Loans, and Cooperative Agreements, or SF–LLL, Disclosure of Lobbying Activities, are required, but missing, *or* Form HUD–2880, Applicant/Recipient Update/Disclosure Form, is missing, *or* there is a technical mistake, such as no signature on a submitted form or the HA failed to address all of the technical review factors, the Field Office shall immediately notify the HA in writing to submit or correct the deficiency within 14 calendar days from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents, as specified in this subparagraph, or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If the HA fails to submit or correct the items within the required time period, the HA's application will be ineligible for further processing. The Field Office shall immediately notify the HA in writing after this occurs.

(4) The HA may submit a CIAP Application for Emergency Modernization whenever needed. See section IV(j).

(b) *Eligibility Review.* After the HA's CIAP Application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for full processing or processing on a reduced scope.

(1) *Eligibility for Full Processing.* To be eligible for full processing:

(i) Each eligible development for which work is proposed has reached the Date of Full Availability (DOFA) and is under ACC at the time of CIAP Application submission; and

(ii) Where funded under Major Reconstruction of Obsolete Projects (MROP) after FY 1988, the development/building has reached DOFA or, where funded during FYs 1986–1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for Processing on Reduced Scope.* When the following conditions exist, the HA's application will be reviewed on a reduced scope:

(i) *Section 504 Compliance.* Where the HA has not completed all required structural changes to meet the need for accessible units, as identified in the HA's Section 504 needs assessment, the HA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements.

(ii) *Lead-Based Paint (LBP) Testing Compliance.* Where the HA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the HA is eligible for processing only for Emergency Modernization or work needed to complete the testing.

(iii) *Fair Housing and Equal Opportunity (FHEO) Compliance.* Where the HA has not complied with FHEO requirements as evidenced by an enforcement action, finding or determination, the HA is eligible for processing only for Emergency Modernization or work needed to remedy civil rights deficiencies—unless the HA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance. The enforcement actions, findings or determinations that trigger limited eligibility are described in paragraphs (A) through (E) below:

(A) A pending proceeding against the HA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of Discrimination is a charge under Section 810(g)(2) of the Fair Housing Act, issued by the Department's Assistant Secretary for FHEO or legally authorized designee;

(B) A pending civil rights suit against the HA, referred by the Department's Assistant Secretary for FHEO and instituted by the Department of Justice;

(C) Outstanding HUD findings of HA noncompliance with civil rights statutes and executive orders under 24 CFR Part 5 and 24 CFR 968.110 or 24 CFR 950.115, or implementing regulations, as a result of formal administrative proceedings;

(D) A deferral of the processing of applications from the HA imposed by HUD under Title VI of the Civil Rights Act of 1964 and HUD implementing regulations (24 CFR 1.8), the Attorney General's Guidelines (28 CFR 50.3), and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities specified in 24 CFR Part 5 and 24 CFR 968.110 or 24 CFR 950.115 in a civil action filed against the HA by a private individual.

(c) *Selection Criteria and Ranking Factors.* After all CIAP Applications are reviewed for eligibility, the Field Office shall categorize the eligible HAs and their developments into two processing groups, as defined in subparagraph (1) of this paragraph: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. HA developments may be included in both groups and the same development may be in each group. However, the HA is only required to submit one CIAP Application.

(1) *Grouping Modernization Types.*

(i) *Group 1, Emergency Modernization.* This is a type of modernization program for a development that is limited to physical work items of an emergency nature to correct conditions that pose an immediate threat to the health or safety of residents or are related to fire safety, and that must be corrected within one year of CIAP funding approval. Funding may not be used for management improvements. Emergency Modernization includes all LBP testing and abatement of units housing children under six years old with elevated blood lead levels (EBLs) and all LBP testing and abatement of HA-owned day care facilities used by children under six years old with EBLs. Group 1 developments are not subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph and the long-term viability and reasonable cost determinations in section V(a).

(ii) *Group 2, Other Modernization.* This is a type of modernization program for a development that includes one or more physical work items, where the Field Office determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or HA-wide management work items (including planning costs), and/or LBP testing, professional risk assessment, interim containment, and abatement. Therefore, eligibility of work under Other Modernization ranges from a single work item to the complete rehabilitation of a development. Refer to section II(b)(1)(i) regarding modest amenities and improved design. Group 2 developments are subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph and the long-term viability and reasonable cost determinations in section V(a).

(2) *Assessment of HA's Management Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's

management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, *and* on the performance review under the Public Housing Management Assessment Program (PHMAP) for PHAs or the Administrative Capability Assessment for IHAs, and other information sources, as follows:

(i) *Public Housing.* A PHA has management capability if it is (A) not designated as Troubled under Part 901, PHMAP, or (B) designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its management functions.

(ii) *Indian Housing.* An IHA has management capability if it is (A) not designated as High Risk under 24 CFR 950.135 or (B) designated as High Risk, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A High Risk IHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its management improvement plan under 24 CFR 950.135.

(3) *Assessment of HA's Modernization Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits, as follows:

(i) *Public Housing.* A PHA has modernization capability if it is (A) not designated as Modernization Troubled under Part 901, PHMAP, or (B) designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under 24 CFR 901.140 or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(ii) *Indian Housing.* An IHA has modernization capability if it is (A) not designated as High Risk under 24 CFR 950.135, or (B) designated as High Risk, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. An IHA that has been classified High Risk with regard to modernization is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its management improvement plan under 24 CFR 950.135(f)(2) or has obtained alternative oversight of its modernization functions. Where an IHA does not have a funded modernization program in progress, the ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(4) *Technical Processing.* After categorizing the eligible HAs and their developments into Group 1 and Group 2, the Field Office shall review and rate each Group 2 HA on each of the technical review factors in subparagraph (5) of this paragraph. With the exception of the technical review factor of ''extent and urgency of need,'' a Group 2 HA is rated on its overall HA application and not on each development. For the technical review factor of ''extent and urgency of need,'' each development for which funding is requested in the CIAP Application by a Group 2 HA is scored; the development with the highest priority needs is scored the highest number of points, which are then used for the overall HA score on that factor.

(5) *Technical Review Factors.* The technical review factors for assistance are:

Technical review factors	Maximum points
Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines, to complete previously funded modernization work, or to provide appropriate replacement housing for HUD- approved demolition/disposition	40
HA's modernization capability	15
HA's management capability	15
Extent of vacancies, where the vacancies are not due to insufficient demand	10
Degree of resident involvement in HA operations	5
Degree of HA activity in resident initiatives, including resident management, economic development, and drug elimination efforts	5
Degree of resident employment through direct hiring or contracting or job training initiatives	5
Local government support for proposed modernization	5
Total maximum score	100

(6) *Bonus points.*

(i) For Public Housing only, the Field Office shall provide up to 5 bonus points for any PHA that can demonstrate that it has obtained funds, within the last 12 months, from a non-HUD source to support the modernization activities or improve the general operation of the PHA. Non-HUD sources of funding may include: local government, over and above what is required under the Cooperation Agreement for municipal services such as police and fire protection and refuse collection; private non-profit organizations; or other public and private entities. To qualify for the bonus points, the PHA shall identify the entity, the amount of funds, the date on which the funds were or will be provided, and the purpose of the funding.

(ii) For Public Housing only, the Field Office shall provide up to 2 bonus points for any PHA that can demonstrate that it has awarded contracts, including subcontracts, to minority business enterprises (MBEs) or women's business enterprises (WBEs) within the last 12 months. PHAs are

required by 24 CFR 968.110(b) to take every affirmative action to meet Departmental goals for awarding contracts to MBEs and WBEs. To qualify for the bonus points, the PHA shall identify the contractor or subcontractor, the dollar value of the contract or subcontract, and the date of award.

(7) *Rating and Ranking.* After rating all Group 2 HAs/developments on each of the technical review factors and providing any bonus points as set forth in subparagraph (6) of this paragraph, the Field Office shall then rank each Group 2 HA based on its total score, list Group 2 HAs in descending order, subject to confirmation of need and cost at Joint Review, and identify for Joint Review selection the highest ranking applications in Group 2 and other Group 2 HAs with lower ranking applications, but with high priority needs. *High priority needs* are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines. All Group 1 applications are automatically selected for Joint Review. The Field Office shall consult with Headquarters regarding any identified FHEO noncompliance.

(d) *Joint Review.* The purpose of the Joint Review is for the Field Office to discuss with the HA the proposed modernization program, as set forth in the CIAP Application, review long-term viability and cost reasonableness determinations, and determine the size of the grant, if any, to be awarded.

(1) The Field Office shall select HAs, including all Group 1 HAs, for Joint Review so that the total dollar value of all proposed modernization recommended for funding exceeds the Field Office's estimated funding amount by at least 15 percent. This preserves the Field Office's ability to adjust cost estimates and work items as a result of Joint Review.

(2) The Field Office shall notify each HA whose application has been selected for further processing as to whether Joint Review will be conducted on-site or off-site (*e.g.*, by telephone or in-office meeting).

(3) The HA shall prepare for Joint Review by preparing a draft CIAP Budget and reviewing the other items to be covered during Joint Review, as prescribed by the Field Office, such as the need for professional services, method of accomplishment of physical work (contract or force account labor), HA compliance with various Federal statutes and regulations, etc. If conducted on-site, Joint Review may include an inspection of the proposed physical work.

(4) The Field Office shall advise in writing each HA not selected for Joint Review of the reasons for non-selection.

(e) *Funding Decisions.* After all Joint Reviews are completed, the Field Office shall adjust the HAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, FHEO review, and environmental reviews (refer to paragraph (h) of this section) and make the funding decisions. Such adjustments are necessary where Joint Review determines that actual Group 1 emergencies and Group 2 high priority needs, HA priorities, or cost estimates vary from the HA's application. Such adjustments may preclude the Field Office from funding all of the higher ranked HA applications in order to accommodate the funding of high priority needs. However, where the information obtained from Joint Reviews, FHEO review, and environmental reviews does not substantially alter the information used to establish the rankings before Joint Review, the Field Office shall make funding decisions in accordance with its rankings. An HA will not be selected for Joint Review if there is a duplication of funding (refer to section V(c)). After Congressional notifications, the Field Office shall notify the HAs of their funding approval, subject to submission of the CIAP Budget, including an implementation schedule, and other required documents.

(f) *HA Submission of Additional Documents.* After Field Office funding decisions, the HA shall submit the following documents within the time frame prescribed by the Field Office:

(1) *Form HUD–52825, CIAP Budget/Progress Report,* which includes the implementation schedule(s), in an original and two copies.

(2) *Form HUD–50070, Certification for a Drug-Free Workplace,* in an original only.

(3) *Form HUD–52820, HA Board Resolution Approving CIAP Budget,* in an original only.

(g) *ACC Amendment.* After HUD approval of the CIAP Budget, the Field Office and the HA shall enter into an ACC amendment in order for the HA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The HA Executive Director, where authorized by the Board of Commissioners and permitted by State/tribal law, may sign the ACC amendment on behalf of the HA. HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(h) *Environmental review.*

(1) *Public Housing.* The Field Office shall review the environmental impact of all modernization activities, proposed by PHAs, under 24 CFR Part 50, in accordance with the provisions of Part 968. The Field Office may obtain the information required to conduct the environmental review during Joint Review. The PHA shall provide any documentation to the Field Office that it needs to carry out its review under the National Environmental Policy Act (NEPA). After all Joint Reviews are conducted, the Field Office shall complete the environmental reviews before funding decisions are made and announced and before PHAs are invited to submit CIAP Budgets. Therefore, in requesting CIAP Budgets, the Field Office shall specify any PHA modification or elimination of activities or expenditures that the Field Office has determined, after review under NEPA or related laws, to have an unacceptable environmental impact. Upon approval of the CIAP Budget, the Field Office shall send an approval letter to the PHA which includes notification that HUD has complied with its responsibilities under § 968.110 (c) and (d) before entering into an ACC amendment with the PHA.

(2) *Indian Housing.* For IHAs, the environmental impact of modernization activities is reviewed by a responsible entity under 24 CFR Part 58 in accordance with § 950.120(a). The responsible entity may be an Indian tribe or, in the case of IHAs in Alaska, an Alaska native village, a state, or unit of local government. Under this procedure, the environmental impact of each IHA project will be considered before an IHA obligates or expends funds for physical improvements.

(i) *Declaration of Trust.* Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD has determined that its interest in Mutual Help units is sufficiently protected without the further requirement of a Declaration of Trust; therefore, a Declaration of Trust is not required for Mutual Help units.

(j) *''Fast Tracking'' Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA applications may be submitted and processed at any time during the year when funds are available. The Field Office shall ''fast track'' the processing of these emergency applications so that fund reservation may occur as soon as possible.

V. Other Program Items

(a) *Long-Term Viability and Reasonable Cost.* On Form HUD–52822, CIAP Application, the HA certifies whether the developments proposed for modernization have long-term physical and social viability, including prospects for full occupancy. During Joint Review, the Field Office will review with the HA the determination of reasonable cost for the proposed modernization to ensure that unfunded hard costs do not exceed 90 percent of the computed total development cost (TDC) for a new development with the same structure type and number and size of units in the market area. The Field Office shall make a final viability determination. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required.

(1) If the Field Office determines that completion of the improvements and replacements will not reasonably ensure the long-term physical and social viability of the development at a reasonable cost, the Field Office shall only approve Emergency Modernization or non-emergency funding for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(2) Where the Field Office wishes to fund a development with hard costs exceeding 90 percent of computed TDC, the Field Office shall submit written justification to Headquarters for final decision. Such justification shall include:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to blend the development in with the design and architecture of the neighborhood; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(iii) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(iv) There are no practical alternatives for replacement housing.

(b) *Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities.* CIAP funds may be used to convert dwelling units for purposes related to economic self-sufficiency services and/or drug elimination activities. Regarding the eligibility for funding under the Performance Funding System of dwelling units used for these purposes, refer to 24 CFR 990.108(b)(2) or 24 CFR 950.720(b)(2).

(c) *Duplication of Funding.* The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program shall not be funded by CIAP.

VI. Application Deadline Date and Summary of FY 1996 CIAP Processing Steps

The deadline date for submission of the FY 1996 CIAP Application is June 17, 1996. Dates for other processing steps will be established by each Field Office to reflect local workload issues.

Summary of Processing Steps

1. HA submits CIAP Application.
2. Field Office conducts completeness review and requests corrections to deficient applications or notifies HAs of ineligible applications.
3. HA submits corrections to deficient applications within 14 calendar days of notification from Field Office.
4. Field Office conducts eligibility review and technical review (rating and ranking) and makes Joint Review selections.
5. Field Office completes Joint Reviews, environmental reviews (for PHAs) and FHEO review.
6. Field Office makes funding decisions and forwards Congressional notifications to Headquarters.
7. Congressional notification is completed and Field Office notifies HA of funding decisions.
8. HA submits additional documents as required in section IV(f).
9. Field Office completes fund reservations and forwards ACC amendment to HA for signature and return.
10. Field Office executes ACC amendment and HA begins implementation.

VII. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, DC 20410.

(b) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the NOFA is not subject to review under the Order.

(c) *Impact on the Family.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family,* has determined that this NOFA will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(d) *Accountability in the Provision of HUD Assistance.* The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR Part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. On January 16, 1992, the Department published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) *Documentation and Public Access.* The Department will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This

material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *HUD Responsibilities—Disclosures.* The Department will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. (See 24 CFR Part 12, Subpart C, and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Prohibition Against Advance Information on Funding Decisions.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Prohibition Against Lobbying Activities.*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

If the amount applied for is greater than $100,000, the certification is required at the time application for funds is made that federally appropriated funds are not being or have not been used in violation of the Byrd Amendment. If the amount applied for is greater than $100,000 and the HA has made or has agreed to make any payment using non-appropriated funds for lobbying activity, as described in 24 CFR Part 87 (Byrd Amendment), the submission also must include the SF–LLL, Disclosure of Lobbying Activities. The HA determines if the submission of the SF–LLL is applicable.

(g) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0044. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

VIII. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program Number is 14.852.

Dated: April 3, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

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