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Friday
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NEW YORK, NY

WHEN: September 17, 1996 at 9:00 am.
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WASHINGTON, DC

WHEN: September 24, 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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Electronic Bulletin Board

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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Friday, August 2, 1996

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–96–301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule will revise the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. This rule revises the ''Application of Tolerances'' sections, which establishes the limitations of defective fruit per sample. It also sets a minimum sample size of twenty-five fruit.

EFFECTIVE DATE: August 5, 1996. Comments must be received by October 1, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Act, and issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 handlers of Florida citrus who are subject to regulation under these standards and approximately 11,000 producers of citrus in Florida. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A majority of handlers and producers of Florida citrus may be classified as small entities.

These revisions will be a benefit to handlers and producers of Florida citrus, regardless of the size, by minimizing the destruction of packages and allowing more defective fruit in individual packages while maintaining overall quality levels. Accordingly, AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

The United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and United States Standards for Grades of Florida Tangerines were recently revised following extensive discussions with the Florida citrus industry and a 60 day comment period. The final rule to revise the standards was published in the Federal Register on May 8, 1996, and will become effective August 1, 1996. However, we received two requests after the publication date concerning the revisions to the standards. One was from the Florida Citrus Packers, Inc., which ''represents nearly 90 percent of Florida's fresh commercial citrus industry, growers and shippers'' and from the Commissioner of the Florida Department of Agriculture and Consumer Services (FDACS). Both requested revision of the ''Application of Tolerances'' sections of the standards and they requested a minimum sample size of twenty-five fruit for each of the U.S. standards for Florida citrus.

The ''Application of Tolerances'' sections in the standards effective August 1, 1996, are based on the contents of individual packages with no specified sample size. At that time, it was AMS' understanding that a specified sample was no longer needed and that defects were to be based on individual packages. After publication in the Federal Register on May 8, 1996, the Florida citrus industry and FDACS stated the following concerns to AMS.

The industry stated that without further revisions to the standards it would be very costly to the Florida citrus industry. If the standards are not revised an excessive amount of destruction to consumer packages could occur, resulting in costly repacking of fruit and replacing of these destroyed packages. Also, the tolerances are too restrictive for these consumer packages ultimately resulting in failing to market citrus account of one piece of defective fruit. They also indicated that the minimum sample size should be a minimum of twenty-five fruit.

The FDACS states that ''* * * inspections based on small containers will require inspection procedures which are more time consuming and less efficient than the present.'' The State also expresses their concern in adopting and implementing the revisions to the ''Application of Tolerances'' sections and the minimum sample size of twenty-five fruit expeditiously, in order to train

inspectors for the 1996/1997 citrus season.

Therefore, this rule will change Sections 51.760, 51.1151, and 51.1820 ''Tolerances,'' to set a minimum sample size of twenty-five fruit; which will read as follows: ''In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:'' The Sections 51.761, 51.1152, and 51.1821 ''Application of Tolerances,'' will also change from individual package limitations to limitations on individual samples and will read as follows: ''Individual samples are subject to the following limitations, unless otherwise specified in §§ 51.760, 51.1151, 51.1820, respectively. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: Provided, that at least one decayed or wormy fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.''

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule 30 days after publication in the Federal Register because: (1) The standards were published in the Federal Register on May 8, 1996, and will become effective August 1, 1996; (2) harvesting for the 1996/1997 Florida citrus season will begin in early Fall and USDA in cooperation with the FDACS needs ample time to train inspectors and inform the industry of these changes; and (3) this interim final rule provides a 60 day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.760 is amended by revising the introductory text to read as follows:

§ 51.760 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

3. Section 51.761 is revised to read as follows:

§ 51.761 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.760. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: And *provided further*, that the averages for the entire lot are within the tolerances specified for the grade.

4. Section 51.1151 is amended by revising the introductory text to read as follows:

§ 51.1151 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

5. Section 51.1152 is revised to read as follows:

§ 51.1152 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1151. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided,* that at least one decayed or wormy fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.

6. Section 51.1820 is amended by revising the introductory text to read as follows:

§ 51.1820 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

7. Section 51.1821 is revised to read as follows:

§ 51.1821 Application of Tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1820. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any sample: And provided further, that the averages for the entire lot are within the tolerances specified for the grade.

Dated: July 29, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19637 Filed 8–01–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 915

[Docket No. FV96–915–1 FIR]

Avocados Grown in South Florida; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate for the Avocado Administrative Committee (Committee) under Marketing Order No. 915 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective on April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698, or Tershirra Yeager, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698. Small

businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, FAX# (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning April 1, 1996, and continuing until amended or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 producers of avocados in the production area and approximately 95 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of avocado producers and handlers may be classified as small entities.

The avocado marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Florida avocados. They are familiar with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on December 13, 1995, and unanimously recommended 1996–97 expenditures of $122,200 and an assessment rate of $0.16 per bushel of avocados. In comparison, last year's budgeted expenditures were $107,570. The assessment rate of $0.16 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $24,500 for local and national enforcement, and $24,830 for research. In comparison, last year's budgeted expenditures were $15,600 and $10,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Florida avocados. Avocado shipments for the year are estimated at 750,000 bushels which should provide $120,000 in assessment income. Income derived from handler assessments, along with interest income funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the May 2, 1996, issue of the Federal Register (61 FR 19512). That rule provided for a 30-day comment period. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on April 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (3) handlers are aware of this action which was

unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 900 which was published at 61 FR 19512 on May 2, 1996, is adopted as a final rule without change.

Dated: July 29, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19636 Filed 8–01–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–014–2]

Change in Disease Status of The Netherlands Because of Hog Cholera and Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring The Netherlands free of hog cholera and swine vesicular disease. As part of this action, we are adding The Netherlands to the list of countries that, although declared free of swine vesicular disease, are subject to restrictions on pork and pork products offered for importation into the United States. Declaring The Netherlands free of hog cholera and swine vesicular disease is appropriate because there have been no confirmed outbreaks of hog cholera or swine vesicular disease in The Netherlands since 1992 and 1994, respectively. This rule relieves certain restrictions on the importation of pork and pork products into the United States from The Netherlands. However, because The Netherlands shares common land borders with countries affected by swine vesicular disease, the importation into the United States of pork and pork products from The Netherlands will continue to be restricted.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8688; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Sections 94.9(a) and 94.10(a) of the regulations provide that hog cholera exists in all countries of the world except those listed in §§ 94.9(a) and 94.10(a), which are declared to be free of hog cholera. Section 94.12(a) of the regulations provides that SVD is considered to exist in all countries of the world except those listed in § 94.12(a), which are declared to be free of SVD.

On April 4, 1996, we published in the Federal Register (61 FR 14999–15000, Docket No. 96–014–1) a proposal to amend the regulations by adding The Netherlands to the lists of countries in §§ 94.9(a), 94.10(a), and 94.12(a) of the regulations that have been declared free of hog cholera and SVD. We further proposed to add The Netherlands to the list of countries in § 94.13 that, although declared free of swine vesicular disease, are subject to restrictions on pork and pork products offered for importation into the United States. These actions would relieve certain restrictions on the importation of pork and pork products into the United States from The Netherlands.

We solicited comments concerning our proposal for 60 days ending June 3, 1996. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. This rule relieves certain restrictions on the importation of pork and pork products into the United States from The Netherlands. We have determined that approximately 2 weeks are needed to ensure that the Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the regulations in part 94 by adding The Netherlands to the lists of countries that have been declared free of hog cholera and SVD. This action relieves certain restrictions on the importation of pork and pork products into the United States from The Netherlands. However, the importation of pork and pork products into the United States from The Netherlands will continue to be restricted because The Netherlands shares a common land border with Belgium, where SVD is considered to exist. While there are inspection and certification procedures for ensuring that commingling of pork and pork products from the two countries does not take place, these procedures are not without cost. Therefore, recognition of The Netherlands as free of hog cholera and SVD is not expected to significantly affect pork exports to the United States. The total value of pork exported to the United States from The Netherlands in 1994 was $13.2 million (less than two percent of the value of all U.S. pork imports). There were no live swine exported from The Netherlands to the United States in 1994.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 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).

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by adding ''The Netherlands,'' immediately after ''Iceland,''.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) is amended by adding ''The Netherlands,'' immediately after ''Iceland,''.

§ 94.12 [Amended]

4. In § 94.12, paragraph (a) is amended by adding ''The Netherlands,'' immediately after ''Mexico,''.

§ 94.13 [Amended]

5. In § 94.13, the introductory text, the first sentence is amended by adding ''The Netherlands,'' immediately after ''Luxembourg,''.

Done in Washington, DC, this 29th day of July 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–19720 Filed 8–1–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 96–15]

RIN 1557–AB39

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R–0907]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AB71

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 96–62]

RIN 1150–AA95

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are revising their rules regarding management interlocks. This final rule conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements. In so doing, it reflects comments received on the proposed rule and the agencies' further internal considerations.

EFFECTIVE DATE: This joint rule is effective October 1, 1996.

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Board: Thomas M. Corsi, Senior Attorney (202/452–3275), or Tina Woo, Attorney (202/452–3890), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington DC 20551.

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OTS: David Bristol, Senior Attorney, Business Transactions Division, (202) 906–6461; or Donna Deale, Program Manager, Supervision Policy, (202) 906–7488.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the agencies to review their regulations in order to streamline and modify the regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The agencies have reviewed their respective management interlocks regulations with these purposes in mind and are amending the regulations in ways designed to meet the goals of section 303(a).

The agencies have made the following changes to their respective management interlocks rules in order to comply with the mandate of section 303(a):

- The final rules revise the definition of ''senior management official'' to eliminate uncertainty as to when an employee of a depository institution will be considered to be a senior management official for purposes of the Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (Interlocks Act). Moreover, the final rules conform this definition to definitions of similar terms used elsewhere in the agencies' regulations.
- The final rules revise the definition of ''representative or nominee'' to clarify

that the agencies will determine that a person is acting as a representative or nominee on behalf of another person only when there is an agreement, express or implied, obligating the first person to act on the second person's behalf with respect to management responsibilities.

- The final rules reflect a reinterpretation of the Interlocks Act by the agencies that permits management interlocks within a relevant metropolitan statistical area (MSA) when either of the depository institutions in the MSA has assets of less than $20 million (the agencies previously interpreted the Interlocks Act to permit interlocks between unaffiliated institutions in MSA only if both depository institutions have assets of less than $20 million). This expands the pool of available managerial talent for small depository institutions.

In implementing the Interlocks Act's ''regulatory standards'' exemption (Regulatory Standards exemption) and the exemption under a ''management official consignment program'' (Management Consignment exemption), the final rules contain certain presumptions and define key terms so as to eliminate unnecessary burdens.

The final rules remove the provision concerning statutorily grandfathered management interlocks, given that it is unnecessary in light of the changes made to the Interlocks Act by the CDRI Act.

The agencies believe that these changes will streamline and modify their respective management interlocks regulations, thus furthering the goals of section 303 of the CDRI Act. These changes are explained more fully in the discussion of the final rule and comments received.

Summary of Statutory Changes

The CDRI Act amended the Interlocks Act by removing the agencies' broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a ''grandfathered'' interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.[1]

Pursuant to the changes made by the CDRI Act, a depository institution seeking an exemption from the Interlocks Act's restrictions must qualify either for a Regulatory Standards exemption or a Management Consignment exemption. An applicant seeking a Regulatory Standards exemption must submit a board resolution certifying that no other candidate from the relevant community has the necessary expertise to serve as a management official, is willing to serve, and is not otherwise prohibited by the Interlocks Act from serving. Before granting the exemption request, the appropriate agency must find that the individual is critical to the institution's safe and sound operations, that the interlock will not produce an anticompetitive effect, and that the management official meets any additional requirements imposed by the agency. Under the Management Consignment exemption, the appropriate agency may permit an interlock that otherwise would be prohibited by the Interlocks Act if the agency determines that the interlock would: (1) improve the provision of credit to low- and moderate-income areas; (2) increase the competitive position of a minority- or women-owned institution; or (3) strengthen the management of a newly chartered institution or an institution that is in an unsafe or unsound condition (*see* text following ''Management Consignment exemption'' in this preamble for a discussion regarding interlocks involving a newly chartered institution or an institution that is in an unsafe or unsound condition).

The Proposal

On December 29, 1995, the agencies published a joint notice of proposed rulemaking (proposal) (60 FR 67424) to implement these statutory changes. In addition, the proposal permitted interlocks involving two institutions located in the same relevant metropolitan statistical area (RMSA) if the institutions were not also located in the same community and if at least one of the institutions had total assets of less than $20 million. Finally, the proposal streamlined and clarified the agencies' interlocks rules in various respects.

The Final Rule and Comments Received

The agencies received a total of 26 comments,[2] some of which were sent to more than one agency. Commenters overwhelmingly supported the proposal. A few commenters, while supporting the proposal, suggested that the agencies make additional changes as discussed later in this preamble. Most of the provisions in the proposal received either no comments or uniformly favorable comments. Accordingly, except where noted in the text that follows, the agencies have adopted without revision the changes to their respective interlocks rules that were set forth in the proposal.

The following discussion summarizes the amendments to the agencies' management interlock rules and the comments received.

Authority, Purpose, and Scope

This section in the agencies' final rules identifies the Interlocks Act as the statutory authority for the management interlocks regulation. It also states that the purpose of the rules governing management interlocks is to foster competition between unaffiliated institutions. Finally, this section identifies the types of institutions to which each agency's regulation applies. The OCC rule uses the term ''District bank'' to describe banks operating under the Code of Laws of the District of Columbia. (*See* definition of ''District bank'' at § 26.2(k).)

Definitions

Anticompetitive effect

The final rules define the term ''anticompetitive effect'' to mean ''a monopoly or substantial lessening of competition,'' a definition derived from the Bank Merger Act (12 U.S.C. 1828(c)). The term ''anticompetitive effect'' is used in the Regulatory Standards exemption. Under the Regulatory Standards exemption, the appropriate agency may approve a request for an exemption to the Interlocks Act if, among other things, the agency finds that continuation of service by the management official does not produce an anticompetitive effect with respect to the affected institution.

The statute does not define the term ''anticompetitive effect,'' nor does the legislative history to the CDRI Act point to a particular definition. The context of the Regulatory Standards exemption suggests, however, that the agencies should apply the term ''anticompetitive effect'' in a manner that permits interlocks that present no substantial lessening of competition. By prohibiting an interlock that would result in a monopoly or substantial lessening of competition, the definition preserves the free flow of credit and other banking services that the Interlocks Act is designed to protect. Moreover, use of a definition familiar to the banking industry enables the agencies to accomplish the legislative purpose of

[1] The agencies completed their review of requests for extensions by March 23, 1995, as directed by the statute. Therefore, the provision regarding extending the grandfather period is moot for purposes of this regulation.

[2] The Board received 10 comments from the public, while the OCC, FDIC, and OTS received 6, 6, and 4, respectively.

the Interlocks Act without imposing unnecessary regulatory burdens.

Area Median Income

The final rules define ''area median income'' as the median family income for the MSA in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. The term ''area median income'' is used in the definition of ''low- and moderate-income areas,'' which in turn is used in the implementation of the Management Consignment exemption.

Critical

The final rules define ''critical'' as ''important to restoring or maintaining a depository organization's safe and sound operations.'' The term ''critical'' is used in the Regulatory Standards exemption. Under that exemption, the appropriate agency must find that a proposed management official is critical to the safe and sound operations of the affected institution. 12 U.S.C. 3207(b)(2)(A).

Neither the statute nor its legislative history defines ''critical.'' The agencies are concerned that a narrow interpretation of this term would nullify the Regulatory Standards exemption. If someone were ''critical'' to the safe and sound operations of an institution only if the institution would fail but for the service of the person in question, the exemption would have little relevance, because the standard would be impossible to meet. Given that Congress clearly intended for the Regulatory Standards exemption to permit interlocks under some circumstances, the question thus becomes how to define those circumstances.

The agencies believe that the definition adopted in these final rules is consistent with the legislative intent by insuring that only persons of demonstrated expertise and importance to the institution's safe and sound operations may serve pursuant to a Regulatory Standards exemption.

Depository Institution

The final rules make no substantive change to the definition of ''depository institution.'' Two commenters noted that several of the agencies interpret ''depository institution'' to include only those institutions that accept deposits (see, *e.g.*, Board Staff Opinion of March 29, 1983, I F.R.R.S. 3–838; OCC No-Objection Letter No. 93–01, October, 1993; FDIC Interpretive Letter No. 85–27), and requested that the agencies clarify that these interpretations will not be affected by the final rules. The OCC, Board, and FDIC note that the final rules change neither the definition of ''depository institution'' nor the application of that definition, and that the interpretations cited remain accurate statements of the positions of these agencies.

Low- and Moderate-income Areas

The final rules define this term as a census tract (or, if an area is not in a census tract, a block numbering area delineated by the United States Bureau of the Census) in which the median family income is less than 100 percent of the area median income. This term is used in the Management Consignment exemption that permits an otherwise impermissible interlock if the interlock would improve the provision of credit to a low- and moderate-income area. The final rules clarify that the agencies will evaluate whether an area is low- or moderate-income by comparing the median family income for the census tract to be helped (or, if there is no census tract, the block numbering area delineated by the United States Bureau of the Census) with the area median income. Income data will be derived from the most recent decennial census.

One commenter requested that the agencies use a cutoff of 120 percent of the area median income for determining whether an area is ''low- or moderate-income.'' This commenter suggested that this higher cutoff would be consistent with the flexibility vested in the agencies to implement the Management Consignment exemption in a way designed to make it easier for institutions to serve economically disadvantaged areas.

The agencies agree that a cutoff above 80 percent of the area median income is appropriate, given that ''low-income'' is defined in Title I, Subtitle A of the CDRI Act (titled ''Community Development Banking and Financial Institutions'') to mean not more than 80 percent of the area median income. 12 U.S.C. 4702(17). The agencies believe that Congress, by using the term ''moderate-income'' in addition to ''low-income'' in section 338(b) of the CDRI Act (which created the Management Consignment exemption), intended for that term to apply to an area where the median family income exceeds the cutoff for low income established elsewhere in the CDRI Act.

The agencies disagree, however, that a cutoff above 100 percent of area median income is appropriate. The agencies continue to believe that the 100 percent cutoff proposed best effectuates the Congressional purpose of facilitating the flow of credit to economically disadvantaged areas. Moreover, the threshold adopted is a commonly used definition for ''moderate-income'' in other statutory provisions.[3]

Management Official

The final rules define ''management official'' to include a senior executive officer, a director, a branch manager, a trustee of an organization under the control of trustees, or any person who has a representative or nominee serving in such capacity. The definition excludes (1) A person whose management functions relate either exclusively to the business of retail merchandising or manufacturing or principally to business outside the United States of a foreign commercial bank and (2) a person excluded by section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

The final rules remove the phrase ''an employee or officer with management functions,'' which appeared in the former rule. In its place, the agencies have used the term ''senior executive officer'' as defined by each agency in its regulation pertaining to the prior notice of changes in senior executive officers, which implement section 32 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831i) as added by section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101–73, 103 Stat. 183). The agencies have made this change to eliminate the uncertainty and attendant compliance burden created by the ambiguous term ''management functions.'' The final rules incorporate specific illustrative examples of positions at depository organizations that will be treated as senior executive officers. See 12 CFR 5.51(c)(3) (OCC); 12 CFR 225.71(a) (Board); 12 CFR 303.14(a)(3) (FDIC); and 12 CFR 574.9(a)(2) (OTS). The agencies believe that these definitions will allow depository organizations to identify impermissible interlocks with greater certainty and thus will enhance compliance.

One commenter requested that the agencies amend the rules to expand the exemption that exists for individuals whose management functions relate to the business of retail merchandising or manufacturing. In response to this request, the agencies carefully reviewed their respective rules and concluded that the rules as drafted are sufficiently broad to address the concerns expressed by the commenter. This commenter also requested that the agencies clarify the procedures by which someone may confirm that an organization complies

[3] *See, e.g.*, 12 U.S.C. 4502(10) (defining ''moderate-income'' in the context of the statute addressing government sponsored enterprises).

with the regulation. The agencies note that an organization may request from the appropriate regulator at any time confirmation that a given interlock complies with applicable law. The agencies have elected not to impose any procedural requirements in the regulation on this type of request.

Relevant Metropolitan Statistical Area (RMSA)

The final rules, like the former rules, define ''relevant metropolitan statistical area (RMSA)'' as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs. However, unlike the former rules, the final rules clarify that this definition will be used to the extent that the Office of Management and Budget (OMB) defines and applies the terms MSA, primary MSA, and consolidated MSA. This change reflects the fact that OMB defines ''consolidated MSA'' to include two or more primary MSAs. Given that a consolidated MSA, by OMB's definition, is comprised of primary MSAs, the reference to a consolidated MSA in the Interlocks Act and the agencies' regulations is inappropriate. The final rules enable the agencies to implement the statute in a way that complies with both the spirit and the letter of the Interlocks Act.

Representative or Nominee

The final rules define ''representative or nominee'' as someone who serves as a management official and has an obligation to act on behalf of someone else. The final rules remove the rest of the definition that appeared in the former rule, however, and insert in lieu thereof a statement that the appropriate agency will find that someone has an obligation to act on behalf of someone else only if there is an agreement (express or implied) to act on behalf of another. This change clarifies that the determination of whether someone serves a representative or nominee will depend on whether there is a basis to conclude that an agreement exists to act on someone's behalf.

Prohibitions

The former rules prohibited interlocks in the following three instances. First, no two unaffiliated depository organizations may have an interlock if they (or their depository institution affiliates) have depository institution offices in the same community. Second, a depository organization may not have an interlock with any unaffiliated depository organization if either depository organization has assets of $20 million or more and the depository organizations (or depository institution affiliates of either) have depository institution offices in the same RMSA.[4] Third, if a depository organization has total assets exceeding $1 billion, it (and its affiliates) may not have an interlock with any depository organization with total assets exceeding $500 million (or affiliate thereof), regardless of location.

The final rules amend the restriction applicable to institutions with assets equal to or exceeding $20 million to better conform to the purposes of the Interlocks Act. Whereas the former rules prohibited interlocks in an RMSA if one of the organizations has total assets of $20 million or more, the final rules apply the RMSA-wide prohibition only if both organizations have total assets of $20 million or more. Interlocks within a community involving unaffiliated depository organizations will continue to be prohibited, regardless of the size of the organizations.

The agencies believe that this change is consistent with both the language and the intent of the Interlocks Act. While the statute uses the plural ''depository institutions'' in section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)), in context, the wording is ambiguous and neither the statute nor its legislative history compels the conclusion that the interlock must involve two institutions with less than $20 million in assets before the less restrictive prohibition applies.

The Interlocks Act seeks to prohibit interlocks that could enable two institutions to engage in anticompetitive behavior. However, an institution with total assets of less than $20 million is likely to derive most of its business from the community in which it is located and is unlikely to compete with institutions that do not have offices in that community. Therefore, an interlock involving one institution with assets under $20 million and another institution with assets of at least $20 million not in the same community is not likely to lead to the anticompetitive conduct that the Interlocks Act is designed to prohibit.

The agencies believe, moreover, that the change will promote rather than inhibit competition. Expanding the pool of managerial talent for institutions with assets under $20 million could enhance the ability of smaller institutions to compete by improving the management of these institutions.

Every comment on this change either supported the change without qualification or supported the change and asked the agencies go even farther. A few commenters suggested that the agencies should raise the asset thresholds discussed earlier and/or provide blanket exceptions for institutions with total assets below certain levels. The agencies note that the Interlocks Act, which establishes the thresholds at which the various prohibitions apply, does not vest the agencies with authority to change these levels or to exempt classes of organizations from the statute's prohibitions. Accordingly, the agencies have not adopted the changes proposed by these commenters.

Interlocking Relationships Expressly Permitted by Statute

The final rules state the exemptions found in 12 U.S.C. 3204 (1)–(8).[5] The final rules reorder the exemptions set forth in the current regulations in order to conform the list of exemptions to the list set forth in the Interlocks Act.

Regulatory Standards Exemption

The final rules set forth the requirements that a depository organization must satisfy in order to obtain a Regulatory Standards exemption. The rules implement the requirement regarding certification by allowing a depository organization's board of directors (or the organizers of a depository organization that is being formed) to certify to the appropriate agency that no other qualified candidate has been found after undertaking reasonable efforts to locate qualified candidates who are not prohibited from service under the Interlocks Act. If read narrowly, the Interlocks Act could require a depository organization to evaluate every person in a given locale that might be qualified and interested. This would create a requirement that, in practice, would be impossible to satisfy. Given that Congress would not have included an exemption that would have no practical application, the agencies believe that the ''reasonable efforts'' standard is consistent with the legislative intent.

[4] A community as that term is defined in the rules is smaller than an RMSA. There may be several communities in one RMSA.

[5] The Interlocks Act contains an additional exemption for savings associations and savings and loan holding companies that have issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act (12 U.S.C. 1467a(q)). See 12 U.S.C. 3204(9). The OTS therefore will continue to list an additional exemption in its interlocks regulation that the other agencies do not list. Another exemption provides for interlocks as a result of an emergency acquisition of a savings association authorized in accordance with section 13(k) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)) if the FDIC has given its approval to the interlock. The FDIC will continue to list an additional exemption in its management interlocks regulation that the other agencies do not list.

The final rules also set forth presumptions that the agencies will apply when reviewing an application for a Regulatory Standards exemption. First, each agency will presume that an interlock will not have an anticompetitive effect if it involves institutions that, if merged, would not trigger a challenge from the agencies on competitive grounds. This presumption is unavailable, however, for interlocks subject to the Major Assets prohibition.

Generally, the agencies will not object to a merger on competitive grounds if the post-merger Herfindahl-Hirschman Index (HHI) for the market is less than 1800 and the merger increases the HHI by 200 points or less. This presumption will enable applicants to avoid the unnecessary burden of submitting a competitive analysis in several instances. The agencies have found this HHI benchmark to be a useful guide to evaluating anticompetitive effects of interlocks.[6] However, the agencies may decide that this presumption should not be conclusive in appropriate circumstances, such as when approval of an interlock request would lead to several institutions being linked by overlapping management.

Second, the agencies will presume that a person is critical to an institution's safe and sound operations if the agencies also approved that individual under section 914 of FIRREA and the institution in question either was a newly chartered institution, failed to meet minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in the reviewing agency's section 914 regulation at the time the section 914 filing was approved.[7]

The final rules also address the duration of an interlock permitted under the Regulatory Standards exemption. The statute does not require that these interlocks terminate. In light of this open-ended grant of authority, the agencies have not adopted a specific term for a permitted exemption. Instead, an agency may require an institution to terminate the interlock if the agency determines that the management official in question either no longer is critical to the safe and sound operations of the affected organization or that continued service will produce an anticompetitive effect. The agencies will provide affected organizations an opportunity to submit information before they make a final determination to require termination of an interlock.

One commenter suggested that the agencies clarify that the 15-month grace period that applies when an interlock must be terminated due to a change in circumstances also applies in the case of a Regulatory Standards exemption that must be terminated. The agencies agree with the commenter that it is appropriate in most cases to grant a grace period following the termination of a Regulatory Standards exemption in order to minimize the disruption of the affected institution that otherwise might be caused by the loss of a management official.

There may be circumstances, however, where immediate termination of a regulatory standards exemption would be appropriate. For instance, if an organization obtains an exemption on the basis of misleading information, the organization's primary regulator will require the organization to take appropriate steps to immediately remedy the situation. The final rules thus provide for the possibility of a grace period, with the caveat that the agencies may, under appropriate circumstances, order the immediate termination of a Regulatory Standards exemption.

Another commenter suggested that the agencies limit the term of a Regulatory Standards exemption when the exemption is granted. This commenter opined that depository organizations would benefit from the greater certainty by avoiding questions concerning whether a director must vacate his or her position on a board. The agencies believe that the procedures in the final rules for terminating a Regulatory Standards exemption will provide an affected organization with ample certainty concerning the permissibility of continued service.

Grandfathered Interlocking Relationships—Removed

Section 338(a) of the CDRI Act authorizes the agencies to extend a grandfathered interlock for an additional five years if the management official in question satisfies the statutory criteria for obtaining an extension.

The final rules remove the sections addressing the grandfather exemption because they are unnecessary and redundant in light of the statute. Individuals who wished to extend their exemption already have applied for and received an exemption if they met the statutory criteria.

Management Consignment Exemption

The final rules implement the Management Consignment exemption, set forth in section 209(c) of the Interlocks Act (12 U.S.C. 3207(c)), by restating the statutory criteria with three clarifications. First, the final rules state that the agencies consider a ''newly chartered institution'' to be an institution that has been chartered for less than two years at the time it files an application for exemption. This standard is consistent with certain other banking agency thresholds for determining when an institution is considered newly chartered (see, *e.g.*, 12 CFR 5.51(d), 225.72(a)(1); 303.14(b)).

Second, the final rules clarify that the exemption available for ''minority- and women-owned institutions'' is available for an institution that is owned either by minorities or women. In analyzing the exemptions to the Interlocks Act that the Federal banking agencies have approved, the House Conference Report to the CDRI Act (H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 181 (1994)) (Conference Report) states that the types of institutions that have received exemptions include those that are ''owned by women or minorities.'' These exemptions ultimately were codified in the Interlocks Act. Accordingly, the agencies have concluded that Congress intended the Management Consignment exemption to assist institutions owned by women and/or by minorities, but did not intend to require the institution to be owned by both.

Third, the final rules permit an interlock if the interlock would strengthen the management of either a newly chartered institution or an institution that is in an unsafe or unsound condition. Section 209(c)(1)(C) of the Interlocks Act (12 U.S.C. 3207(c)(1)(C)) permits an exemption if the interlock would ''strengthen the management of newly chartered institutions that are in an unsafe or unsound condition.'' However, this provision contains what appears on its face to be an error, given that an exemption limited to situations involving newly chartered institutions that also are in an unsafe and unsound condition would have no practical utility. The chartering agencies do not approve an application for a bank or thrift charter unless the applicant seeking a charter can demonstrate that the proposed new financial institution will operate in a safe and sound manner for the foreseeable future. While there may be an extraordinary instance where

[6] See, *e.g.*, the OCC's Bank Merger Competitive Analysis Screen (OCC Advisory Letter 95–4, July 18, 1995); Department of Justice Merger Guidelines (49 FR 26823, June 29, 1984) (applied by the Board); FDIC Statement of Policy: Bank Merger Transactions (54 FR 39045, Sept. 22, 1989).

[7] This presumption also applies to individuals whose service as a senior executive officer is approved by the OCC pursuant to the standard conditions imposed on newly chartered national banks and to individuals whose service as a management official is approved by the FDIC as a condition of a grant of deposit insurance prior to the opening of the depository institution.

a newly chartered institution immediately experiences unforeseen problems so severe that they threaten the safety and soundness of that institution, there is nothing in the legislative history to suggest that Congress intended to limit the Management Consignment exemption to such rare instances.

Moreover, the legislative history of the CDRI Act suggests that the agencies are to apply the Management Consignment exemption in cases involving either newly chartered institutions or institutions that are in an unsafe or unsound condition. The Conference Report notes that the agencies have used their exemptive authority to grant exemptions in limited cases where institutions ''are particularly in need of management guidance and expertise to operate in a safe and sound manner.'' *Id.* The Conference Report goes on to state that ''Examples of exceptions permissible under an agency management official consignment program include improving the provision of credit to low- and moderate-income areas, increasing the competitive position of minority- and women-owned institutions, and strengthening the [sic] management of newly chartered institutions or institutions that are in an unsafe or unsound condition.'' *Id.* at 182 (emphasis added).

Finally, Congress used the exemptions in the agencies' current rules as the model for the Management Consignment exemption. See *id.* at 181–182. These exemptions distinguish newly chartered institutions from institutions that are in an unsafe or unsound condition. The reference in the CDRI Act's legislative history to the current regulatory exemptions suggests that Congress intended to codify these exemptions.

For these reasons, the agencies will permit Management Consignment exemptions if the management official will strengthen either a newly chartered institution or an institution that is in an unsafe or unsound condition.

The final rules set forth two presumptions that the agencies will apply in connection with an application for an exemption under the Management Consignment exemption. First, the agencies will presume that an individual is capable of strengthening the management of an institution that has been chartered for less than two years if the reviewing agency approved the individual to serve as a management official of that institution pursuant to section 914 of FIRREA.[8] Second, the agencies will presume that an individual is capable of strengthening the management of an institution that is in an unsafe or unsound condition if the reviewing agency approved the individual to serve under section 914 as a management official of that institution at a time when the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition.''

The agencies believe that presumptions of suitability are less valid when applied to the other Management Consignment exemptions because there is no reason to conclude that a management official approved under section 914 necessarily will improve the flow of credit to low- and moderate-income areas or increase the competitive position of minority- or women-owned institutions. Moreover, the final rules do not contain a presumption regarding effects on competition, given that this is not a factor to be considered by the agencies when reviewing an application for a Management Consignment exemption.

The final rules set forth the limits on the duration of a Management Consignment exemption. The Interlocks Act limits a Management Consignment exemption to two years, with a possible extension for up to an additional two years if the applicant satisfies at least one of the criteria for obtaining a Management Consignment exemption. The final rules implement this limitation by requiring interested parties to submit an application for an extension at least 30 days before the expiration of the initial term of the exemption and by clarifying that the presumptions that apply to initial applications also apply to extension applications.

One commenter suggested that the agencies should be consistent in how they address the duration of a Management Consignment exemption with how the agencies address the duration of a Regulatory Standards exemption, and permit a Management Consignment exemption to last until the appropriate agency orders the interlock terminated. The statute is clear, however, that a Management Consignment exemption may not last more than one initial two-year term and one extension of up to an additional two years in appropriate circumstances. Accordingly, the agencies have not adopted the approach suggested by the commenter.

Change in Circumstances

The final rules provide a 15-month grace period for nongrandfathered interlocks that become impermissible due to a change in circumstances. This period may be shortened by the agencies under appropriate circumstances.

Paperwork Reduction Act

OCC: The collection of information requirements contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1557–0196. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0196), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–0196), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this final rule are found in 12 CFR 26.4(h)(1)(i), 26.5(a)(1), 26.5(a)(2), 26.6(a), and 26.6(c). This information is required by the Interlocks Act, and will be used by the OCC to evaluate compliance with the requirements of the Interlocks Act by national banks and District banks. The collections of information are required to obtain a benefit.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are national banks and District banks.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 100.

Start-up costs to respondents: None.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0046, 7100–0134, 7100–0171, 7100–0266), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the

[8] This presumption also applies to an individual whose service as a senior executive officer of a national bank is approved pursuant to the standard conditions imposed by the OCC on newly chartered national banks and to an individual whose service as a management official is approved by the FDIC as a condition of a grant of deposit insurance prior to the opening of the depository institution.

Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this final rule are found in 12 CFR 212.4(h)(1)(i), 212.5(a)(1), 212.5(a)(2), 212.6(a), and 212.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act as amended by section 338 of the CDRI Act. The respondents are state member banks and subsidiary depository institutions of bank holding companies.

Currently, information on management official interlocks is gathered as a part of the following applications: membership in the Federal Reserve System (OMB No. 7100–0046); state member bank mergers (OMB No. 7100–0266); changes in bank control (OMB No. 7100–0134); and bank holding company acquisitions of depository institutions (OMB No. 7100–0171). The estimated portion of burden for each application that is attributable to management interlocks averages 4 hours, and the burden ranges from as much as 6 hours to as little as 0.5 hours. It is estimated that 822 applications are filed annually, with an estimate of 3,288 hours of annual burden. Based on an hourly cost of $20, the annual cost to the public is estimated to be $65,760. The Federal Reserve believes that the final rule will have a minimal effect on respondent burden.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers.

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for the applications.

FDIC: The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget under control number 3064–0118 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0118), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this final rule are found in 12 CFR 348.4(i)(1)(i), 348.5(a)(1), 348.5(a)(2), 348.6(a), and 348.6(c). This information is required by the Interlocks Act as amended by section 338 of the CDRI Act, and will be used by the FDIC to evaluate compliance with the requirements of the Interlocks Act by insured nonmember banks. The likely respondents are insured nonmember banks.

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of recordkeeping: Not applicable (one-time application).

Estimated total annual recordkeeping burden: 24 hours.

OTS: The collection of information requirements contained in this rule have been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0051), Washington, DC 20503, with copies to the Business Transactions Division (1550–0051), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

The collection of information requirements in this final rule are found in 12 CFR 563f.4(h)(1)(i), 563f.5(a)(1), 563f.5(a)(2), 563f.6(a), and 563f.6(c). This information is required by the Interlocks Act, and will be used by the OTS to evaluate compliance with the requirements of the Interlocks Act by savings associations. The collections of information are required to obtain a benefit.

Respondents are not required to respond to the foregoing collection of information unless it displays a currently valid OMB control number. The likely respondents are savings associations.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 8.

Start-up costs to respondents: None.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the Federal Register along with its final rule.

Pursuant to section 605(b) of the RFA, the agencies hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this rule will not (1) have significant secondary or incidental effects on a substantial number of small entities or (2) create any additional burden on small entities. The changes to the exemptions are required by the Interlocks Act. The agencies have added presumptions that will streamline and simplify the application procedures for obtaining an exemption from the Interlocks Act prohibitions, and have defined key terms used in the provisions implementing these exemptions in a way that is intended to eliminate any unnecessary burden. As noted in the preamble discussion of the changes made by the final rule, the agencies have made substantive changes that will permit more flexibility to institutions with total assets of less than $20 million, clarified the circumstances under which someone will be deemed to be a ''representative or nominee,'' and amended the definition of ''senior management official'' so as to provide greater clarity and to conform this definition with definitions of similar terms used in other regulations.

The impact of these changes will be to minimize, to the extent possible, the costs of complying with this final rule.

Executive Order 12866

OCC and OTS: The OCC and OTS have determined that this rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule likely to result in a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating the rule.

The OCC and OTS have determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 26

Antitrust, Banks, banking, Holding companies, Management official interlocks, National banks.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

12 CFR Part 563f

Antitrust, Holding companies, Management official interlocks, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC revises part 26 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
26.1 Authority, purpose, and scope.
26.2 Definitions.
26.3 Prohibitions.
26.4 Interlocking relationships permitted by statute.
26.5 Regulatory Standards exemption.
26.6 Management Consignment exemption.
26.7 Change in circumstances.
26.8 Enforcement.

Authority: 12 U.S.C. 93a and 3201–3208.

§ 26.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended, and the OCC's general rulemaking authority in 12 U.S.C. 93a.

(b) *Purpose*. The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope*. This part applies to management officials of national banks, District banks, and affiliates of either.

§ 26.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate*. (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a national bank based on common ownership does not exist if the OCC determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the OCC considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *District bank* means any State bank operating under the Code of Law of the District of Columbia.

(l) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(m) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 5.51(c)(3);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragaph (m)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(n) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(o) *Person* means a natural person, corporation, or other business entity.

(p) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(q) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The OCC will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The OCC will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(r) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(s) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 26.3 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 26.4 Interlocking relationships permitted by statute.

The prohibitions of § 26.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The OCC may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the OCC.

(3) The OCC may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 26.5 Regulatory Standards exemption.

(a) *Criteria.* The OCC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 26.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the OCC certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The OCC, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The OCC applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption does not

apply to depository organizations subject to the Major Assets prohibition of § 26.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the OCC to serve as a director or senior executive officer of that institution pursuant to 12 CFR 5.51 or pursuant to conditions imposed on a newly chartered national bank; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 5.51 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the OCC notifies the affected depository organizations otherwise. The OCC may require a national bank to terminate any interlock permitted under this section if the OCC concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The OCC may shorten this period under appropriate circumstances.

§ 26.6 Management Consignment exemption.

(a) *Criteria.* The OCC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 26.3 if the OCC, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the OCC on a case-by-case basis.

(b) *Presumptions.* The OCC applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the OCC to serve as a director or senior executive officer of that institution pursuant to 12 CFR 5.51 or pursuant to conditions imposed on a newly chartered national bank and the institution had operated for less than two years at the time the service under 12 CFR 5.51 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the OCC to serve as a director or senior executive officer of that institution pursuant to 12 CFR 5.51 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 5.51 at the time service under that section was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The OCC may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 26.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The OCC may shorten this period under appropriate circumstances.

§ 26.8 Enforcement.

Except as provided in this section, the OCC administers and enforces the Interlocks Act with respect to national banks, District banks, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a national bank or a District bank is subject to the primary regulation of another Federal depository organization supervisory agency, then the OCC does not administer and enforce the Interlocks Act with respect to that affiliate.

Dated: July 22, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board revises part 212 of chapter II of title 12 of the Code of Federal Regulations to read as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

Authority: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

§ 212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of state member banks, bank holding companies, and their affiliates.

§ 212.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held

by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship based on common ownership does not exist if the Board determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the Board considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means a city, town, or village, and contiguous and adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical,* as used in § 212.5, means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 225.71(a);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee, as defined in paragraph (p) of this section, serving in any of the capacities in this paragraph (l)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to a foreign commercial bank's business outside the United States; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(m) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, a loan production office, or any office of a depository holding company.

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The Board will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The Board will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(q) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(r) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 212.3 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each

depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 212.4 Interlocking relationships permitted by statute.

The prohibitions of § 212.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institution's regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The Board may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the Board.

(3) The Board may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 212.5 Regulatory Standards exemption.

(a) *Criteria.* The Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 212.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the Board certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The Board, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The Board applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption does not apply to depository organizations subject to the Major Assets prohibition of § 212.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the Board to serve as a director or senior executive officer of that institution pursuant to 12 CFR 225.71; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 225.71 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the Board notifies the affected depository organizations otherwise. The Board may require termination of any interlock permitted under this section if the Board concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The Board may shorten this period under appropriate circumstances.

§ 212.6 Management Consignment exemption.

(a) *Criteria.* The Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 212.3 if the Board, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the Board on a case-by-case basis.

(b) *Presumptions.* The Board applies the following presumptions in reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution

described in paragraph (a)(3) of this section if that official is approved by the Board to serve as a director or senior executive officer of that institution pursuant to 12 CFR 225.71 and the institution had operated for less than two years at the time the service was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if the official is approved by the Board to serve as a director or senior executive officer of the institution pursuant to 12 CFR 225.71 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 225.71 at the time service was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The Board may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 212.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the state member bank or bank holding company involved in the interlock for 15 months following the date of the change in circumstances. The Board may shorten this period under appropriate circumstances.

§ 212.8 Enforcement.

Except as provided in this section, the Board administers and enforces the Interlocks Act with respect to state member banks, bank holding companies, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a state member bank or a bank holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

§ 212.9 Effect of Interlocks Act on Clayton Act.

The Board regards the provisions of the first three paragraphs of section 8 of the Clayton Act (15 U.S.C. 19) to have been supplanted by the revised and more comprehensive prohibitions on management official interlocks between depository organizations in the Interlocks Act.

Dated: July 10, 1996.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, pursuant to its authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207), the Board of Directors of the FDIC revises part 348 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

Authority: 12 U.S.C. 3207, 12 U.S.C. 1823(k).

§ 348.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of insured nonmember banks and their affiliates.

§ 348.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving an insured nonmember bank based on common ownership does not exist if the FDIC determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the FDIC considers, among other things, whether a person, including members of his or her immediate family whose shares are necessary to constitute the group, owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository

organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 303.14(a)(3);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (l)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(m) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The FDIC will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The FDIC will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(q) *Total assets.* (1) The term *total assets* includes assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that are exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(r) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 348.3 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 348.4 Interlocking relationships permitted by statute.

The prohibitions of § 348.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h) A savings association whose acquisition has been authorized on an emergency basis in accordance with section 13(k) of the Federal Deposit

Insurance Act (12 U.S.C. 1823(k)) with resulting dual service by a management official that would otherwise be prohibited under the Interlocks Act which may continue for up to 10 years from the date of the acquisition provided that the FDIC has given its approval for the continuation of such service; and

(i)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who is also a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The FDIC may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the FDIC.

(3) The FDIC may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 348.5 Regulatory Standards exemption.

(a) *Criteria*. The FDIC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 348.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the FDIC certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The FDIC, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions*. The FDIC applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption shall not apply to depository organizations subject to the Major Assets prohibition of § 348.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined by 12 CFR 303.14(a)(4) at the time the service under that section was approved.

(c) *Duration of interlock*. An interlock permitted under this section may continue until the FDIC notifies the affected depository organizations otherwise. The FDIC may require termination of any interlock permitted under this section if the FDIC concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The FDIC may shorten this period under appropriate circumstances.

§ 348.6 Management Consignment exemption.

(a) *Criteria*. The FDIC may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 348.3 if the FDIC, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the FDIC on a case-by-case basis.

(b) *Presumptions*. The FDIC applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14 and the institution had operated for less than two years at the time the service under 12 CFR 303.14 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the FDIC to serve as a director or a senior executive officer of that institution pursuant to 12 CFR 303.14 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 303.14 at the time service under that section was approved.

(c) *Duration of interlock*. An interlock granted under this section may continue for a period of two years from the date of approval. The FDIC may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 348.7 Change in circumstances.

(a) *Termination*. A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation,

or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the insured nonmember bank involved in the interlock for 15 months following the date of the change in circumstances. The FDIC may shorten this period under appropriate circumstances.

§ 348.8 Enforcement.

Except as provided in this section, the FDIC administers and enforces the Interlocks Act with respect to insured nonmember banks and their affiliates and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of an insured nonmember bank is subject to the primary regulation of another federal depository organization supervisory agency, then the FDIC does not administer and enforce the Interlocks Act with respect to that affiliate.

Dated at Washington, DC, this 16th day of July, 1996.

By order of the Board of Directors.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS revises part 563f of chapter V of title 12 of the Code of Federal Regulations to read as follows:

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

Authority: 12 U.S.C. 3201–3208.

§ 563f.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of savings associations, savings and loan holding companies, and affiliates of either.

§ 563f.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a savings association or savings and loan holding company based on common ownership does not exist if the OTS determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the OTS considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 574.9(a)(2);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (l)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the

business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(m) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The OTS will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The OTS will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee*.

(q) *Savings association* means:

(1) Any Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2));

(2) Any state savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) Any corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)) the deposits of which are insured by the Federal Deposit Insurance Corporation, that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(r) *Total assets*. (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(s) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 563f.3 Prohibitions.

(a) *Community*. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA*. A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $20 million or more.

(c) *Major assets*. A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 563f.4 Interlocking relationships permitted by statute.

The prohibitions of § 563f.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq*. and 12 U.S.C. 611 *et seq*., respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The OTS may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the OTS.

(3) The OTS may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period; and

(i) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has

issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (i) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the OTS has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

§ 563f.5 Regulatory Standards exemption.

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the OTS certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The OTS, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The OTS applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock will not have an anticompetitive effect if it involves depository organizations that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption shall not apply to depository organizations subject to the Major Assets prohibition of § 563f.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to 12 CFR 574.9; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 574.9 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the OTS notifies the affected depository organizations otherwise. The OTS may require termination of any interlock permitted under this section if the OTS concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock, unless the order terminating the interlock provides otherwise.

§ 563f.6 Management Consignment exemption.

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if the OTS, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than three years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the OTS on a case-by-case basis.

(b) *Presumptions.* The OTS applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to 12 CFR 574.9 and the institution had operated for less than two years at the time the service under 12 CFR 574.9 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by the OTS to serve as a director or senior executive officer of that institution pursuant to 12 CFR 574.9 and the institution was not in compliance with minimum capital requirements or otherwise was in a ''troubled condition'' as defined under 12 CFR 574.9 at the time service under that section was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The OTS may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 563f.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The OTS may shorten this period under appropriate circumstances.

§ 563f.8 Enforcement.

Except as provided in this section, the OTS administers and enforces the Interlocks Act with respect to savings associations, savings and loan holding companies, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings association or savings and loan holding company is subject to the primary regulation of another Federal depository organization

supervisory agency, then the OTS does not administer and enforce the Interlocks Act with respect to that affiliate.

§ 563f.9 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

Dated: July 1, 1996.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–19400 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 931

[No. 96–48]

Modification of Definition of Deposits in Banks or Trust Companies

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) has adopted a final rule to modify the definition of ''deposits in banks or trust companies'' in the Finance Board's regulations. The final rule will: Make clear that the term ''banks'' includes savings associations; and expressly include federal funds transactions as eligible to fulfill the liquidity requirement imposed on the Federal Home Loan Banks (FHLBanks) by section 11(g) of the Federal Home Loan Bank Act (Bank Act).

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408–2505, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under section 11(e)(1) of the Bank Act, the FHLBanks have the power to accept deposits from their members, other FHLBanks, or instrumentalities of the United States. See 12 U.S.C. 1431(e)(1). To ensure that each FHLBank has sufficient liquid assets to meet deposit withdrawal demands, section 11(g) of the Bank Act imposes a liquidity requirement. *See id.* section 1431(g). The liquidity requirement provides that each FHLBank must invest, upon such terms and conditions as the Board of Directors of the Finance Board may prescribe, an amount equal to the current deposits the FHLBank holds in specified types of assets. *Id.* Among the specified assets are ''deposits in banks or trust companies.'' *Id.* section 1431(g)(2).

The phrase ''deposits in banks or trust companies'' appeared in, and has not been changed since enactment of, the Bank Act in 1932. See ch. 522, sec. 11, 47 Stat. 733 (July 22, 1932). The legislative history of section 11(g) of the Bank Act does not discuss use of the phrase, but suggests only that the purpose of the liquidity requirement is to ensure that the FHLBanks have sufficient liquid assets to meet their advance and deposit withdrawal demands. See *Bank Act: Hearings on S. 2959 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 72d Cong., 1st Sess. 36 (Jan. 14, 1932) (statement of John O'Brien, Assistant Legislative Counsel). Although the legislative history of section 11(g) is limited, a legal opinion issued several years after enactment of the Bank Act by the General Counsel of the Federal Home Loan Bank Board (Bank Board), the Finance Board's predecessor agency, stated that ''Congress, in using the phrase 'deposits in banks or trust companies' * * * intended to refer to those financial institutions which accept deposits in their regular course of business.'' [1] The Bank Board General Counsel based his determination on the plain meaning of the term ''banks'' at that time. *Id.* at 2–3. To decide if a financial institution is a ''bank'' for purposes of section 11(g)(2), ''the principal test or criterion * * * is whether the financial institution accepts deposits as one of the primary purposes for which it was created.'' *Id.* at 2. Since savings associations did not accept deposits at that time,[2] the Bank Board General Counsel concluded that ''savings associations did not fall within the strict meaning of 'banks.' '' Bank Board General Counsel opinion at 3.

In 1978, the Bank Board defined by regulation the phrase ''deposits in banks or trust companies'' to include a deposit in another FHLBank, a demand account with a Federal Reserve Bank, or a deposit in a depository designated by a FHLBank's board of directors that is a member of the Federal Reserve System (FRS) or the Federal Deposit Insurance Corporation (FDIC). See 43 FR 46835, 46836 (Oct. 11, 1978), codified at 12 CFR 521.5 (superseded). When the Bank Board adopted this definition, deposits in federal and some state savings associations were insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), and deposits in banks (and some savings banks) were insured by the FDIC. The Bank Board's regulation provided that only deposits in FDIC-insured institutions were eligible investments for purposes of the ''deposits in banks or trust companies'' provision of section 11(g) of the Bank Act. Since, generally speaking, only banks were members of (or, more precisely, insured by) the FDIC, deposits in FSLIC-insured savings associations could not be counted toward the liquidity requirement under the regulation. When Congress abolished the Bank Board and FSLIC in 1989, *see* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board transferred the definition of ''deposits in banks or trust companies,'' without any change in substantive or technical matters, to § 931.5 of its regulations. See 54 FR 36757 (Aug. 28, 1989), codified at 12 CFR 931.5.

On September 22, 1993, the Board of Directors of the Finance Board approved for publication a proposed rule to modify the definition of ''deposits in banks or trust companies'' in § 931.5 of its regulations. The notice of proposed rulemaking (Notice) was published in the Federal Register on September 29, 1993, with a 60-day public comment period that closed on November 29, 1993. See 58 FR 50867 (Sept. 29, 1993). The Notice proposed to make two changes to the definition of ''deposits in banks or trust companies.'' First, it

[1] *See* Bank Board General Counsel opinion 015 (Dec. 7, 1936) at 1–2. The Bank Board General Counsel concluded that ''Congress * * * intended to limit the trust companies authorized to receive [FHLBank] deposits to those which actually receive deposits as part of their regular course of business.'' *Id.* at 4.

[2] See *e.g.,* Home Owners' Loan Act of 1933 (HOLA), ch. 64, sec. 5(b), 48 Stat. 132 (June 13, 1993) (savings and loan associations ''shall raise their capital only in the form of payments on such shares as are authorized in their charger * * * no deposits shall be accepted''); Horace Russell, *Savings and Loan Associations* 166–67, n.21 (1956) (''savings and loan associations * * * issue savings accounts, sometimes called share accounts and sometimes share savings accounts * * * by federal law, the use of the word 'deposit' by savings and loan associations is prohibited''); *Indep Bankers Ass'n of Am.* v. *Clarke,* 917 F.2d 1126, 1128 (8th Cir. 1990) (''traditionally, of course, and originally, savings and loan associations * * * did not accept demand deposits'').

proposed to replace the reference to depositories that are FRS or FDIC members with a reference to banks, as defined in section 3 of the Federal Deposit Insurance Act (FDI Act), see 12 U.S.C. 1813(a), and trust companies that are members of the FRS or insured by the FDIC. The intent of this modification was to make clear that deposits in savings associations would continue to be ineligible investments for purposes of section 11(g) of the Bank Act. Second, the Notice proposed to expand the definition to specifically include as deposits the sale of federal funds.

II. Analysis of the Final Rule

A. Meaning of the Term ''Banks''

In the Notice, the Board of Directors of the Finance Board proposed to limit the meaning of ''banks'' to those institutions included in the technical definition of the term ''banks'' under the FDI Act. Under that definition, the term ''banks'' does not include savings associations. See *id.* section 1813 (a), (b). As a result of reviewing the comments received by the Finance Board, one from a FHLBank and the other from an industry trade association, and the factors discussed below, the Board of Directors of the Finance Board has determined that deposits in savings associations should be eligible investments for purposes of the liquidity requirement in section 11(g) of the Bank Act. The Board of Directors of the Finance Board has modified the proposed rule to make clear that the term ''banks'' will include savings associations for purposes of section 11(g)(2) of the Bank Act. The public comments support this interpretation.

Neither the legislative history of the Bank Act nor the Bank Board in adopting its regulatory definition, articulated any policy reasons to support the exclusion of deposits in FSLIC-insured savings associations. See *supra* section I. One commenter suggested that the rationale for the exclusion of savings associations might have been to avoid any conflict of interest that might arise as a result of placing deposits in FHLBank member institutions. If this was the concern when Congress enacted the Bank Act in 1932, or when the Bank Board promulgated its regulatory definition in 1978, it was obviated in 1989, when banks for the first time became eligible as FHLBank members. See FIRREA, sec. 704(a), codified at 12 U.S.C. 1424(a)(1). The commenter urged the Finance Board to treat bank and savings association FHLBank members equally.

The other commenter offered that the reason for disparate treatment of banks and savings associations might have been to ensure that FHLBank liquidity deposits be transacted only with ''low-risk'' counterparties, implying that FDIC-insured deposits were less risky than FSLIC-insured savings accounts. Because Congress dissolved FSLIC in 1989 and transferred responsibility for administering the insurance funds for both savings associations and banks to the FDIC, see FIRREA, sections 401(a)(1), 205, the commenter argued that, if there ever were such differences, there are now no material differences in overall credit risk between deposits in FDIC-insured banks and deposits in FDIC-insured savings associations. The commenter pointed out also that sound financial management and the dictates of the Finance Board's Financial Management Policy, see Board of Directors Res. 93–133 (Dec. 15, 1993), Board of Directors Dec. Mem. 94–DM–48 (Nov. 10, 1994), require the FHLBanks to select only the most creditworthy counterparties.

Permitting the FHLBanks to count deposits in savings associations towards the statutory liquidity requirement also is sound as a matter of statutory construction. Congress enacted the Bank Act a year before it created the FDIC. See ch. 89, sec. 8, 48 Stat. 168 (June 16, 1933). Thus, the technical definition of the term ''bank'' provided for purposes of deposit insurance coverage could not have been the contemplated meaning of the word as used in section 11(g)(2) of the Bank Act. See *supra* section I. It appears that Congress' intent in using the phrase ''deposits in banks or trust companies'' was to permit the FHLBanks to make deposits only in financial institutions that accepted deposits in the ordinary course of their business. *Id.* Clearly, the plain meaning of the term ''bank'' at the time Congress enacted the Bank Act was a financial institution that accepts deposits. *Id.* This also is the ordinary dictionary definition of the term ''bank'' today.[3]

Although there continue to be differences between banks and savings associations, even the courts have acknowledged that ''the clear, bright-line distinctions between commercial banks and savings and loans have, over the years, gradually become blurred.'' *Indep. Bankers,* 917 F.2d at 1128. Indeed, for purposes of other statutes, the term ''banks'' has been defined to include savings associations, and vice versa. For example, under HOLA, the Office of Thrift Supervision considers certain types of banks to be savings associations for purposes of the qualified thrift lender test. See 12 U.S.C. 1467a(1)(A), (l); 12 CFR 583.21. Further, under the Internal Revenue Code, the meaning of the term ''bank'' includes savings associations for purposes of assessing taxes on certain situations common to both types of financial institutions. See 26 U.S.C. 581; Horace Russell, *Savings and Loan Associations* 307 (2d ed. 1960) (''black,' therefore, is 'white' ''). And, for purposes of the McFadden Act, 12 U.S.C. 36, which authorizes national banks to establish branches only to the extent that state banks within the same state may branch under state law, the Comptroller of the Currency has determined that savings associations are state banks. Several courts have upheld as reasonable the Comptroller of the Currency's determination.

For all of the above reasons, including the fact that savings associations now have statutory authority to accept deposits,[4] it is reasonable for the Board of Directors of the Finance Board to conclude that deposits in savings associations should be eligible investments for purposes of section 11(g) of the Bank Act.

B. Federal Funds Transactions

The Board of Directors of the Finance Board has adopted the provisions of the Notice that concern federal funds transactions as proposed. The Board of Directors of the Finance Board has decided that federal funds transactions, which are highly liquid investments essentially equivalent to deposits, constitute investments that are ''deposits'' within the meaning of section 11(g)(2) of the Bank Act. Therefore, the final rule amends § 931.5 to include expressly the sale of federal funds to banks and trust companies as a deposit the FHLBanks may use to fulfill the liquidity requirement in section 11(g) of the Bank Act. Since the Board of Directors of the Finance Board has concluded that the term ''banks'' includes savings associations, savings associations, as well as banks and trust companies, are eligible counterparties

[3] ''A bank is an institution * * * whose business it is to receive money on deposit * * *.'' 131 Black's Law Dictionary (5th ed. 1979). The word ''bank'' means ''an institution for receiving, lending, exchanging, and safeguarding money.'' 106 The Random House College Dictionary (rev. ed. 1980) (emphasis added).

[4] In 1968, Congress amended section 5(b) of HOLA. See Pub. L. 90–448, Title XVII, sec. 1716(a), 82 Stat. 608 (Aug. 1, 1968); *supra* n.2. The amendment eliminated provisions that permitted savings associations to raise their capital only in the form of payments on shares and prohibited acceptance of deposits, and inserted provisions permitting savings associations to raise capital in the form of savings deposits, shares, or other accounts. *Id.*, codified at 12 U.S.C. 1464.

for federal funds transactions. The public comments received by the Finance Board support this interpretation.

For purposes of the final rule, a sale of federal funds means either a conventional federal funds transaction or a correspondent-respondent federal funds transaction. A conventional sale of federal funds involves the unsecured sale of funds held by a FHLBank in an account maintained at its district Federal Reserve Bank to a bank in need of additional funds to meet its statutory reserve requirement.[5] A correspondent-respondent federal funds sale involves the sale of unsecured funds directly from a FHLBank (the respondent) to a correspondent bank in need of funds to meet its statutory reserve requirement.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq*., the FHLBanks are not ''small entities.'' *Id*. section 601(6). Since this final rule applies only to the FHLBanks, it does not impose any additional regulatory requirements on small entities. Thus, in accordance with section 605(b) of the RFA, *Id*. section 605(b), the Board of Directors of the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 931

Banks, banking, Federal home loan banks.

Accordingly, the Board of Directors of the Federal Housing Finance Board hereby amends chapter IX, title 12, part 931, Code of Federal Regulations, as follows:

PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1427, and 1431(g).

2. Section 931.5 is revised to read as follows:

§ 931.5 Deposits in banks or trust companies.

Include:

(a) A deposit in another Bank;

(b) A demand account in a Federal Reserve Bank; and

(c) A deposit in, or a sale of federal funds to:

(1) An insured depository institution, as defined in section 2(12)(A) of the Act (12 U.S.C. 1422(12)(A)), that is designated by the Bank's board of directors; or

(2) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by the Bank's board of directors.

Dated: July 3, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 96–19525 Filed 8–1–96; 8:45 am]

BILLING CODE 6725–01–U

[5] Section 19(b)(2)(A) of the Federal Reserve Act requires each depository institution to maintain reserves against its transaction accounts, as the FRS Board of Governors may prescribe, for the purpose of implementing monetary policy. See 12 U.S.C. 461(b)(2)(A). These reserves are commonly referred to as ''federal funds.'' A depository institution meets the reserve requirement by maintaining accounts at its direct Federal Reserve Bank or by holding cash in its vaults. A depository institution may sell excess reserves to another depository institution in need of additional funds to meet its reserve requirement.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–04; Amendment 39–9705, AD 96–08–01 R1]

Airworthiness Directives; Hamilton Standard Model 14RF–9 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises airworthiness directive (AD) 96–08–01, that is applicable to Hamilton Standard Model 14RF–9 propellers. The current AD superseded priority letter AD 95–24–09, and requires an ultrasonic shear wave inspection, adds a one-time visual and fluorescent penetrant inspection, and repair of the propeller blade shank. This revision will add a new shank eddy current inspection and will allow repair of certain blade shanks removed from service under the current AD. The actions specified by this AD are intended to prevent propeller blade separation due to propeller blade shank cracking that can result in loss of control of the aircraft.

DATES: Effective August 2, 1996.

The incorporation by reference of Hamilton Standard Service Bulletins (SB) Nos. 14RF–9–61–86, Revision 4, dated November 9, 1995, Alert Service Bulletin No. 14RF–9–61–A90, Original, dated November 9, 1995, and Alert Service Bulletin No. 14RF–9–61–A92, Revision 2, dated March 6, 1996, and listed in the regulations was approved by the Director of the Federal Register as of May 1, 1996 (61 FR 16618, 4/16/96). The incorporation by reference of Hamilton Standard Service Bulletin No. 14RF–9–61–105, Original, dated July 24, 1996, is approved by the Director of the Federal Register as of August 2, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–04, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address:''epd-adcomments@mail.hq.faa.gov''. All comments must contain the Docket No. in the subject line of the comment. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010; telephone (203) 654–6876. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On April 1, 1996, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 96–08–01, applicable to Hamilton Standard Model 14RF–9 propellers, which superseded priority letter AD 95–24–09, and requires an ultrasonic shear wave inspection for cracks or surface indications, a one-time visual and flourescent penetrant inspection for mechanical damage, and repair of the propeller blade shank. That action was prompted by a report of an inflight loss of a Hamilton Standard Model 14RF–9 propeller blade installed on an Embraer EMB–120 aircraft. The loss of the propeller blade resulted in the subsequent loss of the propeller and portions of the gearbox. The propeller blade separated due to a crack approximately 9 inches from the butt end of the blade. The FAA determined that the crack initiated on the outer

surface of the blade shank in an area of mechanical damage induced as a result of a localized interference condition between the blade spar and the foam mold which occurred during blade manufacture. That condition, if not corrected, could result in propeller blade separation due to propeller blade shank cracking, which could result in loss of control of the aircraft.

Since the issuance of that AD, the manufacturer has developed new inspection and repair procedures for mechanical damage (dents) greater than .005 inches deep to a maximum of .010 inches in depth. The new inspection and repair procedures will ensure that the structural integrity of the blades is maintained. Also, the new inspection and repair procedures will allow certain blades having dents greater than .005 inches deep that were removed from service in accordance with AD 96–08–01 to be inspected and repaired in accordance with Hamilton Standard Service Bulletin No. 14RF–9–61–105, dated July 24, 1996, and returned to service.

The new inspection procedure can find damage in areas of the propeller blade shank that might have been damaged by interference with the propeller blade foam mold during manufacture. The damage will be visible when the overlying fiberglass and adhesive layers are removed. Prior to returning damaged propeller blades to service, blades must be repaired in accordance with the applicable service or alert service bulletin.

The FAA has reviewed and approved the technical contents of Hamilton Standard Service Bulletin (SB) No. 14RF–9–61–86, Revision 4, and Alert Service Bulletin (ASB) No. 14RF–9–61–A90, both dated November 9, 1995, that describe procedures for an ultrasonic shear wave inspection of propeller blade shanks for cracks or surface indications; and Hamilton Standard ASB No. 14RF–9–61–A92, Revision 2, dated March 6, 1996, that describes procedures for an inspection and repair for mechanical damage. In addition, the FAA has reviewed and approved the technical contents of Hamilton Standard SB No. 14RF–9–61–105, Original, dated July 24, 1996, which describes eddy current inspection and repair procedures for those propeller blades with dents that exceed .005 inches deep to a maximum of .010 inches in depth.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD revises AD 96–08–01, by adding a new paragraph (d) which allows inspection and repair of propeller blades with mechanical damage greater than .005 inches deep to a maximum of .010 inches in depth in accordance with Hamilton Standard Service Bulletin No. 14RF–9–61–105, dated July 24, 1996. This revision will also enable those propellers that were removed from service in accordance with AD 96–08–01, and that are determined repairable in accordance with SB 14RF–9–61–105, to be returned to service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–04.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is revised to read as follows:

96–08–01R1 Hamilton Standard: Amendment 39–9707. Docket No. 96–ANE–04, revises AD 96–08–01, Amendment No. 39–9567.

Applicability: Hamilton Standard Model 14RF–9 propellers, installed on but not limited to Embraer EMB–120 series aircraft.

Note: This airworthiness directive (AD) applies to each propeller 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 propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the Federal Aviation Administration (FAA). This approval may

address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade separation due to propeller blade shank cracking, which could result in loss of control of the aircraft, accomplish the following:

(a) Propeller blades that have been ultrasonically shear wave inspected in accordance with the requirements of AD 95–24–09 or AD 96–08–01 need not undergo another ultrasonic shear wave inspection in accordance with paragraph (b) of this AD. All affected propeller blades with S/N's less than 885751, however, must be inspected for mechanical damage in accordance with paragraph (c) of this AD by August 31, 1996. Propeller blades with S/N's less than 885751 that have not been ultrasonically shear wave inspected in accordance with AD 95–24–09 or AD 96–08–01 must undergo ultrasonic shear wave inspection in accordance with paragraph (b) of this AD prior to further flight, and must be inspected for mechanical damage in accordance with paragraph (c) of this AD by August 31, 1996; or must be inspected for mechanical damage in accordance with paragraph (c) of this AD prior to further flight.

(b) Prior to further flight, perform an ultrasonic shear wave inspection for cracks or surface indications in accordance with the applicable Hamilton Standard Service Bulletin (SB) or Alert Service Bulletin (ASB) described in paragraphs (b)(1) and (b)(2) of this AD unless accomplished previously in accordance with AD 95–24–09 or AD 96–08–01. Prior to further flight, remove from service propeller blades with ultrasonic shear wave readings that exceed the acceptable limits described in the applicable SB or ASB, and replace with serviceable propeller blades:

(1) Inspect, and if necessary, remove and replace with a serviceable propeller blade, in accordance with the Accomplishment Instructions of Hamilton Standard SB No. 14RF–9–61–86, Revision 4, dated November 9, 1995, propeller blade shanks with propeller blade spars, Part Number (P/N) 792231–1. These propeller blades may be identified by, but not limited to, Serial Numbers (S/N's) 853445 and higher except for the S/N's listed in Table 1 of this SB. Propeller blades inspected in accordance with the Original, Revision 1, Revision 2, or Revision 3 of Hamilton Standard SB No. 14RF–9–61–86, and which passed inspection, need not be ultrasonically shear wave inspected again.

(2) Remove propeller blade for off-wing inspection, inspect, and if necessary, replace with a serviceable propeller blade, in accordance with the Accomplishment Instructions of Hamilton Standard ASB No. 14RF–9–61–A90, dated November 9, 1995, propeller blade shanks with propeller blade spars, P/N 782683–1. These propeller blades may be identified by, but not limited to, S/N's less than 853445, and propeller blades with S/N's greater than 853445 that are listed in Table 1 of this ASB.

(c) Perform a one-time visual and fluorescent penetrant inspection of the propeller blade shank for mechanical damage by August 31, 1996, in accordance with the Accomplishment Instructions of Hamilton Standard ASB No. 14RF–9–61–A92, Revision 2, dated March 6, 1996, on all propeller blade shanks with S/N's before 885751. Propeller blades inspected in accordance with the original or Revision 1 of Hamilton Standard ASB No. 14RF–9–61–A92, and which passed inspection or were repaired, need not be inspected again.

(1) Prior to further flight, remove from service propeller blades with mechanical damage that exceed repair limits specified in ASB No. 14RF–9–61–A92, Revision 2, dated March 6, 1996, and replace with serviceable parts.

(2) Prior to further flight, repair propeller blades with repairable damage in accordance with the procedures described in ASB No. 14RF–9–61–A92, Revision 2, dated March 6, 1996.

(d) Propeller blades removed from service in accordance with paragraph (c) of this AD, may be returned to service provided the blades are inspected for cracks and repaired in accordance with the procedures described in Hamilton Standard SB No. 14RF–9–61–105, dated July 24, 1996. Blades with damage that exceed repair limits specified in Hamilton Standard SB 14RF–9–61–105, dated July 24, 1996, cannot be returned to service.

(e) 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, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(f) 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 aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be performed in accordance with Hamilton Standard Service Bulletin (SB) No. 14RF–9–61–86, Pages 1–34, Revision 4, dated November 9, 1995, Hamilton Standard Alert SB No. 14RF–9–61–A90, Pages 1- 39, Original, dated November 9, 1995; Hamilton Standard Alert SB No. 14RF–9–61–A92, Pages 1–44, Revision 2, dated March 6, 1996, and Hamilton Standard SB No. 14RF–9–61–105, Pages 1–23, Original, dated July 24, 1996. The incorporation of Hamilton Standard ASB Nos. 14RF–9–61- 86, 14RF–9–61–A90, and 14RF–9–61–A92, was approved previously in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 1, 1996 (61 FR 16618, 4/16/96). The incorporation by reference of Hamilton Standard Service Bulletin No. 14RF–9–61–105, Pages 1–23, Original dated July 24, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 2, 1996. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010; telephone (203) 654–6876. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment revises AD 96–08–01, issued April 1, 1996.

(i) This amendment becomes effective on August 2, 1996.

Issued in Burlington, Massachusetts, on July 27, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–19560 Filed 7–31–96; 10:38 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–012]

Establishment of Class E Airspace; Grants Pass, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Grants Pass, Oregon, Class E airspace to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Grants Pass Airport.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–012, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On June 12, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Grants Pass, Oregon, to accommodate a new GPS SIAP to the Grants Pass Airport (61 FR 29699). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations establishes Class E airspace at Grants Pass, Oregon. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ANM OR E5 Grants Pass, OR [New]

Grants Pass Airport, OR
(lat. 42°30′37″N, long. 123°23′17″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Grants Pass Airport and within 7 miles each side of a 331° bearing from the Grants Pass Airport extending from the 7-mile radius to 25 miles northwest of the airport.

* * * * *

Issued in Seattle, Washington, on July 23, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–19675 Filed 8–1–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANM–013]

Establishment of Class E Airspace; Libby, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Libby, Montana, Class E airspace to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Libby Airport.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT:

James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–013, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On June 12, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Libby, Montana, to accommodate a new GPS SIAP to the Libby Airport (61 FR 29700). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations establishes Class E airspace at Libby, Montana. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ANM MT E5 Libby, MT [New]

Libby Airport, MT
(lat. 48°17′02″N, long. 115°29′25″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Libby Airport and within 4 miles each side of the 345° bearing from the Libby Airport extending from the 7-mile radius to 10 miles northwest of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 48°19′00″N, long. 115°50′00″W; to lat. 48°19′00″N, long. 115°16′00″W; to lat. 48°45′00″N, long.

115°22′00″W; to lat. 48°45′00″N, long. 115°50′00″W, to the point of beginning.

* * * * *

Issued in Seattle, Washington, on July 23, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–19674 Filed 8–1–96; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging

CFR Correction

In Title 16 of the Code of Federal Regulations, parts 1000 to End, revised as of January 1, 1996, on page 685, in § 1700.14, paragraph (a)(25) was inadvertently omitted. The omitted text should read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(25) *Naproxen.* Naproxen preparations for human use and containing the equivalent of 250 mg or more of naproxen in a single retail package shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73 and 184

[Docket No. 93G–0017]

Direct Food Substances Affirmed as Generally Recognized as Safe; Listing of Color Additives Exempt From Certification; Ferrous Lactate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that ferrous lactate is generally recognized as safe (GRAS) as a color fixative on ripe olives. The agency is adding this use of ferrous lactate as a color fixative on ripe olives to the other uses for ferrous lactate. The agency is also amending this regulation to permit additional methods of synthesis for ferrous lactate. This action is in response to a petition filed by Purac America, Inc. The agency, on its own initiative, is also amending its color additive regulations to provide for the safe use of ferrous lactate for the coloring of ripe olives.

DATES: The amendments to § 184.1311 (21 CFR 184.1311) will be effective on August 2, 1996. New § 73.165 will be effective on September 4, 1996, except as to any provisions that may be stayed by the filing of proper objections; written objections by September 3, 1996. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications listed in § 184.1311(b), effective August 2, 1996; and in new § 73.165(b) effective September 4, 1996.

ADDRESSES: Submit written objections to new § 73.165 to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3074.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in 21 CFR 170.35, Purac America, Inc., c/o 700 13th St. NW., suite 1200, Washington, DC 20005, submitted a petition (GRASP 3G0396) requesting that the regulations in § 184.1311 be amended to affirm that ferrous lactate is GRAS as a color fixative in black olives.

FDA published a notice of filing of this petition in the Federal Register of December 27, 1993 (58 FR 68437), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Also, in this notice, FDA announced that, on its own initiative, the agency would amend the color additive regulations to provide for the safe use of ferrous lactate as a color additive for the coloring of ripe olives. No comments were received in response to this notice of filing.

Since the filing of this petition, the agency has come to recognize that ferrous lactate is being used as a color fixative in ripe, rather than black, olives. The Agricultural Marketing Service of the U. S. Department of Agriculture defines ''ripe type'' olives as ''* * * those which have been treated and oxidized in processing to produce a typical dark brown to black color'' (7 CFR 52.3752(a)). Also, in 21 CFR 73.160, the use of ferrous gluconate is approved for the coloring of ripe olives. Ferrous lactate is a potential substitute for ferrous gluconate. Therefore, to maintain consistency, the agency will refer to ripe olives instead of black olives.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation but ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the food ingredient (§ 170.30(c)). In its petition, Purac America, Inc., relied on the scientific procedures that have been used to support the regulated uses of ferrous lactate in § 184.1311, and on additional submitted published and unpublished data, to establish that ferrous lactate is GRAS for use as a color fixative on ripe olives.

III. Use, Estimated Exposure Levels, and Synthesis of Ferrous Lactate

Ferrous lactate is currently affirmed as GRAS for use as a nutrient supplement under § 184.1311. Because ferrous lactate is used interchangeably with several other iron salts that also may be used as nutrient supplements, FDA considered the exposure to ferrous lactate resulting from its use on ripe olives in relation to total exposure from iron.

Based on information supplied in the petition, FDA has estimated that the exposure to iron from the consumption of ferrous lactate-treated olives would be no greater than 0.14 milligrams per person per day (mg/person/day) (Ref. 1).

This represents a small contribution to the reference daily intake (RDI) of 18 mg/day for iron (21 CFR 104.20(d)(3)). As ferrous lactate can replace ferrous gluconate for coloring or fixing color in ripe olives, no actual increase in exposure to iron is expected.

Lactic acid is GRAS (21 CFR 184.1061) and is a ubiquitous component of the human body. FDA has estimated that exposure to lactate from the petitioned use would not contribute significantly to the overall dietary exposure to lactate (Ref. 1).

Section 184.1311(a) describes ferrous lactate as a greenish-white powder prepared by reacting calcium lactate or sodium lactate with ferrous sulfate or by direct reaction of lactic acid with iron filings. The petitioner described two additional methods for preparing ferrous lactate: (1) Reaction of ferrous chloride with sodium lactate and (2) reaction of ferrous sulfate with ammonium lactate.

The petitioner also submitted a draft copy of specifications for ferrous lactate that has been incorporated into the 4th edition of the Food Chemicals Codex recently published by the National Academy of Sciences. The agency has reviewed these additional methods of synthesis and specifications for ferrous lactate and has concluded that they are acceptable (Ref. 1).

IV. Safety

FDA discussed the safety of ferrous lactate in a proposal that published in the Federal Register on April 21, 1987 (52 FR 13086). As noted above, ferrous lactate is affirmed as GRAS for use as a nutrient in food under § 184.1311. Ferrous lactate is also recognized as a coloring adjunct and nutrient by the Food and Agriculture Organization/ World Health Organization and the Joint Expert Committee on Food Additives. Ferrous lactate is listed as a color retention agent in the Registry of Food Additives of the European Communities. Ferrous lactate is also listed by the Spanish Ministry of Health for color fixation of black olives. The petitioner has relied primarily on the above data to support its proposed use of ferrous lactate as a color fixative for ripe olives.

FDA has considered the information in the petition, along with other available information, concerning ferrous lactate and other iron salts and has concluded that ferrous lactate is safe for use as a color fixative for ripe olives (Ref. 2). This determination is based on the fact that lactate is a normal constituent of food and a normal intermediary metabolite in humans. Ferrous salts are present in many foods, particularly meats and poultry and are used as nutrients in food processing. The exposure to iron from the consumption of ferrous lactate-treated olives represents only a small contribution to the RDI of 18 mg/day for iron.

V. Conclusions on Use of Ferrous Lactate as a Color Fixative on Ripe Olives

FDA has evaluated all of the available information on ferrous lactate. Based on its review, the agency concludes that the data are adequate to demonstrate the safety of ferrous lactate for the petitioned use. Therefore, the agency concludes, based upon scientific procedures, that ferrous lactate is GRAS for use as a color fixative on ripe olives at levels consistent with current good manufacturing practice. The agency is therefore amending § 184.1311 to provide for this use.

The agency is also amending § 184.1311 to provide for the additional methods of synthesis for ferrous lactate that were discussed above. Additionally, the agency is amending § 184.1311 to require that the ingredient meets the specifications listed in the Food Chemicals Codex. In the existing GRAS regulation for food use of ferrous lactate (§ 184.1311), the agency indicated that it was developing specifications for ferrous lactate in cooperation with the National Academy of Sciences. The agency, as noted above, has reviewed the specifications for ferrous lactate that published in the 4th edition of the Food Chemicals Codex and has found them acceptable. Therefore, the agency is amending § 184.1311 to require that ferrous lactate meet the specifications in the Food Chemicals Codex, 4th edition, pages 154 and 155.

VI. Use of Ferrous Lactate as a Color Additive

In the document announcing the filing of Purac America, Inc.'s, GRAS affirmation petition for ferrous lactate, FDA proposed, on its own initiative, to amend the color additive regulations in part 73 (21 CFR part 73) to provide for the safe use of ferrous lactate as a color additive for the coloring of ripe olives. The agency undertook this action because of questions as to whether ferrous lactate, when used for the petitioned purpose, is functioning as a color fixative or as a color additive. Section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(b)(4), provides that ''* * * a color additive shall be deemed to be suitable and safe for the purpose of listing under this subsection for use generally in or on food, while there is in effect a published finding of the Secretary declaring such substance exempt from the term 'food additive' because of its being generally recognized by qualified experts as safe for its intended use, as provided in section 201(s).'' Therefore, to eliminate any questions with respect to the use of ferrous lactate on ripe olives, the agency proposed to amend part 73 to provide for the safe use of ferrous lactate for the coloring of ripe olives.

Having concluded that ferrous lactate is GRAS for use as a color fixative on ripe olives, the agency is amending part 73 to provide for the use of ferrous lactate as a color additive for the coloring of ripe olives.

The agency has also determined that the Food Chemicals Codex specifications for ferrous lactate are acceptable for the color additive use of ferrous lactate in coloring ripe olives, and in the regulation, the agency is requiring that the substance conform to these specifications. Section 721(c) of the act provides that GRAS substances when listed as color additives are exempt from certification. Therefore, ferrous lactate, when used as a color additive for coloring ripe olives, is exempt from certification.

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Effect

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

VIII. Economic Effects of GRAS Affirmation

FDA has examined the economic implications of this final rule affirming that the use of ferrous lactate is GRAS as a color fixative on ripe olives and of amending § 184.1311 to permit

additional methods of synthesis for ferrous lactate under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses.

FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. The compliance costs to firms are zero because no current activity is prohibited by affirming the GRAS status of ferrous lactate as a color fixative for ripe olives, or by amending the regulations to permit additional methods of synthesis for ferrous lactate. Because this final rule will not increase the health risks faced by consumers, total health costs are also zero. Potential benefits include the ability to use additional methods to synthesize ferrous lactate and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this substance.

Affirming that ferrous lactate is GRAS as a color fixative for ripe olives under conditions of current good manufacturing practice and permitting additional methods of synthesis for ferrous lactate will expand the formulation possibilities for food manufacturers, including small businesses. Therefore, in accordance with the Regulatory Flexibility Act, FDA has also determined that this rule will have a positive impact on small businesses.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memoranda from Chemistry Review Branch, HFS–247, to Direct Additives Branch, HFS–217, dated December 19, 1994, July 28, 1995, and November 21, 1995.

2. Memorandum from Additives Evaluation Branch no. 1, HFS–226, to Direct Additives Branch, HFS–217, dated September 9, 1993.

X. Objections to § 73.165

Any person who will be adversely affected by new § 73.165 may at any time on or before September 3, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

List of Subjects

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drug and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 73 and 184 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. New § 73.165 is added to subpart A to read as follows:

§ 73.165 Ferrous lactate.

(a) *Identity.* The color additive ferrous lactate is the ferrous lactate defined in § 184.1311 of this chapter.

(b) *Specifications.* Ferrous lactate shall meet the specifications given in the Food Chemicals Codex, 4th ed. (1996), pp. 154 to 155, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) *Uses and restrictions.* Ferrous lactate may be safely used in amounts consistent with good manufacturing practice for the coloring of ripe olives.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirements of section 721(c) of the Federal Food, Drug, and Cosmetic Act (the act).

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

3. Section 184.1311 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 184.1311 Ferrous lactate.

(a) Ferrous lactate (iron (II) lactate, $C_6H_{10}FeO_6$, CAS Reg. No. 5905–52–2) in the trihydrate form is a greenish-white powder or crystalline mass. It is prepared by reacting calcium lactate or sodium lactate with ferrous sulfate, direct reaction of lactic acid with iron filings, reaction of ferrous chloride with sodium lactate, or reaction of ferrous sulfate with ammonium lactate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 4th ed. (1996), pp. 154 to 155, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in

§ 170.3(o)(20) of this chapter and as a color fixative for ripe olives, with no other limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

* * * * *

Dated: July 19, 1996.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–19305 Filed 8–1–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 93N–0153]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims and Health Claims; Restaurant Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to remove the provisions that exempt restaurant menus from the requirements for how nutrient content claims and health claims are to be made and from the requirements for the provision of nutrition information with respect to the nutrients that are the basis for the claim, when claims are made. Because a significant number of meals are consumed outside of the home, the extension of these requirements to menus will help to increase the awareness of the American consumer to the relationships between diet and health. FDA is issuing this final rule at this time in response to a decision by the United States District Court for the District of Columbia.

DATES: This regulation is effective May 2, 1997. Written comments on the information collection requirements should be submitted by October 1, 1996.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document. Persons who believe it would be useful for the agency to hold a public meeting on what is required by this rule should also send their letters to the Dockets Management Branch.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Requirements for Nutrition Labeling and Nutrient Content Claims and Health Claims

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the final regulations that implement the 1990 amendments (58 FR 2066, January 6, 1993, as modified at 58 FR 44020, August 18, 1993) provide for a number of fundamental changes in how food is labeled, including mandatory nutrition labeling on most foods, uniform definitions for terms that characterize the level of nutrients in a food, and the use of claims about the relationship between nutrients and diseases or health-related conditions. These changes apply to virtually all foods in the food supply, including foods sold in restaurants.

The provision on nutrition labeling that was added to the Federal Food, Drug, and Cosmetic Act (the act) by the 1990 amendments, section 403(q) (21 U.S.C. 343(q)), includes an exemption for foods that are served or sold in restaurants or other establishments in which food is served for immediate human consumption (section 403(q)(5)(A)(i)). This exemption, however, is contingent on there being no claims or other nutrition information on the label or labeling, or in the advertising, for the food. The use of nutrient content claims, health claims, or other nutrition information on the label or labeling of a food sold in a restaurant or other establishment in which food is served for immediate consumption will subject that food to the nutrition labeling provisions of the act (see sections 403 (q) and (r) of the act and § 101.9 (j)(2)(i) through (j)(2)(iii) (21 CFR 101.9 (j)(2)(i) through (j)(2)(iii))). Consistent with these provisions, in this discussion the term ''restaurant foods'' refers to foods served in restaurants and in other establishments in which food that is ready for human consumption is sold (e.g., institutional food service, delicatessens, catering) or sold only in such establishments. Firms selling such foods will be referred to as ''restaurants,'' and responsible individuals in these firms will be referred to as ''restaurateurs.''

In the January 6, 1993, final rules on nutrient content claims and health claims (entitled ''Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food'' (58 FR 2302); and ''Food Labeling; General Requirements for Health Claims for Food'' (58 FR 2478), respectively (hereinafter referred to as the ''nutrient content claims final rule'' and the ''health claims final rule,'' and collectively, as the ''claims final rules'')), the agency concluded that if claims on restaurant foods are to be useful to consumers, they must be valid. Thus, FDA stated that the same standards will apply to restaurant foods as to other foods with respect to basic definitions for nutrient content claims. FDA also stated that when a restaurant makes explicit or implied reference to a food or substance in food, and directly or indirectly links that substance to an effect on a disease or health-related condition (i.e., when both basic elements of a health claim are present), the restaurant must comply with the health claims regime (58 FR 2478 at 2516). At the same time, FDA acknowledged that how a restaurant demonstrates compliance with these requirements is a difficult matter. FDA pointed out, in the claims final rules (58 FR 2302 at 2386 and 58 FR 2478 at 2515), that it is not obligated under the act to regulate claims on restaurant foods in a manner identical to that in which it regulates claims on packaged foods. In the nutrient content claims final rule (58 FR 2302), the agency amended § 101.10 *Nutrition labeling of restaurant foods* (21 CFR 101.10) to provide flexibility for restaurants in determining compliance with FDA's requirements for the claims regime and in providing nutrition labeling for foods that bear a claim.

Consequently, although restaurant food must comply with the same standards as other foods to bear a claim, the way in which a restaurant determines the nutrient content of a food or meal, and the way in which nutrition information is communicated to consumers, may be different for restaurant foods than for foods from other sources. For example, § 101.10 provides that nutrient levels in restaurant foods may be determined through the use of nutrient data bases, cookbooks, or other reasonable bases that provide assurance that the food or meal meets the nutrient requirements for the claim. For compliance purposes,

a restaurant is required to provide information on its reasonable basis for making a claim. Further, restaurants making a claim are required to provide consumers, upon request, with nutrition information on the nutrient that is the subject of the claim. However, § 101.10 provides that nutrition labeling may be presented in various forms, including those provided in § 101.45 (21 CFR 101.45) for raw fruit, vegetables, and fish, or by other reasonable means.

Thus, although FDA encourages restaurants to provide full nutrition information according to § 101.9 whenever possible, the agency has determined that information on the nutrient amounts that are the bases for claims (e.g., if the claim is a ''low fat'' claim, the nutrition information must only state that ''this meal provides less than 10 grams of fat'') may, in a restaurant setting, serve as the functional equivalent of complete nutrition information as described in § 101.9. Further, this information may be provided by reasonable means, e.g., in a flier, brochure, poster, notebook, or orally. FDA concluded that these flexibilities (e.g., the ''reasonable basis'' criterion) would help to ensure that a restaurateur is provided with a readily achievable way to make claims for his or her food, while the consumer is provided with a reasonable assurance that the claim is valid (58 FR 2302 at 2387 and 58 FR 2478 at 2516).

The claims final rule contained two additional provisions. First, § 101.13(q)(5) (21 CFR 101.13(q)(5)) exempts nutrient content claims made on menus from the requirement that such claims comply with the requirements and definitions governing nutrient content claims. There is a similar provision with respect to health claims made on restaurant menus in §§ 101.10 and 101.14 with respect to nutrition labeling requirements for a restaurant food that makes a nutrient content claim or a health claim. The agency's decision to exempt restaurant menus from the requirements for nutrient content claims and health claims was based, in part, on the frequency with which menus change (sometimes daily) (58 FR 2302 at 2388 and 58 FR 2478 at 2517).

Second, because of concerns about the demands that the new labeling requirements would impose on small restaurants, FDA decided to use its enforcement discretion to delay for 1 year the effective date of its regulations governing the use of claims by these firms. The agency defined ''small restaurants'' as ''restaurant firms consisting of 10 or fewer establishments'' (58 FR 2302 at 2388 and 58 FR 2478 at 2517). Consequently, FDA provided that its requirements for health claims and nutrient content claims on restaurant labeling (except menus) would be effective on May 8, 1993, and May 8, 1994, respectively, for other than small restaurants (i.e., restaurant firms with more than 10 establishments), and on May 8, 1994, and May 8, 1995, for small restaurants.

FDA concluded that these additional measures of flexibility would help to ensure that restaurants, especially small restaurants, would not be deterred by the 1990 amendments from providing useful nutrition-related information to their customers. It is the latter two decisions that FDA decided to reconsider.

B. Decision to Reconsider

Among the final rules that FDA issued in the Federal Register of January 6, 1993, was one entitled ''Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments'' (58 FR 2066) (hereinafter referred to as the ''implementation final rule''). Among other things, the implementation final rule provided 30 days for the submission of comments on technical issues, such as inconsistencies or unintended consequences of specific provisions not raised in earlier comments. Two comments received during the technical comment period criticized the menu exemption and questioned its legality under both the 1990 amendments and the Administrative Procedure Act (the APA). One comment received during the technical comment period maintained that the effort required for small restaurants to comply with the new labeling requirements is no different from that required by medium and large restaurants. Another comment argued that delaying the effective dates for small restaurants is not consistent with the 1990 amendments.

After careful consideration of the comments and further study of the administrative record, the agency decided to reconsider these provisions. Based on its reconsideration, in the Federal Register of June 15, 1993 (58 FR 33055), FDA proposed to remove the exemption for menus from the coverage of the claims provisions. In this proposed rule (hereinafter referred to as the June 15, 1993, proposed rule), FDA tentatively concluded that the menu exemption is not consistent with the act or with the statutory charge provided by the 1990 amendments. FDA stated that it was concerned that health claims and nutrient content claims in menus will be of little utility if they fail to comply with the standards in the claims regulations, which are designed to ensure the validity of these claims. Further, FDA stated that the menu exemption could create a situation in which confusion about the valid information provided by authorized claims in non-menu labeling would result from the use of unauthorized claims in menus. FDA emphasized that (except for the deletion of the menu exemption) the proposed amendments do not alter the substance or status of the current regulations governing the use of nutrient content claims and health claims in restaurants (58 FR 33055 at 33057). Finally, the agency noted that it is virtually impossible to distinguish menus from other types of restaurant labeling, such as signs, placards, and other point of purchase information, that are covered by the claims final rules.

FDA also tentatively concluded that, in establishing dates of applicability for its requirements, it had no reasonable basis for differentiating among restaurants based on size. Consequently, the agency proposed to remove the provisions that delayed by 1 year the effective dates for compliance for small restaurants. However, because the agency was unable to publish a final rule before the May 8, 1994, and May 8, 1995, compliance dates for non-menu labeling, this aspect of the proposal, i.e., to shorten the delay in effective dates for small restaurant firms, is moot. Therefore, FDA is withdrawing that aspect of its June 15, 1993, proposed rule.

In deciding whether to publish a final rule, several concerns were raised for the agency's consideration. These concerns involved evaluation of the extent to which the nutrient content claims and health claims that were being made on restaurant menus failed to meet FDA's definitions, and of whether consumers were experiencing confusion or were concerned about variations between the labeling of restaurant and packaged foods. Concerns were also raised about whether both nutrient content claims and health claims needed to be covered, about whether the regulations would cause restaurants to stop making claims and/or the associated foods, and about what the effect of the regulations would be on small restaurants.

Before the agency had fully resolved these issues, other events intervened. As noted in the June 15, 1993, proposed rule, FDA had been sued by two public interest groups and two individuals on the grounds that the menu exemption violates the 1990 amendments and the Administrative Procedure Act *(Public*

Citizen, Inc., et al. v. *Shalala,* Civil Action No. 93 0509 (D.D.C.)). On June 28, 1996, the court declared that the parts of the regulations that exempted restaurant menus from the nutrient content claim and health claim provisions of the 1990 amendments are contrary to the statute and ordered FDA to amend its regulations to include menus. Therefore, FDA is issuing this final rule. However, as explained below, in doing so, the agency remains committed to ensuring that the changes made by this final rule do not adversely affect either small restaurants or the flow of information from restaurant menus to consumers.

II. Comments

The agency received 37 letters, each containing 1 or more comments on its June 15, 1993, proposed rule, from consumers and consumer groups, restaurateurs, trade associations, registered dieticians, academia, and State officials. Some letters supported the proposal to delete the exemption for restaurant menus, stating, for example, that exempting restaurant menus that make claims from the new labeling requirements would undermine the ability of consumers to make improved dietary choices. Conversely, other letters opposed applying the new labeling requirements to restaurant menus, stating that the requirements are burdensome and not appropriate for a restaurant situation. Many of these comments, however, expressed confusion as to how the agency would implement its requirements with respect to restaurant foods.

In response to the latter comments, FDA prepared a guidance document on the labeling of restaurant foods. The agency announced in the Federal Register of September 19, 1995 (60 FR 48516), the availability of the guidance document. The agency also published, as an appendix to that notice of availability, answers to some of the most frequently asked questions. The guidance document, entitled ''Food Labeling: Questions and Answers, Volume II; A Guide for Restaurants and Other Retail Establishments,'' explains how FDA will implement its requirements for restaurant labeling that bears a health claim or characterizes the level of a nutrient in a food.

Several comments addressed issues that are outside the scope of this rulemaking, such as modifying the criteria for nutrient content and health claims set out in the claims final rules. These comments are not responded to in this document. A summary of the comments that did address the proposal, and the agency's responses, follow.

A. Menu Exemption

1. A number of comments supported the proposal, stating that FDA is legally bound to include menus under the 1990 amendments. Comments stated that restaurant menus are labeling under the act and appropriate case law and, as such, are covered by the 1990 amendments. Comments further stated that Congress neither provided for nor intended an exemption for menus, and, therefore, FDA cannot grant one.

Other comments cited the importance of restaurant foods in the American diet, stating that applying the requirements of the 1990 amendments to menus would play a critical role in the ability of consumers to make healthy dietary choices. Comments maintained that menus are the primary means by which a consumer discovers information about the foods available in a restaurant. Thus, these comments argued, the new labeling requirements should apply to all types of restaurant labeling, including menus. As evidence of the need to apply the new requirements to restaurant menus, several comments submitted menus that, in their opinion, bear claims that do not comply with FDA's requirements.

Conversely, a number of comments maintained that many restaurateurs currently offer ''healthier'' menu items and promote the nutritional quality of these foods to consumers in a variety of ways that are truthful and not misleading. These comments maintained that applying the requirements of the 1990 amendments to restaurant menus is redundant and unnecessary because restaurant menus are already covered by section 403(a) of the act. Several comments stated that menus are also regulated by States and, because they are considered to be advertising, by the Federal Trade Commission (FTC).

FDA agrees that many restaurants currently provide consumers with useful information in a way that is not inconsistent with FDA's new requirements. Nonetheless, FDA concludes, based at least in part on the act, that it is necessary to make the proposed changes. Thus, the agency disagrees with the comments that state that applying the requirements of the 1990 amendments to restaurant menus is redundant and unnecessary.

As stated in the nutrient content claims final rule (58 FR 2302 at 2388), before the 1990 amendments, when restaurants provided nutrition information they were subject to § 101.10, FDA's pre-1990 amendment nutrition labeling regulation. FDA enforcement of that regulation was virtually nonexistent, however. Further, while section 403(a) of the act prohibits labeling that is ''false or misleading in any particular,'' section 403(r) provides for requirements with respect to claims that are in addition to those established in section 403(a) of the act. FDA's statutory charge under the 1990 amendments is to ensure that nutrient content claims and health claims made for food accurately characterize the food and are scientifically valid. Finally, although FTC has jurisdiction over national advertising, restaurant menus are more akin to labeling than advertising in their use and function. Thus, they are appropriately included within the regulatory scheme designed for food labeling.

FDA notes that restaurant foods are an important part of the food supply. As stated in the nutrient content claims final rule (58 FR 2302 at 2387), as much as 30 percent of the American diet is composed of foods prepared in food service operations. The agency agrees with comments that menus are a primary source of information for consumers making purchase decisions in a restaurant or other establishment where food is sold for immediate consumption.

In the claims final rules, the agency justified the menu exemption on the grounds that it will help ensure that restaurants are not deterred by the requirements of the 1990 amendments from providing useful nutrition-related information. FDA also noted that fast food chains and other restaurants frequently use non-menu media, such as posters and placards, to convey nutrition information to consumers, and stated that it would focus its efforts on these media. However, FDA notes that menus are used to present information about the choices available in a restaurant or other establishment in which food is served for immediate consumption. Consequently, FDA concludes that menus that bear a nutrient content claim, health claim, or other nutrition information have a significant bearing on the ability of consumers to select foods that are useful in maintaining healthy dietary practices. Therefore, FDA finds that claims on restaurant menus should be subject to the same standards as claims on other food labels and in labeling.

FDA finds that, if it were to maintain the exemption for restaurant menus, it would have no specific criteria for determining whether a nutrient content claim made in a menu appropriately describes the food, or for determining whether a health claim is scientifically valid. Consequently, there would be no assurance that claims made in

restaurant menus are consistent with claims on other restaurant labeling or on the labeling of other foods, or that such claims would help consumers select foods that are useful in maintaining healthy dietary practices.

On further review of the legislative history, FDA noted that section 405 of the act (21 U.S.C. 345), which authorizes exemptions to the act, was amended by the 1990 amendments to state: ''This section does not apply to the labeling requirements of section 403(q) and 403(r).'' Because the menu exemption is an exemption from section 403(r) of the act, FDA tentatively concluded that it is barred by section 405 of the act.

FDA also noted that section 403(r)(5)(B) of the act limits the extent to which the nutrient content claims and health claims provisions of the act apply to restaurants by, e.g., exempting restaurant foods from certain disclosure statements that apply to claims on packaged food labels. In its discussion of whether Congress intended to apply the 1990 amendments to restaurant menus (58 FR 33055 at 33056), the agency cited a sponsors' report explaining this section. That report stated that restaurants that use nutrient content claims in connection with the sale of a food must comply with regulations issued by the Secretary of Health and Human Services under section 403(r)(2)(A)(I). In that report, the sponsors specifically gave the example of the use of the word ''light'' or ''low'' on a menu as the type of labeling that must comply with FDA's requirements (136 Congressional Record H5841 (July 30, 1990)). This part of the bill was passed by the Senate unchanged. Thus, FDA concludes that the menu exemption is not consistent with the congressional intent in adopting the 1990 amendments, and that there is no basis for exempting menus from the coverage of section 403(r) of the act. (See also *Public Citizen* v. *Shalala, supra.*)

2. A number of comments stated that consumers' need for useful nutrition information outweighs any burden that the requirements might place on restaurants making claims on their menus. One comment stated that it did not believe that the new requirements would be burdensome for restaurants because, according to the comment, a ''good'' restaurant ordinarily keeps track of ingredient quantities to evaluate food preparation costs. Several comments stated that ample resources exist to aid restaurants in developing menu items that comply with FDA's requirements. They noted that applying the new requirements to menus would not interfere with a restaurant's ability to provide dietary guidance on a menu, e.g., to identify those foods with a nutrient content such that the food could be helpful to consumers in achieving a diet consistent with the dietary guidelines of a professional health organization.

A number of comments stated that it is important that claims be used in a consistent manner across the food industry. One comment argued that exempting menus from the nutrient content claims and health claims provisions would create an uneven playing field between restaurateurs and food processors. Another comment maintained that the need for a single rule for the use of claims is further evidenced by FTC's decision to adopt FDA's definitions for nutrient content claims.

Conversely, a number of comments stated that the menu exemption provides critical flexibility to the restaurant industry. Comments cited numerous differences between restaurant foods and standardized, processed foods, including: Ingredient supply sources, methods of preparation, and marketing. One comment stated that many food service operations find the new regulations to be burdensome and poorly suited to the food service industry. Another comment argued that the nutrition labeling regulations would impose a greater burden on restaurants than on food manufacturers because restaurants may change their menus more than once a day, for example, between lunch and dinner. Several comments stated that revoking the menu exemption would create a barrier to the dissemination of beneficial information to the consumer, would increase the cost of creating and promoting nutritionally improved foods, and would ultimately limit the number of nutritionally improved foods in restaurants.

In response to comments that compliance with the requirements of the 1990 amendments will be burdensome, FDA notes that these rules place no affirmative requirements on restaurants that do not make claims. In other words, a restaurant would be in complete compliance with the new regulations if it simply refrained from making a nutrient content claim or a health claim. However, FDA does not believe such a situation would be the most desirable outcome.

As stated in the nutrient content claims final rule (58 FR 2302), two of the goals of the 1990 amendments are to provide for information that can assist consumers in maintaining healthy dietary practices and to encourage product innovation through the development and marketing of improved foods. FDA has concluded that, for information to be useful to consumers, nutrient content and health claims must be valid. At the same time, the agency has recognized that there are sources of variation unique to restaurant foods (e.g., methods of preparation). Consequently, to ensure that the new requirements do not place an unreasonable burden on restaurants, FDA has included a number of provisions to provide flexibility in how these requirements can be met in a restaurant situation. For example, as stated above, §§ 101.13(q)(5)(ii) and 101.14(d)(2)(vii)(B) provide that a restaurant may make a nutrient content claim or a health claim for a food as long as it has a ''reasonable basis'' for believing that the food contains the requisite level of the nutrient in question (58 FR 2302 at 2387 and 58 FR 2478 at 2516). The ''reasonable basis'' criterion provides that nutrient content levels may be determined by use of nutrient data bases, cookbooks, analyses, or other sources that provide reasonable assurance that the food meets the criteria for a claim.

FDA also notes that restaurants may develop and market menu items that help consumers to achieve certain dietary goals without subjecting the food to the requirements of the 1990 amendments. For example, restaurants may offer alternative selections whose value in a diet that conforms to dietary guidelines may be recognized by consumers without elaboration, e.g., raw vegetables, steamed vegetables, pasta with a tomato based sauce instead of a cream sauce, a grain dish, or a fresh fruit plate. Optional preparation or serving methods may be highlighted on menus by statements such as ''may be prepared with half the oil on request,'' ''smaller portions,'' or ''dressings and sauces available on the side.''

Further, foods that meet the dietary guidelines of a recognized dietary authority or health professional organization may be highlighted without subjecting the food to the nutrient content claims regime, provided the statement that a food meets dietary guidelines does not go on to characterize the level of a nutrient in the food (§ 101.13(q)(5)(iii)). For example, a restaurateur may signal to consumers by the use of a term or symbol that a meal is formulated in complete accordance with the Dietary Guidelines for Americans (e.g., moderate calories, less than 30 percent of calories from fat, less than 10 percent of calories from saturated fat, emphasis on vegetables, fruits, and grain products,

and moderate use of sugars and sodium). Likewise, dietary guidance that, within the context of the labeling, does not meet the definition of a health claim, i.e., does not include both the food or substance element and the disease-related element (e.g., ''eating five fruits and vegetables a day is an important part of a healthy diet''), would be considered dietary guidance and not a health claim subject to section 403(r) of the act (§ 101.14(a)(1)). FDA advises that foods bearing statements outside the coverage of section 403(r) of the act are still subject to section 403(a) of the act, which requires that the label be truthful and not misleading, and to section 201(n) of the act which describes the circumstances in which labeling is misleading.

The agency acknowledges that a significant effort will be required on the part of some restaurants to examine their meals and menus to ensure that they are in compliance with the new regulations. However, many of the comments that argued that the requirements for nutrient content claims and health claims would be burdensome for restaurants consistently evidenced a significant misunderstanding of the relevant provisions, such as the application of ''reference amounts customarily consumed'' and the need for a ''reference food'' when making some types of claims. For example, several comments seemed to believe that restaurants would be forced to alter their portion sizes to be identical to the established reference amounts. Another comment expressed the belief that restaurants would be required to declare the serving size of its food as the same as the reference amount, even if the amount served differed from the reference amount. A number of comments expressed concern that restaurateurs would be required to develop recipes for, analyze, and market, a reference food for every food that bears a claim. Several comments maintained that there is not enough room on menus to provide the nutrition information that they assumed FDA would require.

The agency advises that there is no basis for the concerns expressed by these comments. In a January 6, 1993, final rule, entitled ''Food Labeling; Serving Sizes'' (58 FR 2229) (hereinafter referred to as the ''serving size final rule''), FDA defined reference amounts, and the serving sizes derived from them, on the basis of the amount of food customarily consumed per eating occasion (reference amount customarily consumed or ''reference amount'') in order to facilitate comparison of the nutrient content of similar foods. FDA established reference amounts for 139 food product categories (§ 101.12 (21 CFR 101.12)). The agency provided that, in order to make certain nutrient content claims or health claims, a food must meet the criteria for the claim based on the amount of the particular nutrient present in the reference amount of the food. For example, the reference amount for all soups is 245 grams (g) based on a serving size of 1 cup. However, restaurants may offer soup in more than one portion size, e.g., by the cup and by the bowl. In order to bear a ''low fat'' claim a cup of soup may contain up to 3 g of fat per reference amount (245 g). If this same soup is served to customers in a bowl that contains 367 g of soup (367 g serving/245 g per reference amount for all soups = 1.5), it may contain up to 4.5 g of fat (3 g of fat per reference amount x 1.5 = 4.5 g of fat) and still be labeled ''low fat.''

Criteria for claims on meals and main dishes (as defined in § 101.13(l) and (m)) are generally based on the level of a nutrient in 100 g of the food. For example, a ''low fat'' meal weighing 333 g can contain up to 10 g of fat (333 g serving /100 g = 3.3; 3 g of fat per 100 g of food x 3.3 = 10 g of fat). Again, a restaurant serving a larger portion of a meal or main dish item is not at a disadvantage compared to other food sources when making a ''low fat'' claim. FDA advises, however, that some claims, e.g., ''free'' claims and cholesterol claims, have additional criteria based on the labeled or actual serving size. The criteria for specific nutrient content and health claims are set out in part 101 (21 CFR part 101).

FDA advises that it is not necessary for restaurants to produce and market a reference food in order to sell a food that bears a claim. Reference foods are necessary only for comparative nutrient content claims, i.e., claims about the level of a nutrient in one food compared to another, such as ''reduced sodium'' or ''less fat.'' Provisions for the use of data bases and other means to determine nutrient values for an appropriate reference food are set out in § 101.13(j)(1)(ii). FDA also advises that, while restaurants are required to provide nutrition information on request for foods that make a claim, FDA is providing considerable flexibility in § 101.10 as to the type of nutrition information that must be provided and on how this information can be provided. For example, in a restaurant situation, nutrition information may be presented in various forms, including those provided in § 101.45 and by other reasonable means (e.g., using posters, fliers, brochures, notebooks, or communicated orally by restaurant staff). In sum, FDA notes that the types of misconceptions presented by these comments have resulted in a perception of burdens that do not in fact exist.

Given the flexible provisions, such as the ''reasonable basis'' criterion that the agency set out in the claims final rules, FDA concludes that most restaurants that wish to make claims will be able to do so. Further, as stated in several comments, many resources, including Federal, State, and local governments; professional health organizations; and dietary professionals, are available to aid restaurants in their efforts to comply with FDA's requirements. Moreover, as stated above, FDA has made available the labeling guidance document to assist restaurants and other retail establishments in developing or revising their labeling to comply with the new requirements.

Although these resources will likely be sufficient to meet the needs of restaurateurs for information, FDA is willing, if necessary, to take other steps to help restaurants, particularly small restaurants, to understand and respond to the requirements established in this final rule. The agency requests that restaurateurs contact the agency (see address above) if they believe that it would be useful to have a national meeting or regional meetings to discuss what is required for health or nutrient content claims made on menus to comply with FDA's regulations. If the agency receives a sufficient expression of interest, it will hold such a meeting or meetings. If it decides to hold a meeting, FDA will provide ample notice of the time and place in the Federal Register.

While FDA acknowledges that some restaurants may discontinue offering improved food selections because menus have to comply with the requirements for claims, the agency concludes that most restaurants will continue to work to develop improved foods about which they can make claims. Consumer interest in improved food choices provides a continuing incentive for such efforts. The number of menus that currently bear claims and other nutrition information evidences the impact of consumer demand. FDA intends to work, as described above, to help restaurants to minimize the number of claims that are removed and to monitor the extent of this effect.

3. One comment argued that the First Amendment to the Constitution protects menus through its guarantee of freedom of the press. Another comment stated that FDA is not authorized to regulate restaurant foods under the Tenth

Amendment, as this power is not one provided for in Article I, Section 8, of the Constitution.

The agency disagrees. FDA's authority to regulate the content of the labels and labeling of food in interstate commerce has been broadly upheld against First Amendment and other constitutional challenges. The agency's authority to regulate food labeling, including the labeling of restaurant foods, is discussed at length in the claims final rules (58 FR 2302 at 2392 and 58 FR 2478 at 2524), which are incorporated herein by reference. The comments did not provide any information, or make any arguments, that the agency has not previously considered and found to be without merit.

4. Several comments maintained that FDA cannot legally justify reversing its policy with respect to restaurant menus. These comments maintained that FDA has received no new information or facts since the claims final rules on which to base its reconsideration. They further maintained that the proposal to delete the menu exemption without, in the comments' opinion, adequately explaining the departure from the past norm constitutes arbitrary and capricious rulemaking and is a violation of the APA.

FDA disagrees with these comments. An agency may always change its mind and alter its policies. *Conference of State Bank Examiners* v. *Office of Thrift Supervision*, 792 F. Supp. 837, 845 (D.D.C. 1992). While the burden is on the agency to justify the change from the status quo, that justification need not consist of an affirmative demonstration that the status quo is wrong. It may also consist of a demonstration that there is no cause to believe that the status quo is right, so that the existing rule has no rational basis to support it. *Center for Auto Safety* v. *Peck*, 751 F.2d 1336, 1349 (D.C. Cir. 1985).

Concern about whether a rational basis existed for the agency's rule is exactly what motivated FDA. In its June 15, 1993, proposed rule, the agency pointed out that, in confronting the issue of what defines a menu in the wake of the publication of the January 6, 1993, final rules, it found that it was virtually impossible to distinguish menus from other types of restaurant labeling, such as signs, placards, and other types of point of purchase information that are covered under the agency's rules (58 FR 33055 at 33056). Thus, the agency had ample basis to be concerned about the distinction that it had drawn in the final rules. This concern was underscored by technical comments that the agency received on the menu exemption (*id*). The conclusion that the agency has reached based on its consideration of the comments that it received on the June 15, 1993, proposed rule is that there is, in fact, no rational basis for distinguishing menus from other types of restaurant labeling, and, therefore, FDA is revoking the provisions that established that distinction.

5. One comment objected to what it perceived as the agency's inability to define menus in the June 15, 1993, proposed rule. The comment maintained that this problem was not a reasonable basis for deleting the menu exemption. The comment argued that, at the least, FDA should issue an advanced notice of proposed rulemaking on this issue.

FDA believes that the comment misinterpreted the agency's statement in the June 15, 1993, proposed rule (58 FR 33055 at 33056), about distinguishing between menus and other restaurant labeling. FDA did not say that it could not define menus, but rather, that the agency found that it is virtually impossible to distinguish menus from other types of restaurant labeling, such as signs, placards, and other point of purchase information, that the agency said in the claims final rules would be covered.

The agency notes that if its problem were one of defining ''menu,'' it has numerous sources to which it could turn. Webster's II New Riverside University Dictionary defines ''menu'' as ''A list of the food and drink available or to be served for a meal.'' Comments received during the 30-day technical comment period to the claims final rules provided additional guidance, stating that a menu ''includes any medium available to consumers in a restaurant that can be consulted in making a purchasing decision in terms of food selection or price.'' One comment stated that ''A broad range of formats are used to convey selection and price information on which consumers rely. These formats are all properly ''menus'.''

However, the problem that the agency stated that it was having in June of 1993 was one of drawing a rational distinction that would justify its treatment of menus on the one hand and of other types of restaurant labeling on the other. Such a distinction is particularly difficult to draw given that some of the same types of restaurant media that FDA said were covered in the claims final rules, e.g., signs, posters, and placards, are used, like menus, to convey purchase information to consumers. Both menus and non-menu media may be used to provide restaurant patrons with information about the foods available in a restaurant.

Accordingly, for the foregoing reasons, FDA is amending its food labeling regulations by removing the provisions of the regulations that exempt nutrient content claims and health claims made on restaurant menus from the coverage of these regulations. Specifically, FDA is amending the regulations by removing: (1) From § 101.10, pertaining to nutrition labeling of restaurant foods, the language that reads ''* * * (except on menus)''; (2) from § 101.13(q)(5), pertaining to nutrient content claims on restaurant foods, the language that reads ''* * * (except on menus)''; and (3) from § 101.14(d)(2)(vii)(B), pertaining to health claims on restaurant foods, the language that reads ''* * * (except if the claim is made on a menu).'' Thus, the requirements of FDA's food labeling regulations will be applied to all forms of restaurant labeling, including menus, signs, posters, or placards, that bear a nutrient content claim, health claim, or otherwise characterize the level of a nutrient in a food.

6. One comment suggested that FDA specify that the term ''menu'' applies to all types of menus, including wallboards, take- out menus, and menus delivered to the table.

FDA advises that, in the claims final rules, it differentiated between menus and non-menu media by describing those media that it did not consider to be menus, e.g., posters, signs, and placards. However, as discussed in response to the preceding comment, the agency has determined that it is virtually impossible to distinguish between menus and other media that are used to convey purchase information to consumers. Therefore, FDA is amending its food labeling regulations by removing the provisions that exempt menus from the coverage of these regulations. Because the requirements will be applied to all forms of restaurant labeling that bear a claim, the issue of distinguishing between menus and non-menu labeling is rendered moot.

B. Modification of Effective Date

The claims final rules provided that regulations governing the use of health claims in restaurant labeling (other than menus) would become effective on May 8, 1993, except for small restaurant firms consisting of 10 or fewer establishments for which these provisions were to become effective 1 year later, i.e., May 8, 1994. With respect to the use of nutrient content claims and other nutrition information in restaurant labeling (except for menus), FDA's requirements were to

become effective on May 8, 1994, for medium and large restaurant firms and on May 8, 1995, for small firms.

In the claims final rules, FDA stated that it recognized that a significant effort would be necessary on the part of restaurants to show that they have a reasonable basis to believe that their food complies with FDA's regulations for the use of nutrient content claims and health claims. At that time, the agency believed that it would be especially difficult for small restaurants to become familiar with Federal requirements and to determine how to apply these requirements to their individual food selection and preparation methods in a short time. Consequently, FDA had decided that small restaurants should be given the additional time (i.e., 1 year) to come into compliance.

During the technical comment period, FDA received information that convinced the agency that it was appropriate to reconsider its decision to delay the effective date of the claims requirements for small restaurants. Thus, in its June 15, 1993, proposed rule (58 FR 33055 at 33057), FDA proposed to modify the delay in the effective dates for small restaurant firms. However, based in part on numerous demands associated with implementing the 1990 amendments and the agency's limited resources, this speed-up did not happen. FDA's efforts to move up those dates have effectively been rendered moot by the agency's inability to issue a final rule. Consequently, the following comments are now only relevant as they apply to restaurant menus.

1. Delay for Small Restaurants

7. One comment argued that compliance would be more difficult for small firms compared to large restaurant chains because of limited resources. The comment did not, however, provide any information that the agency had not previously considered. Another comment maintained that an extension for small restaurants is justified by the ''lack of real harm'' to the public from such a delay.

Conversely, the majority of letters that addressed the proposed modification in effective dates supported the agency's proposal to establish uniform effective dates for all restaurants. These comments maintained that there is no appropriate basis for differentiating among restaurants based on size when establishing a date by which each must comply with FDA's requirements. Thus, the comments stated, the agency should enforce its labeling requirements for large and small restaurants, at the same time. However, the comments contained numerous and varied suggestions as to when the new effective dates should be.

Having considered the comments, FDA concludes that, although there are some areas where small restaurants may be at a disadvantage compared to large restaurants, e.g., the cost of a one-time menu change relative to more limited resources, in most respects, the distinction between small restaurants and larger restaurants is not as great as the agency had believed when it issued the January 6, 1993, final rules. For example, not all restaurant firms with greater than 10 establishments are familiar with the new requirements or have established nutrition support personnel. Further, in establishing the requirements for restaurant labeling in the claims final rules, the agency worked with restaurant industry representatives to make its requirements feasible for both large and small restaurants. FDA advises that the flexibility built into these requirements, e.g., the ''reasonable basis'' criterion, provides a wide range of options for how a restaurant may determine the nutrient content of its food, and how it communicates this information to consumers. FDA finds that this flexible approach will allow most restaurants, including small restaurants, to choose options that fit their own needs and resources. Thus, FDA finds nothing in the comments that would provide a basis for differentiating among restaurants based on size when establishing a date by which restaurants must comply with these requirements.

2. Establishment of Effective Date for Menus

FDA is removing the exemption for menus that it adopted inappropriately. While, in light of overwhelming support from comments and in the absence of any new information to the contrary, FDA has concluded that the same date of applicability should apply to menus in all restaurants, regardless of size, the agency wants to be sure that the effect of its decision is not punitive for restaurants. FDA finds that it has flexibility in setting the date by which menus must comply with its requirements for claims. Thus, the agency is using that discretion in setting the date by which menus must comply with the rules on the use of claims. The issue that FDA has considered is what effective date will provide all restaurants with a reasonable amount of time to make any necessary changes in their menus while providing consumers with useful information as quickly as possible.

8. A few comments stated that restaurant menus should comply with FDA's requirements by the same date as labeling on foods from other sources, i.e., May 8, 1994. These comments stated that to delay the effective date for compliance by restaurant menus beyond May 8, 1994, would create an uneven playing field between restaurants and food processors. The comments further argued that any extension for restaurants beyond May 8, 1994, would violate the mandatory effective dates provided by the 1990 amendments. Another comment also tied the effective date for restaurant labeling with the date of applicability for other foods, except that it suggested that restaurants should have an additional 4 months after the May 8, 1994, deadline (i.e., until September 8, 1994) to bring their menus into compliance.

FDA does not agree that it must establish the same effective dates for restaurant menus as for other food labeling. As stated above, FDA must act in an equitable manner in removing the exemption for restaurant menus. Although the agency continues to strive for consistency within the framework of the 1990 amendments, this rulemaking to amend certain provisions of the January 6, 1993, final regulations cannot reasonably impose the same deadlines that the agency imposed in the final regulations implementing the 1990 amendments that it promulgated over 40 months ago. Further, the date of publication of this final rule obviously makes an effective date of May 8, 1994, moot.

9. One comment suggested that compliance with FDA's requirements begin 1 year from the date of the last menu printing. In support of its suggestion, the comment stated that many restaurants change their menus yearly, and that it would be costly for restaurants to change menus in midyear to comply with the new regulations. The comment did not, however, provide data on the number of restaurants that will need to make changes in their menus or on the number of restaurants that do not normally change their menus more than once a year.

FDA notes that restaurants vary widely in the frequency with which they print new menus. Comments to the June 15, 1993, proposed rule, stated that menus may be printed infrequently, annually, daily, or even for each meal. Given the wide variance in practices within the industry, the agency finds that establishing a compliance date that is based on a date that is a given period of time from the last menu printing would be impractical from an enforcement standpoint. It would be extremely difficult to ensure compliance with an application date that varies

from one establishment to another. In such a situation, compliance checks would require not merely looking at the labeling but also determining the date on which labels had last been revised.

Further, establishing an application date that, as it is phased in, affects only some establishments, is inconsistent with the establishment of a single effective date for labels on foods from other sources. As stated in the August 18, 1993, technical amendments (58 FR 44033 at 44035), the nutrition labeling requirements apply to food labeled after May 8, 1994. The agency stated that the term ''labeled'' means the date that the label is affixed to the food. FDA notes that each time a menu is used in a restaurant to convey purchase information about a food served in the restaurant, such use is analogous to affixing a label to a packaged food. Thus, establishing a specific date of applicability for restaurant menus, such that the date applies to the date that any menu is used as labeling in any restaurant, would be consistent with the treatment of labels on foods from other sources.

Finally, confusion could result from a situation in which, for example, two neighboring restaurants use identical claims on identical menus, one restaurant that makes claims would use terms in a manner that complies with FDA's requirements, while the restaurant that printed its menus less than a year earlier would not. Moreover, a restaurant that has not changed its menu in some time because of limited resources could be forced to change its menu sooner than a larger restaurant that had recently printed new menus. Such an outcome would make no sense.

FDA concludes that it is more appropriate to establish an effective date for applying its requirements to menus based on a given amount of time following the date on which this final rule publishes rather than an arbitrary date, such as the date of the last menu change, that may vary between restaurants. This approach will ensure that all restaurants will have a specified amount of time to change menus to comply with any applicable requirements, and that the amount of time will be based on an accommodation of both consumer and industry needs, rather than an arbitrary date that will vary between restaurants.

10. A number of comments agreed with FDA's proposal that the modified effective dates for restaurant menu labeling should allow restaurants to achieve compliance within an amount of time similar to the time that other food producers have had, and that the effective dates should be uniform for all restaurants, regardless of size. These comments stated that all restaurants should be required to comply with health claims regulations 4 months after publication of a final rule and with nutrient content claims regulations 1 year after publication, as proposed. One comment stated that the date of applicability for requirements for menus bearing nutrient content claims should be based on the same amount of time that packaged foods had, i.e., 16 months after publication of the January 6, 1993, final rules.

Alternatively, several comments maintained that compliance with the nutrient content claims regulations would be no more difficult than compliance with the requirements for the use of health claims, and that, consequently, restaurant menus should be required to comply with both regulations at the same time. Comments were divided, however, as to whether the single effective date for both nutrient content claims and health claims should be 4 months or 12 months after the date of publication of a final rule.

FDA has carefully considered how much time should be given for restaurant menus to be brought into compliance with the nutrient content claim and health claim labeling requirements. FDA's consideration has been guided by section 10 of the 1990 amendments. That provision made the nutrient content claim and health claim provisions effective 6 months after enactment but gave FDA the authority to delay application of the nutrient content claim requirements for up to 1 year if it found that compliance with those requirements would cause undue economic hardship (section 10(a)) of the 1990 amendments). FDA took advantage of the latter provision. FDA notes that a number of the factors that influenced the agency's decision to delay the application of the nutrient content claims requirements in the January 6, 1993, final rule do not have equal application with respect to this rulemaking.

One factor that influenced FDA's decision to delay the applicability date was the amount of effort that would be necessary to learn about how to come into compliance with the new rules (56 FR 60856 at 60862, November 27, 1991). The agency notes that, since publication of the January 6, 1993, final rules, FDA and other organizations have been active in disseminating information about the new food labeling requirements. Because access to information about these requirements, and the number of resources available to facilitate compliance with these requirements, have grown, the effort required on the part of a restaurateur who is not familiar with the requirements to obtain information about them has been reduced compared to that which was required for makers of other types of food. Moreover, the effort required for compliance by restaurateurs is even further reduced by the flexible provisions that FDA has established specifically for restaurant situations, e.g., providing the ''reasonable basis'' criterion for nutrient content determinations.

A second factor that influenced FDA's decision was the amount of time needed to come into compliance with the labeling requirements (56 FR 60856 at 60862). The type of labeling used in restaurants reduces the amount of time, compared to other food sources, that is reasonably necessary to achieve compliance. For example, for packaged foods that bear nutrient content claims, manufacturers needed time to use up preexisting labels to reduce the cost of complying with the new requirements. Conversely, menu inventory is generally not affected by a food purchase. Further, many restaurants use menus that may be revised, printed, and copied in-house, thereby avoiding the queue at printers that affected many food manufacturers. Therefore, providing time for bringing menus into compliance will not have the same effects on the costs of a restaurateur that it had on the costs of the manufacturer. Consequently, FDA concludes that significant circumstances that justified a1-year delay in the applicability of the nutrient content claims provisions for packaged foods do not apply to restaurant foods.

Moreover, in the June 15, 1993, proposed rule (58 FR 33055 at 33058), FDA cited an informal survey by the National Restaurant Association indicating that up to 89 percent of all printed menus include at least one claim. Based on information in the survey, FDA had assumed that more restaurants were making nutrient content claims than health claims, and that, consequently, a larger effort would be required on the part of restaurants to ensure compliance with requirements for nutrient content claims compared to health claims. The agency tentatively concluded that a date of applicability of 4 months after the publication of a final rule would be sufficient to ensure compliance with the requirements for health claims.

FDA continues to believe that few if any restaurant menus bear express health claims, such as ''a diet low in sodium may contribute to a reduced risk of high blood pressure, a disease associated with many factors,'' on their

menus. However, a number of comments to the June 15, 1993, proposed rule provided examples of menus that bear terms and symbols (e.g., heart symbols and terms such as ''heart healthy'') in a manner that makes them implied health claims under the act. Based on this information, and on information gleaned by FDA from informal inquiries from the industry (Ref. 1), FDA concludes that the number of restaurants making health claims is greater than it had previously assumed.

Furthermore, because of the flexible provisions that FDA has established for restaurant foods, it may be easier for a restaurant to establish that a food qualifies to bear a nutrient content claim (e.g., that a ''low fat'' food contains no more than 3 g of fat per reference amount) than that it qualifies to bear a health claim (i.e., that, in addition to the criterion for the nutrient in the claim, the food contains less than the disqualifying levels for fat, saturated fat, sodium, and cholesterol, and 10 percent or more of the Reference Daily Intake or Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount prior to nutrient addition). The agency concludes that the effort required on the part of restaurants that want to make health claims in their menus (e.g., to obtain, read, and understand FDA's regulations; to develop a ''reasonable basis'' for making claims; to generate nutrition information for consumers; and, in some cases, to modify a food or its labeling) will be as great, if not greater, than that required of restaurants making nutrient content claims.

The agency notes that, in establishing a specific effective date, its goal is to ensure that consumers have access to useful nutrition-related information as quickly as possible while providing restaurateurs with sufficient time to make necessary changes. FDA does not believe that all restaurant menus could be reasonably expected to comply with the health claims requirements within the proposed 4-month timeframe. While many restaurants have already begun actions to come into compliance, especially larger restaurants that make claims on non-menu labeling, some restaurants that use only menus to convey purchase information may not be familiar with the requirements or know how to obtain the necessary information to determine whether their menus are in compliance. FDA further notes that an effective date for its requirements for restaurant menus that bear nutrient content claims of 4 months after the publication of this final rule, as suggested by some comments, would provide restaurant foods significantly less time than had been afforded foods from other sources. Thus, a compliance period of 4 months after publication would place restaurants offering improved foods and promoting these foods on their menus at a disadvantage compared to other food manufacturers.

Conversely, FDA concludes that it is not necessary for restaurant menus to have the same amount of time that other food labeling producers were given. Based in part on the amount of time that information on the criteria that will be applied to menus has been available (i.e., since January 6, 1993), and on the flexible rules it has adopted for restaurants, FDA concludes that a compliance period of 12 or 16 months is longer than is necessary for menus, and that such a time period would unduly delay consumer access to useful information.

After considering the foregoing, FDA has decided to establish a single date of applicability for both the nutrient content claim and health claim requirements for menus and to establish that date as May 2, 1997. This date will provide restaurateurs with 9 months to bring their menus into compliance. FDA has decided to provide 9 months based on the following three factors: First, 6 months is the amount of time that Congress provided for compliance with these provisions in the absence of undue economic hardship (section 10 of the 1990 amendments). Second, FDA finds that, based on the economic impact analysis in this rulemaking, unlike for non-restaurant foods, economic hardship does not exist. Consequently, the agency has no basis for providing an additional year for compliance by restaurant menus. Third, in Pub. L. 103–261, Congress provided non-restaurant food manufacturers with an additional 3 months to achieve compliance with the new labeling rules. Consequently, FDA finds that establishing May 2, 1997 as the effective date for the amendments that it is making to §§ 101.10, 101.13(q)(5), and 101.14(d)(2)(vii)(B) and (d)(3), and, thus, as the date that menus must be in compliance, is consistent with the treatment of non-restaurant foods. FDA believes that establishing a single date will benefit both consumers and industry. FDA notes that the different effective dates for nutrient content claims and for health claims in non-menu labeling in small restaurants and in larger restaurants have created a great deal of confusion about what requirements are effective at a given time. The agency concludes that establishing different dates for the use of health claims and of nutrient content claims in menus would only further compound this confusion. FDA finds that, in light of the confusion expressed by comments and in informal communications with the agency (Ref. 1), establishing a uniform date for all types of claims on menus makes the most sense. The agency further finds that a single effective date for menus will prevent the consumer confusion that could result from a restaurant using a menu that bears some types of claims that are consistent with the new requirements and other claims that are not. In addition, a single effective date for all menu claims will aid compliance by giving restaurants a single date by which to make necessary changes, regardless of the kind of statement (e.g., nutrient content claim, health claim, third party endorsement, or dietary guidance) used to present nutrient information to consumers. Thus, a single date will avoid the need to change menus twice within the compliance period. The agency concludes that, for efficient enforcement of the act, establishing a single effective date for both nutrient content claims and health claims on menus is desirable and appropriate.

Moreover, given the amount of time that FDA's labeling rules have been in place, an effective date of May 2, 1997, will provide ample time for restaurants to bring their menus into compliance without unduly delaying consumer access to useful nutrition-related information. An effective date of May 2, 1997, will also provide time for FDA and other regulatory officials to work with restaurants, consumers, dietitians, health professional organizations, and other interested parties to ensure that the agency's regulations are adequately implemented with respect to restaurant menus.

Thus, the deletion of the phrase ''(except for menus)'' that exempted menus from nutrient content claim requirements in §§ 101.10 and 101.13(q)(5) will be effective on May 2, 1997. Likewise, the deletion of the phrase ''(except on menus)'' that exempted menus from health claim requirements in § 101.10 and the phrase ''(except if the claim is made on a menu)'' in § 101.14(d)(2)(vii)(B) will also be effective on that date.

III. Environmental Impact

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

IV. Analysis of Impacts

FDA has examined the economic implications of the final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the significant economic impact of that rule on those small entities. FDA finds that this final rule is a significant rule as defined by Executive Order 12866, and finds under the Regulatory Flexibility Act, that the final rule will not have a significant economic impact on a substantial number of small entities.

A. Background

In the Federal Register of January 6, 1993 (58 FR 2927), FDA published a final regulatory impact analysis (RIA) of the final rules implementing the 1990 amendments (hereinafter referred to as the January 6, 1993, RIA). In that document (58 FR 2927 at 2934), FDA presented costs of compliance with the 1990 amendments for food service establishments. Although the agency did not include menus in its regulatory coverage of the nutrient content claims and health claims final rules, it assumed that restaurants would alter their menus to comply with the agency's definitions because of the possibility of enforcement by the States. Consequently, FDA included the cost of altering menus in its assessment.

In the June 15, 1993, proposed rule, FDA proposed to remove the provisions that exempt restaurant menus from the requirements for how nutrient content claims and health claims are to be made. Because the agency originally assumed that restaurants would alter their menus in order to comply with the regulations so as to avoid State enforcement, FDA assumed that the proposed action to include menus in the agency's regulatory coverage would not result in any significant increase in costs to food service establishments beyond that estimated in the January 6, 1993, RIA.

B. Costs of the Final Regulation

The following estimates are based on both quantitative and anecdotal information provided in the comments. However, FDA has previously stated that it lacks in-depth data on a number of issues related to the food service industry (56 FR 60537 at 60554, November 27, 1991). Therefore, while these estimates represent the best information available to the agency, FDA acknowledges that there is uncertainty in these estimates.

In the January 6, 1993 (58 FR 2927 at 2934), RIA, FDA estimated that 75 percent of restaurants, including all small restaurants, would normally alter menus before the applicable compliance date for nutrient content claims and health claims on non-menu labeling (based on a 16-month compliance period). The agency also assumed that, in revising their menus, most restaurants would make changes to comply with the regulations so as to avoid enforcement by the States. Consequently, FDA estimated that only 14,500 commercial establishments would incur costs attributable to the nutrient content claims and health claims final rules. In the June 15, 1993, proposed rule, FDA repeated the assumptions stated in the January 6, 1993, RIA, i.e., that most restaurants would alter their menus in order to comply with the regulations.

FDA received very few comments regarding its economic analysis of the June 15, 1993, proposed rule. However, a few comments indicated that the agency's assumption that most restaurants would alter menus to comply with the agency's requirements because of the possibility of enforcement by the States was not correct. FDA has anecdotal information indicating that at least some restaurants have not yet altered menus to comply with the claims requirements and would, therefore, bear some cost of the agency's action to remove the exemption for menus. However, the comments did not provide information regarding the proportion of the industry that has not yet altered its menus.

FDA notes that the costs of revising menus to comply with the new requirements are one-time costs only. However, costs of ensuring that claims are made on a reasonable basis and are in conformance with FDA rules, and costs of maintaining that information and presenting it to consumers on demand, are on-going costs, changing with new claims only in the former case. FDA does not have information with which to estimate these costs. However, those firms that would normally redesign their menus within the compliance period will not incur costs attributable to FDA's regulations. In the analysis of the proposed rule, FDA estimated that 75 percent of all menus would normally be revised during the compliance period ending in May 1994.

FDA received comments regarding the frequency of menu changes. Comments varied in their estimates of the frequency of menu redesign, ranging from several times a day to once a year. FDA concludes that, taken as a whole, these comments do not significantly alter its original assumptions about the rates at which restaurants alter menus, that is, that an average of 5 percent of all restaurants would normally alter their menus in a month and, thus, 45 percent of all restaurants would normally alter their menus during a 9-month compliance period.

In previous analyses, FDA noted that, because it is requiring only a reasonable basis to support claims in restaurant labeling, no analytical testing is necessary. FDA has described a number of methods by which a restaurant may determine the nutrient content of a food that are less costly than chemical analyses. For example, a claim may be based on nutrient data published in FDA's regulations for the voluntary nutrition labeling of fresh fruits, vegetables, and fish. A claim may also be based on nutrient data provided in USDA's *Handbook 8*, information in a cookbook, or an analysis using a reliable database. However, the cost of determining whether or not a reasonable basis exists to support a claim is not zero. Estimates of the cost of these sources range from $10 to $175 per claim (Ref. 2).

FDA now assumes that approximately 50 percent of the industry has already redesigned menus to comply with the nutrient content and health claims regulations. This rulemaking provides 9 months for menus to come into compliance with the claims requirements. FDA assumes that approximately 45 percent of restaurants will normally alter their menus during this compliance period; those restaurants can incorporate the requirements of this regulation into their normally scheduled menu revisions and, thus, will incur no regulatory costs associated with menu changes.

According to the National Restaurant Association, there are approximately 262,000 commercial establishments and 36,000 institutions with a combined total of approximately 460,000 printed menus. Based on a review of menus entered in the National Restaurant Association's annual menu contest, the association estimated that 89 percent of all printed menus include at least one nutrient content or health claim. Although FDA has not challenged this

number, it has no basis on which to determine whether this number fairly represents the situation in restaurants. Nonetheless, FDA is using the 89 percent survey result as an upper-bound estimate of the likelihood of typical menus bearing claims. The association also indicated that at least 18 percent of the printed menus that it reviewed would require more complex changes, such as the revision of an entire section or symbol program (e.g., programs using a heart logo).

Based on the association's estimates and on the agency's revised estimate of the number of menus that have already been changed to comply with the nutrient content and health claims requirements, FDA estimates that approximately 90,000 individual menus [460,000×(.89 − .18)×(1 − .45)×(1 − .50)] would require simple changes valued at $500 per menu, or $45 million. In addition, approximately 23,000 menus [406,000×.18×(1 − .45)×(1 − .50)] would require more complex changes valued at $1,700 per menu, or $39 million. The cost of establishing a reasonable basis to support a claim ranges between $10 and $175 per claim for each of the 113,000 menus, or a total cost of between $1 and $20 million. FDA estimates that the total cost of compliance for food service establishments would be between $85 million and $104 million if none of the restaurants currently making claims on menus have a reasonable basis to support their claims. However, because significant time has elapsed since publication of the nutrient content and health claims final rules, it is likely that at least one-third of restaurants have a reasonable basis for believing that their foods meet the nutrient requirements for the claims that they are making. Therefore, the total costs of compliance are estimated to be between $57 million and $69 million. However, if as many as 90 percent of restaurants have a reasonable basis to support claims currently being made, the regulations will result in costs of between $8.5 million and $10 million.

C. Benefits

Requiring that health claims and nutrient content claims on menus be consistent with FDA's definitions and with these types of claims made on packaged foods will provide consumers with consistent, reasonably based signals from restaurant menus with regard to health claims and nutrient content claims that they can use to achieve dietary goals. It is possible that information that is now on menus that complies with FDA's requirements and that would aid consumers in meeting dietary goals may be removed if a restaurateur believes that the burden of proof to support a claim is too costly. However, FDA believes that in many circumstances this will not be the case, because the minimum amount of effort that a restaurant would have to go through to validate a claim is not overly burdensome.

D. Regulatory Flexibility

FDA has examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612).

In this final rule FDA defines small commercial food service establishments consistent with the Small Business Administration's (SBA's) definitions (13 CFR part 121) as firms with $5 million or less in total annual revenue. In addition, small institutional food service establishments defined as those with less than $15 million in sales. FDA estimates that approximately 66 percent of all of the firms affected by this rule are small by SBA's definitions. Using that figure, FDA estimates that there are approximately 173,000 commercial food establishments and 24,000 institutional food establishments that may be defined as small under these definitions. Using the same assumptions as in the previous analysis, i.e., that 89 percent of all printed menus contain at least one nutrient content or health claim, then there are approximately 175,000 small establishments with 270,000 menus that contain claims. Using the same assumptions as above ((1) 50 percent have already revised their menus, (2) 55 percent of the remaining establishments would not normally revise their menus within the compliance period for this rule, and (3) 18 percent of these latter establishments will have to make complex changes), approximately 9,700 small establishments will potentially have one-time costs of $1,700 to make complex changes to each menu. In addition, approximately 38,000 small establishments will potentially have one-time costs of $500 to make simple revisions to each menu.

In addition, firms will have initial and recurring costs of ensuring that health claims and nutrient content claims are supported by a reasonable basis and are in conformance with FDA's definitions of terms. For each claim, a firm must establish via books, databases, or by some reasonable means that the claim falls within FDA's definition. The supporting information must be kept as long as the claim appears on the menu and must be presented to customers on demand. Thus, as menu items and claims change, the cost of establishing a reasonable basis is incurred.

FDA has no data on how often firms change claims or how often restaurant customers will ask to see the nutrition information for foods that bear these claims. However, as stated earlier, cost estimates of establishing a reasonable basis for a claim run between $10 and $175 per claim. Assuming one future claim change or addition per menu per year and an average of 1.5 menus per firm, costs to determine a reasonable basis per firm will be between $15 and $260 per year. As stated earlier, for existing claims, many firms already have or would be likely to have established a reasonable basis for such claims, and this analysis will continue to presume that at least one third to as much as 90 percent of all firms would do so. Thus, average total cost per small firm may range from as high as $2,135 to as low as $765 in the first year for those who have menus with claims and between $15 and $260 per firm for each subsequent year. Firms that neither have claims nor would be expected to have them on their menus in the future will not incur cost.

It is important to note that this rule provides flexibility for restaurateurs in how they determine the nutrient content of a food and in how they communicate this information to consumers, as described above in the preamble. That is, for enforcement purposes, restaurateurs need only show that they have a reasonable basis for the claim and that the method of preparation does not violate the basis for the claim. Therefore, the costs of this regulation for small businesses have been minimized. Accordingly, under the Regulatory Flexibility Act, 5 U.S.C. 605(b) the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Summary

FDA has examined the impact of the final rule in accordance with Executive Order 12866 and has determined that, while it is a significant rule, it is not an economically significant rule. The rule will result in total costs to restaurants of between $8.5 million and $69 million, depending on the number of restaurants that can provide a reasonable basis to support the claims currently in use.

FDA has also examined the impact of the final rule on small entities in accordance with the Regulatory Flexibility Act and has determined that it will not result in a significant burden on a substantial number of small entities.

V. Paperwork Reduction Act

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the collection of information are shown below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, gathering necessary information, maintaining records of that information, and making that information available upon request.

Title: Food Labeling: Nutrient Content Claims and Health Claims; Restaurant Foods.

Description: This regulation removes the provisions that exempt restaurant menus from the requirements for how nutrient content claims and health claims are to be made and from therequirements for the provision of nutrition information with respect to the nutrients that are the basis of the claim, when claims are made. Once it becomes effective, §§ 101.13(q)(5) and 101.14(d)(2)(vii)(B) will require that nutrient content claims and health claims appearing on menus comply with FDA's regulations for nutrient content claims in § 101.13 and subpart D of part 101 of this chapter and for health claims in § 101.14 and subpart E of part 101. Restaurants using nutrient content claims or health claims on menus will be required by § 101.10 to provide nutrition information for the food that bears the claim. Information on the nutrient that is the basis of the claim may serve as the functional equivalent of complete nutrition information as described in § 101.9.

Because of the flexibility provided for restaurants in determining the nutrient content of a food (they need only have a reasonable basis that provides assurance that the food meets the requirements for the claim) and in how this information may be communicated to consumers, a wide range of options is available to restaurants in meeting the information collection requirements imposed by this rule. For example, a restaurant may choose to run a full nutrient profile analysis on a group of items listed under a heading of ''low fat'' on its menu. alternatively, it may chood to offer an item purchases from a commercial manufacturer where the item is appropriately labeled by the manufacturer as ''low fat.'' In such a case, the restaurant requirement for the provision of nutrituin information with respect to the nutrients that are the basis of the claim, when claims are made. Once it becomes effective, § § 101.13(q)(5) and 101.14(d)(2)(vii)(B) will require that nutrient content claims and health claims appearing on menus comply with FDA's regulations for nutrient content claims in § 101.13 and subpart D of part 101 of this chapter and for health claims in § 101.14 and subpart E of part 101. Restaurants using nutrient content claims or health claims on menus will be required by § 101.10 to provide nutrition information for the food that bears the claim. Information on the nutrient that is the basis of the claim may serve as the functional equivalent of complete nutrition information as described in § 101.9.

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Description of Respondents: Businesses or other for profit organizations.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR	No. of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeping	Total hours
§§ 101.10, 101.13(q)(5), and 101.14 (d)(2)(vii)(B) and (d)(3)	265,000	1.5	397,500	1	397,500

Note: There are no operation and maintenance costs or capital costs associated with this information collection.

Although the June 15, 1993, proposed rule provided a 60-day comment period, and this final rule incorporates the comments received, FDA is providing an additional opportunity for public comment under the Paperwork Reduction Act of 1995, which applies to this final rule but which was enacted after the expiration of the comment period for the June 15, 1993, proposal. FDA invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 through the use of automated collection techniques or other forms of information technology, when appropriate. Individuals and organizations may submit comments on the information collection requirements by October 1, 1996. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, make revisions as necessary to the information collection requirements, and submit the requirements to OMB for review and approval. FDA will publish a notice in the Federal Register when the information collection requirements are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Additional time will be allotted for public comment to OMB. Prior to the effective date of this final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or

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

VI. References

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

1. Smith, M.A., communications regarding labeling of restaurant foods that bear a claim or other nutrition information, memorandum to file, November 9, 1994.

2. Bush, L.M., communication regarding the cost of establishing a reasonable basis for a claim, memorandum of telephone conversation, September 14, 1994.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.10 is revised to read as follows:

§ 101.10 Nutrition labeling of restaurant foods.

Nutrition labeling in accordance with § 101.9 shall be provided upon request for any restaurant food or meal for which a nutrient content claim (as defined in § 101.13 or in subpart D of this part) or a health claim (as defined in § 101.14 and permitted by a regulation in subpart E of this part) is made, except that information on the nutrient amounts that are the basis for the claim (e.g., ''low fat, this meal provides less than 10 grams of fat'') may serve as the functional equivalent of complete nutrition information as described in § 101.9. Nutrient levels may be determined by nutrient data bases, cookbooks, or analyses or by other reasonable bases that provide assurance that the food or meal meets the nutrient requirements for the claim. Presentation of nutrition labeling may be in various forms, including those provided in § 101.45 and other reasonable means.

3. Section 101.13 is amended by revising the introductory text of paragraph (q)(5) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(q) * * *

(5) A nutrient content claim used on food that is served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments shall comply with the requirements of this section and the appropriate definition in subpart D of this part, except that:

* * * * *

4. Section 101.14 is amended by revising paragraphs (d)(2)(vii)(B) and (d)(3), introductory text, and adding paragraph (d)(3)(i) to read as follows:

§ 101.14 Health claims; general requirements.

* * * * *

(d) * * *

(2) * * *

(vii) * * *

(B) Where the food that bears the claim is sold in a restaurant or in other establishments in which food that is ready for immediate human consumption is sold, the food can meet the requirements of paragraphs (d)(2)(vi) or (d)(2)(vii) of this section if the firm that sells the food has a reasonable basis on which to believe that the food that bears the claim meets the requirements of paragraphs (d)(2)(vi) or (d)(2)(vii) of this section and provides that basis upon request.

* * * * *

(3) Nutrition labeling shall be provided in the label or labeling of any food for which a health claim is made in accordance with § 101.9; for restaurant foods, in accordance with § 101.10; or for dietary supplements of vitamins or minerals, in accordance with § 101.36. The requirements of this paragraph are effective as of May 8, 1993, except:

(i) For menus, for which the requirements of paragraph (d)(3) of this section will be effective May 2, 1997.

* * * * *

Dated: July 25, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–19645 Filed 7–30–96; 12:21 pm]

BILLING CODE 4160–01–U

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Freedom of Information Policy and Procedures

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: The United States Arms Control and Disarmament Agency (ACDA) is revising and restating in their entirety its rules that govern the availability and release of information. Clarifying these rules will help the public to interact better with ACDA and is part of ACDA's effort to update and streamline its regulations.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451, telephone (202) 647–3596.

SUPPLEMENTARY INFORMATION: On May 30, 1996, ACDA published a notice of proposed rulemaking (61 FR 27031–27036) with a 39-day comment period. No comments were received during the comment period. Accordingly, the rules are adopted as proposed.

List of Subjects in 22 CFR Part 602

Freedom of Information Act.

Chapter VI of Title 22 of the Code of Federal Regulations is amended by revising part 602 to read as follows:

PART 602—FREEDOM OF INFORMATION POLICY AND PROCEDURES

Authority: 5 U.S.C. 552; 22 U.S.C. 2581; and 31 U.S.C. 9701.

Subpart A—Basic Policy

Subpart B—Procedure for Requesting Records

Authority: U.S.C. 552; 22 U.S.C. 2581; and 31 U.S.C. 9701.

Subpart A—Basic Policy

§ 602.1 Scope of part.

This part 602 establishes the policies, responsibilities and procedures for release to members of the public of records which are under the jurisdiction of the U.S. Arms Control and Disarmament Agency.

§ 602.2 Definitions.

As used throughout this part, the following terms have the meanings set forth in this section:

(a) The term *Agency* and the acronym *ACDA* stand for the U.S. Arms Control and Disarmament Agency.

(b) The term *records* includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Agency in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library or museum material made or acquired solely for reference or exhibition purposes is not included within the definition of the term ''records.''

(c) *Deputy Director* means the Deputy Director of the Agency.

(d) The acronym *FOIA* stands for the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 602.3 General policy.

(a) In accordance with section 2 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2551), it is the policy of ACDA to carry out as one of its primary functions the dissemination and coordination of public information concerning arms control, nonproliferation, and disarmament.

(b) In compliance with the FOIA, ACDA will make available upon request by members of the public to the fullest extent practicable all Agency records under its jurisdiction, as described in the FOIA, except to the extent that they may be exempt from disclosure under the FOIA and § 602.31

Subpart B—Procedure for Requesting Records

§ 602.10 Requests for records.

(a) A written request for records should be addressed to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. To facilitate processing, the letter of request and envelope should be conspicuously marked ''FOIA request.''

(b) The request should identify the desired record or reasonably describe it. The identification should be as specific as possible so that a record can be found readily. Blanket requests or requests for ''the entire file of'' or ''all matters relating to'' a specified subject will not be accepted. The Agency will make any reasonable effort to assist the requester in sharpening the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum.

(c) If a fee is chargeable under subpart C of this part for search or duplication costs incurred in connection with a request for an Agency record, the request should include the anticipated fee or should ask for a determination of such fee. Any chargeable fee must be paid in full prior to issuance of requested materials. The method of payment is described in § 602.24.

§ 602.11 Requests in person.

A member of the public may request an Agency record by making an appointment to apply in person between the hours of 8:30 a.m. and 4 p.m. at the ACDA Office of Public Affairs, 320 21st Street, NW., Washington, DC 20451. Form ACDA–21, Public Information Service Request, is available at the ACDA Office of Public Affairs for the convenience of members of the public in requesting Agency records.

§ 602.12 Availability of records at the ACDA Office of Public Affairs.

(a) A current index identifying all available records is kept on file at the ACDA Office of Public Affairs. Copies of this index may be obtained free upon request.

(b) In addition, the ACDA Office of Public Affairs will maintain or have available, unless authorized to be withheld, certain types of unclassified records, including but not necessarily limited to the following:

(1) A copy of the ACDA Manual and other Agency regulations, including a copy of title 22 of the Code of Federal Regulations (CFR) and any other title of the CFR in which Agency regulations have been published;

(2) Copies of arms control and disarmament treaties or agreements in force;

(3) Research contracts between the Agency and universities or other non-Government organizations; and

(4) Reimbursable agreements with other Government agencies.

(c) Copies of records available to the public may be inspected by a requester in the ACDA Office of Public Affairs during the business hours stated in § 602.11. Copies of records made available for inspection may not be removed by any requester from the ACDA Office of Public Affairs.

§ 602.13 Copies of records.

(a) The Agency will provide copies of requested records of the same type and quality that it would provide to personnel of another U.S. Government agency in the course of official business. It will not accept requests for special types of copying processes or for special standards of quality of reproduction.

(b) Copies of records requested will be reproduced as promptly as possible and mailed to the requester. Chargeable fees will be determined according to the schedule set forth in subpart C of this part. The FOIA Officer is authorized to limit copies of each requested record to ten or fewer when there exists an extraordinary demand for the number of available copies or when requirements place excessive demands on the Agency's copying facilities.

§ 602.14 Records of other agencies, governments and international organizations.

(a) Requests for records that were originated by or are primarily the concern of another U.S. Government department or agency shall be forwarded to the particular department or agency involved, and the requester notified in writing.

(b) Requests for records that have been furnished to the Agency by foreign governments or by international organizations will not normally be released unless the organization or government concerned has indicated that the particular information should or may be made public. Where international organizations or foreign governments concerned have not made such a determination, the requester will be so advised, and if possible, furnished

the address to which the request may be sent.

§ 602.15 Overseas requests.

Pursuant to the general policy outlined in § 602.3, ACDA has made arrangements to provide the United States Information Agency (USIA) with material for dissemination abroad, such as information on official U.S. positions on arms control and disarmament policy. Requests originating in an area served by a USIA office which are received at Agency headquarters, will be referred to USIA when appropriate for direct response to the requester.

§ 602.16 Responses and time limits on requests.

(a) The FOIA requires an initial determination on a request for an Agency record to be made within ten working days after receipt of the request.

(b) If it is determined that the requested record (or portions thereof) will be made available, the requested material will be forwarded promptly after the initial determination, provided any applicable fee has been paid in full.

(c) If prior to making an initial determination it is anticipated that the costs chargeable for a request will amount to more than $25.00 or more than the amount of the payment accompanying the request, whichever is larger, the requester shall be promptly notified of the total amount of the anticipated fee or such portion thereof as can readily be estimated. In these instances, an advance deposit in the estimated amount of the search, review, and copying costs may be required. The request for an advance deposit shall extend an offer to the requester to consult with Agency personnel in order to reformulate the request in a manner that will reduce the fee, yet still meet the needs of the requester.

(d) In instances where the Agency has requested an advance deposit, the date of receipt of the deposit will be considered as the request date which begins the period of response by the Agency.

(e) Receipt of a request for Agency records will be determined by the time and date the request is received.

(f) Where an obvious delay in receipt of a request has occurred, such as in cases where the requester has failed to address the request properly, or where a delay has been caused in the mails, the Agency will dispatch to the requester an acknowledgment of the receipt of the request.

§ 602.17 Time extensions.

(a) In unusual circumstances, the time limit for an initial or final determination may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an Agency record.

(b) ''Unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular case:

(1) The need to search for and collect the requested records from other establishments that are physically separate from ACDA headquarters;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 602.18 Inability to comply with requests.

(a) When a request cannot be fulfilled, the requester will be so informed with reasons, and any fees returned after deduction of applicable search costs. Such reasons may include, but are not limited to the following:

(1) Insufficient or vague identifying information which makes identification or location of the record impossible;

(2) No such record in existence;

(3) Record available for purchase from the Government Printing Office or elsewhere; or

(4) Records destroyed pursuant to the Records Disposal Act.

(b) Inability to comply with requests shall be processed the same as denials of records, i.e., notification to the requester shall be in writing, shall set forth the reasons therefor, shall be signed by the name and title of the FOIA Officer, and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.19 Predisclosure notification for confidential commercial information

(a) *When notification is required.* If a request under the FOIA seeks a record that contains information submitted by a person or entity outside the Federal government that arguably is exempt from disclosure under exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm, the Agency shall notify the submitter that such a request has been made whenever:

(1) The submitter has made a good faith designation of information, less than ten years old, as confidential commercial or financial information, or

(2) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) *Notification to submitter.* The notice to the submitter shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the information. The notice shall afford the submitter a reasonable period of time, based on the amount and/or complexity of the information, within which to object to disclosure.

(c) *Objection by submitter.* Any objection by a submitter to disclosure must be made in writing and sent to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. It should identify the portion(s) of the information to which disclosure is objected, and should include a detailed statement of all claimed grounds for withholding any of the information under the FOIA and, in the case of exemption 4, an explanation of why the information constitutes a trade secret or commercial or financial information that is privileged and confidential, including a specification of any claim of competitive or other business harm that would result from disclosure.

(d) *Notification to requester.* The Agency shall notify the requester in writing when any notification to a submitter is made pursuant to paragraph (a) of this section.

(e) *When notification is not required.* Notification to a submitter is not required if:

(1) The Agency determines that the information requested should not be disclosed;

(2) Disclosure is required by statute (other than FOIA) or by regulation; or

(3) The information has previously been lawfully published or officially made available to the public.

(f) *Notice of intent to disclose.* If the Agency determines that despite the objection of the submitter the requested information should be disclosed, in whole or in part, it shall notify both the requester and the submitter of the decision and shall provide to the submitter in writing:

(1) A brief explanation of why the submitter's objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date that provides a reasonable period of time between receipt of the notice and the disclosure date.

(g) *Notice of lawsuit.* (1) Whenever a requester brings legal action to compel disclosure of information covered by paragraph (a) of this section, the Agency

shall promptly notify the submitter in writing.

(2) Whenever a submitter brings legal action to prevent disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the requester in writing.

Subpart C—Fees

§ 620.20 Fees for records search, review, copying, certification, and related services.

The fees for search, review, and copying services for Agency records under the FOIA or the Privacy Act are as follows:

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs for searching for, reviewing for release, and copying the records sought. A ''commercial use'' request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) Requesters from educational and noncommercial scientific institutions will be assessed only copying costs.

(c) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only copying costs.

(d) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for, reviewing for release, and copying records that are responsive to the request.

(e) Requesters from educational and noncommercial scientific institutions, representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of copying or the first two hours of search time. Commercial use requesters will not be entitled to these free services.

(f) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions.

(g) The fee for paper copy reproduction will be $.20 per page.

(h) The fee for duplication of computer tape or printout reproduction or other reproduction (e.g., microfiche) will be the actual, cost, including operator time.

(i) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(j) A fee may be charged for searches that are not productive and for searches for records or parts of records that subsequently are determined to be exempt from disclosure.

(k) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(l) If search charges are likely to exceed $25.00, the requester will be notified of the estimated fees unless the requester's willingness to pay whatever fee is assessed has been provided in advance.

(m) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250.00. Requesters who have previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of billing) may be required to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and them make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

§ 602.21 Waiver or reduction of fees.

Documents shall be furnished without any charge or at a charge reduced below the fees set forth in § 602.20 if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(a) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government;''

(b) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(c) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the information will contribute to the ''public understanding;''

(d) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities;

(e) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(f) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

§ 602.22 [Reserved]

§ 602.23 GPO and free publications.

(a) The index of records available in the Agency's Office of Public Affairs will list the sales offices of records published by the Government Printing Office (GPO). The Agency will refer each requester to the appropriate sales office and refund any fee payments accompanying the request. Published records out of print at the GPO may be copied by the Agency for the requester at the requester's expense in accordance with the fee schedule established for copying service. In some instances the Agency may have extra copies of out of print GPO records. These extra copies will be provided to requesters at the printed GPO price.

(b) The Agency makes some publications or records available to the public without charge. These regulations neither change that practice nor require payment of a fee by a requester unless the original stock has been exhausted any copying services are necessary to satisfy a request.

§ 602.24 Method of payment.

(a) Payment may be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed or delivered to the FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451. Cash should not be sent by mail.

(b) A receipt for fees paid will be given upon request.

Subpart D—Denials of Records

§ 602.30 Denials.

(a) Requests for inspection or copies of records may be denied where the information or record is exempt from disclosure for reasons stated in § 602.31.

(b) Denials shall be in writing, shall set forth the reasons therefor, shall be signed by the FOIA Officer and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.31 Exemptions.

The requirements of this part to make Agency records available do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the Agency;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the Agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information.

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

Subpart E—Review of Denials of Records

§ 602.40 Procedure for appealing initial determinations to withhold records.

(a) A member of the public who has requested an Agency record in accordance with subpart B of this part and who has received an initial determination that does comply fully with the request, may appeal such a determination.

(b) The appeal shall:

(1) Be in writing;

(2) Be initiated within 30 working days of the initial determination denying the request;

(3) Include a copy of the initial written request, a copy of the letter of denial, and the requester's reasons for appealing the denial; and

(4) Be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451.

(c) The 30-day period for appealing a denial begins on he date of the denial letter. The 30-day limitation may be waived by the Agency for good cause shown. The Agency will consider any request closed if, within 30 working days after a complete or partial denial, the requester fails to appeal the denial.

§ 602.41 Decision on appeal.

(a) Review and final determination on an appeal shall be made by the Deputy Director.

(b) [Reserved]

(c) Review of an appeal shall be made on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(d) The final determination on an appeal from a denial shall be made by the Deputy Director within 20 working days of receipt of the appeal by the Agency.

(e) If the final determination is to release the withheld material, the requester will be notified immediately and the material will be forwarded promptly in accordance with the procedure described in § 602.16 for notifications of initial determinations.

(f) If the final determination is to continue to withhold material in whole or in part, the requester will be notified immediately of the determination, the reasons therefore, and the right to judicial review.

(g) All decisions will be indexed and available for inspection and copying in the same manner as other Agency final orders and opinions, if any, under 5 U.S.C. 552(a)(2).

Subpart F—Annual report to the Congress

§ 602.50 Requirements for annual report.

(a) On or before March 1 of each calendar year, ACDA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(1) The number of determinations made by ACDA not to comply with requests for records made to the Agency under this part and the reasons for each such determination;

(2) The number of appeals made by persons under subpart E of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of this part 602 and any other rule or regulation made by ACDA regarding 5 U.S.C. 552;

(6) A copy of the fee schedule and the total amount of fees collected by ACDA for making records available under this part; and

(7) such other information as indicates efforts to administer fully this part.

(b) The FOIA Officer will be responsible for preparing the report for review and submission to the Congress.

Dated: July 15, 1996.

Mary Elizabeth Hoinkes,

General Counsel.

[FR Doc. 96–18884 Filed 8–1–96; 8:45 am]

BILLING CODE 6820–32–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E4517/R2270; FRL–5391–4]

RIN 2070–AB78

Phosphinothricin Acetyltransferase (PAT) and the Genetic Material Necessary for Its Production (Plasmid Vector pZ01502) in Corn; Exemption from Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide inert ingredient phosphinothricin acetyltransferase and the genetic material necessary for its production (plasmid vector pZ01502) in corn. A request for an exemption from the requirement of a tolerance was submitted by Northrup King Company (NK). This regulation eliminates the need to establish a maximum permissible level for residues of this plant pesticide inert ingredient in all raw agricultural commodities of field corn, sweet corn, and popcorn.

EFFECTIVE DATE: Effective on August 2, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number [PP 5E4517/R2270] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC. 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, Dc 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, Va. 22202. Fees accompanying objections shall be labeled ''tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (tolerance Fees) P.O. Box 360277M, Pittsburgh, PA 15251.

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

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 5E4517/R2270]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Michael L. Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor CS, 2800 Crystal Drive, Arlington, VA 22202, (Telephone No. 703–308–8715); e-mail: mendelsohn.michael@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 25, 1995 (60 FR 54689)(FRL–4982–4), which announced that Northrup King Company, 7500 Olson Memorial Hwy., Golden valley, MN 55427, had submitted a pesticide petition (PP) 5E4517 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the plant pesticide inert ingredient phosphinothricin acetyltransferase (PAT) as produced in corn by the PAT gene and its controlling sequences as found on plasmid vector pZ01502. EPA has assigned the inert ingredient of this product the name phosphinothricin acetyltransferase and the genetic material necessary for its production (plasmid vector pZ01502) in corn. ''Genetic material necessary for its production'' means the genetic material which comprise (1) genetic material encoding the phosphinothricin acetyltransferase and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the phosphinothricin acetyltransferase, such as promoters, terminators, and enhancers. There were no adverse comments, or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition 5E4517.

Toxicology Assessment

Data regarding the *in vitro* digestibility of PAT as well as information on the similarity of the PAT enzyme to other proteins were cited and submitted. These data support the prediction that the PAT protein would be non-toxic to humans and have a minimal potential for allergenicity. Residue chemistry data were therefore not required.

The Agency expects that proteins with no significant amino acid homology to known mammalian protein toxins and which are readily inactivated by heat or mild acidic conditions and readily degraded in an in vitro digestibility assay have little likelihood for displaying oral toxicity. The *in vitro* digestibility studies indicate that the PAT enzyme would be rapidly degraded following ingestion. Further, the PAT enzyme was shown to have no significant amino acid homology to known mammalian protein toxins.

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated and are present at high concentrations in the food. The *in vitro* digestibility studies indicate the PAT protein is rapidly degraded in the gastric environment and is also readily denatured by heat or low pH. Thus, the potential for PAT to be a food allergen is minimal

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

Conclusions

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the

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

EPA has established a record for this rulemaking under docket number [PP 5E4517/R2271] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A statement containing the factual basis for this certification was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: July 30, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, by adding § 180.1175, to read as

§ 180.1175 Phosphinothricin acetyltransferase (PAT) and the genetic material necessary for its production (plasmid vector pZ01502) in corn; exemption from the requirement of a tolerance.

Phosphinothricin acetyltransferase (PAT) and the genetic material necessary for its production (plasmid vector pZ01502) in corn is exempt from the requirement of a tolerance when used as a plant pesticide inert ingredient in all raw agricultural commodities of field corn, sweet corn, and popcorn. ''Genetic material necessary for its production'' means the genetic material which comprise genetic material encoding the phosphinothricin acetyltransferase and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the phosphinothricin acetyltransferase, such as promoters, terminators, and enhancers.

[FR Doc. 96–19812 Filed 8–01–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5E4516/R2269; FRL–5391–2]

RIN 2070–AB78

Plant Pesticide Inert Ingredient CP4 Enolpyruvylshikimate-3-D and the Genetic Material Necessary for Its Production in All Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide inert ingredient CP4 Enolpyruvylshikimate-3-D (CP4 EPSPS) and the genetic material necessary for its production in all plants. A request for an exemption from the requirement of a tolerance was submitted by Monsanto Company (Monsanto). This

regulation eliminates the need to establish a maximum permissible level for residues of these plant pesticide inert ingredients in all plants.

EFFECTIVE DATE: Effective on August 2, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5E4516/R2269], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

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

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 5E4516/R2269] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Michael L. Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor CS, 2800 Crystal Drive, Arlington, VA 22202, Telephone No. 703–308–8715; e-mail: mendelsohn.michael@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 25, 1995 (60 FR 54689)(FRL–4984–4), which announced that Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198, had submitted a pesticide petition (PP) 5E4516 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the plant pesticide inert ingredient CP4 EPSPS and the genetic material necessary for the production of this protein in or on all raw agricultural commodities when used as a plant pesticide inert ingredient. EPA has assigned these inert ingredients the name CP4 EPSPS and the genetic material necessary for its production in plants. ''Genetic material necessary for its production'' means the genetic material which comprise (1) genetic material encoding the CP4 EPSPS and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CP4 EPSPS, such as promoters, terminators, and enhancers.

There were no adverse comments, or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition 5E4516.

Toxicology Assessment

Product Characterization

CP4 EPSPS protein produced in *E. coli* gave SDS-PAGE, western blot, N-terminal amino acid sequence and enzyme activity similar to the reference standard. The *E. coli* preparation lacked detectable glycosylation based on the staining reaction compared to transferritin and horseradish peroxidase positive controls.

CP4 EPSPS protein as expressed in either *E. coli* or corn line 523–06–1 were compared by SDS-PAGE, western blot, N-terminal amino acid sequence and specific enzyme activity against shikimate-3-phosphate and shown to have essentially equivalent characteristics save the specific activity which was lower in the plant preparation. The similarity of the CP4 EPSPS expressed in corn line 523–06–1 and MON80100 were shown to yield identical banding patterns indicating similar molecular weight and immunoreactivity.

Western blot and enzymatic activity assays indicate that CP4 EPSPS is readily degraded in less than 2 minutes by incubation in simulated gastric fluid. In simulated intestinal fluid the enzyme activity and immunoreactivity lasts longer being still detectable at 10 minutes and undetectable by 270 minutes.

CP4 EPSPS is an enzyme involved in aromatic amino acid synthesis. CP4 EPSPS is not closely related in amino acid homology to other described EPSPS enzymes. CP4 EPSPS is no more than 51.1% similar and 26.0% identical to EPSPS in plants and 59.3% similar and 41.1% identical to EPSPS in other bacteria. The unique character of CP4 EPSPS is its ability to function in the presence of glyphosate which is a competitive inhibitor with PEP for the active site of other EPSPS enzymes.

Toxicology

In an acute oral toxicity test of bacterially-derived CP4 EPSPS protein, no test substance related deaths occurred at a dose of 572 mg/kg.

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

The data submitted and cited by Monsanto support the prediction that the CP4 EPSPS protein would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CP4 EPSPS is not considered acutely or chronically toxic. Adequate information was submitted to show that the test material derived from microbial cultures was biochemically similar to the CP4 EPSPS as produced by the plant-pesticide in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The genetic material necessary for the production of the CP4 EPSPS are the nucleic acids (DNA) which comprise (1) genetic material encoding the CP4 EPSPS and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding CP4 EPSPS, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their

consumption. These ubiquitous nucleic acids as they appear in the subject active ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the CP4 EPSPS in any plant.

Conclusion

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

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

A record has been established for this rulemaking under the docket number [PP 5E4516/R2269] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C . 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A statement contianing the factual basis for this certification was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: July 30, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

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

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

2. In subpart D, by adding new § 180.1174, to read as follows:

§ 180.1174 CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) and the genetic material necessary for its production in all plants.

CP4 Enolpyruvylshikimate-3-phosphate (CP4 EPSPS) and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant pesticide inert ingredients in all raw agricultural commodities. ''Genetic material necessary for its production'' means the genetic material which comprise genetic material encoding the CP4 EPSPS and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CP4 EPSPS, such as promoters, terminators, and enhancers.

[FR Doc. 96–19813 Filed 8–1–96; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 5F4473/R2270; FRL–5391–3]

RIN 2070–AB78

Bacillus Thuringiensis CryIA(b) Delta-Endotoxin and the Genetic Material Necessary for Its Production in All Plants; Exemption from Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide active ingredients Bacillus thuringiensis CryIA(b) delta-endotoxin and the genetic material necessary for its production in all plants. A request for an exemption from the requirement of a tolerance was submitted by Monsanto Company. This regulation eliminates the need to establish a maximum permissible level for residues of these plant pesticides in all plant raw agricultural commodities.

EFFECTIVE DATE: Effective on August 2, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number [PP 5F4473/R2270] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC. 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (tolerance Fees) P.O. Box 360277M, Pittsburgh, PA 15251.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5F4473/R2270]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Michael L. Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor CS, 2800 Crystal Drive, Arlington, VA 22202, Telephone No. 703–308–8715), e-mail: mendelsohn.michael@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Monsanto has genetically modified corn plants to produce a truncated version of the pesticidal CryIA(b) delta-endotoxin protein (derived from the soil microbe *Bacillus thuringiensis*). EPA issued a notice, published in the Federal Register of October 25, 1995 (60 FR 54689)(FRL–4982–4), which announced that the Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198 had submitted a pesticide petition (PP) 5F4473 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the *Bacillus thuringiensis* subsp. kurstaki Insect Control Protein (CryIA(b)) as produced in plant cells. EPA has described the active ingredients covered by this description as *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in all plants. ''Genetic material necessary for its production'' means the genetic material which comprise (1) genetic material encoding the CryIA(b) delta-endotoxin and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CryIA(b) delta-endotoxin, such as promoters, terminators, and enhancers.

There were no adverse comments, or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition 5F4473.

Product Analysis

Data was presented which showed that the truncated CryIA(b) toxin can be extracted from corn leaf tissue and this purified material displays characters and activities similar to that produced in *E. coli* which has been transformed to produce CryIA(b). The similarities are shown for the tryptic core proteins in molecular weight after SDS-PAGE, immunorecognition in Western blots and ELISA, partial amino acid sequence analysis, lack of glycosylation and bioactivity against either European corn borer or corn earworm. This analysis justifies the use of the microbially produced toxin as an analogue for the plant produced protein in mammalian toxicity testing.

Toxicology Assessment

Toxicity

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in all plants.

The data submitted regarding potential health effects include information on the characterization of the expressed CryIA(b) delta-endotoxin in corn, the acute oral toxicity, and *in vitro* digestibility of the delta-endotoxin. In an acute oral toxicity test of bacterially-derived CryIA(b) protein, no test substance related deaths occurred at a dose of 4,000 mg/kg.

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

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

The genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(b) delta-endotoxin are the nucleic acids (DNA) which comprise (1) genetic material encoding the CryIA(b) delta-endotoxin and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CryIA(b) delta-endotoxin, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life and the Agency knows

of no instance where these nucleic acids have been associated with toxic effects related to their consumption. These ubiquitous nucleic acids as they appear in the subject active ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is anticipated from dietary exposure to the genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(b) delta-endotoxin in any plants.

Allergenicity

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated and present at high concentrations in the food. Monsanto has submitted data demonstrating that the CryIA(b) delta-endotoxin is rapidly degraded by gastric fluid *in vitro* and is non-glycosylated.

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

Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions to the delta-endotoxin itself despite significant oral, dermal and inhalation exposure to the microbial product. Several reports under FIFRA section 6(a)2 have been made for various *Bacillus thuringiensis* products claiming allergic reactions. However, the Agency determined these reactions were not due to *Bacillus thuringiensis* itself or any of the cry toxins.

Residue Chemistry Data

Residue chemistry data were not required because of the lack of mammalian toxicity of this active ingredient. In the acute mouse oral toxicity study, the CryIA(b) delta-endotoxin was shown to have an LD_{50} greater than 4,000 mg/kg. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' Regulatory Toxicology and Pharmacology 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CryIA(b) delta-endotoxin is not considered acutely. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant pesticide was derived. [See 40 CFR 158.740(b)] For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II and III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

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

Conclusions

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

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

EPA has established a record for this rulemaking under docket number [PP 5F4473/R2270] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any

unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: July 30, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, by adding new § 180.1173, to read as follows:

§ 180.1173 Bacillus thuringiensis CryIA(b) delta-endotoxin and the genetic material necessary for its production in all plants.

Bacillus thuringiensis CryIA(b) delta-endotoxin and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant pesticides in all plant raw agricultural commodities. ''Genetic material necessary for its production'' means the genetic material which comprise genetic material encoding the CryIA(b) delta-endotoxin and its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CryIA(b) delta-endotoxin, such as promoters, terminators, and enhancers.

[FR Doc. 96–19811 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 406, 407, 408, and 416

[BPD–752–FC]

RIN 0938–AH33

Medicare Program: Special Enrollment Periods and Waiting Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rules with comment period.

SUMMARY: These rules provide an additional way for certain disabled individuals under age 65 to qualify for special enrollment periods (SEPs); extend from 1991 through 1998 the period during which certain disabled individuals under age 65 who are covered under large group health plans (LGHPs) may qualify for SEPs; and make clear that a second 24-month waiting period is not required for disability-based reentitlement if the current impairment is the same as, or directly related to, the impairment on which the previous period of entitlement was based.

The changes made by these rules conform the HCFA regulations to certain provisions of the Omnibus Budget Reconciliation Acts of 1987, 1989, 1990, and 1993 (commonly referred to as OBRA '87, OBRA '89, OBRA '90, and OBRA '93, respectively), and the Social Security Act (SSA) Amendments of 1994 (Pub. L. 103–432).

In OBRA '93, Congress amended section 1862(b) of the Social Security Act (the Act), to extend through September 30, 1998 the Medicare Secondary Payer (MSP) provisions for disabled beneficiaries. Congress did not make a conforming amendment to section 1837(i) of the Act, which authorizes SEPs for disabled beneficiaries who stop working. However, the SSA Amendments of 1994 made the conforming change to section 1837(i), retroactive to the OBRA '93 effective date.

The purpose of the special enrollment period amendments is to ensure that a disabled individual under age 65 who meets the conditions for enrollment in Medicare Part B will be able to enroll as soon as his or her group health plan coverage based on current employment ends; and to extend until September 30, 1998 the protection afforded by the special enrollment periods to disabled individuals covered under LGHPs.

DATES: *Effective date:* These rules are effective on September 3, 1996.

Comment date: We will consider comments received by October 1, 1996.

ADDRESSES: Please mail original and 3 copies of your comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–752–FC, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver original and 3 copies of your comments to either of the following addresses:

Room 309–G, 200 Independence Avenue, S.W., Washington, DC 20201,

Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–752–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

Although we cannot respond to individual comments, if we revise these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

FOR FURTHER INFORMATION CONTACT: Margaret Jefferson, (410) 786–4482.

SUPPLEMENTARY INFORMATION:

I. Background

A. Amendments to the Statute: Special Enrollment Periods and Waiting Period

1. Section 4033 of OBRA '87 (Pub. L. 100–203) amended section 226(f) of the Act to provide that, effective as of March 1988, a second 24-month waiting period is not required for disability-based reentitlement if the current impairment is the same as, or directly related to, the impairment on which the

previous period of entitlement was based.

2. Section 6202(c) of OBRA '89 (Pub. L. 101–239) amended section 1837(i) of the Act to provide, effective July 1, 1990, an additional way for certain disabled individuals under age 65 to qualify for a SEP. Before enactment of this amendment, a disabled ''active individual'' could qualify for a SEP only if he or she was covered (directly or as part of the family of another covered individual) under a large group health plan (LGHP). (The statute defined ''active individual'' as ''an employee (as may be defined in regulations), the employer, self-employed individual (such as the employer) an individual associated with the employer in a business relationship, or a member of the family of any such person''). An LGHP is a plan of an employer of 100 or more employees or of a group of employers at least one of which has 100 or more employees. Under the amendment, a disabled individual can also qualify for a SEP under the rules that previously applied only to an individual age 65 or over, that is, by having been covered under a group health plan (GHP) on the basis of his or her own employment or that of a spouse. This rule applies regardless of the number of employees an employer has. However, since the SEP qualification provisions for individuals age 65 or over refer specifically to the plan of the individual or the individual's spouse, this additional way of qualifying for a SEP is not available to a child or other family member who is disabled. Those individuals qualify for SEPs only if covered under an LGHP.

3. Section 4203(b) of OBRA '90 (Public Law 101–508) and section 13561(b) of OBRA '93 (Public Law 103–66) amended section 1862(b)(1)(B)(iii) of the Act to change, first from December 31, 1991 to September 30, 1995, and then to September 30, 1998, the termination date of the MSP provisions for the disabled. Moreover, sections 13561(e)(1)(E) and (e)(1)(F) of OBRA '93 amended section 1862(b)(1)(B)(i) of the Act to eliminate the ''active individual'' language. Before this amendment, ''active individual'' identified the beneficiaries to whom the MSP provisions applied. Because of this change to the ''current employment'' criterion, Medicare is secondary payer for a disabled beneficiary who is under age 65 and who is covered under an LGHP—

- Through August 9, 1993, as a disabled ''active individual''; and
- From August 10, 1993 through September 1998, ''by virtue of the individual's current employment status with an employer''.

Section 1862(b)(1)(B) of the Act establishes October 1, 1998 as the sunset date of the MSP provisions for disabled individuals. As noted above, section 1837(i) of the Act, which pertains to SEPs, was amended by the SSA Amendments of 1994 to conform to section 1862(b(1)(B) of the Act. Since the availability of SEPs to disabled individuals depends upon the existence of section 1862(b)(1)(B) of the Act, we have interpreted that the October 1, 1998 sunset date in that section applies also to those SEP provisions. (The MSP provisions for the aged, set forth at section 1862(b)(1)(A) of the Act have no sunset date.)

4. Section 147(f) of the Social Security Amendments of 1994 (Pub. L. 103–432).

- Amended section 1837(i)(3) of the Act so that a SEP may begin earlier and last longer; and
- Amended section 1838(e) of the Act to provide options for the beginning of Medicare coverage that is based on enrollment during specified months of a SEP.

Under the section 1837 amendment—

- Instead of beginning on the first day of the first month during which the individual is no longer enrolled in a GHP or LGHP on the basis of current employment status, the SEP may include each month during any part of which the individual is so enrolled; and
- Instead of ending ''seven months later'', the SEP ends on the last day of the eighth consecutive month in which the individual is no longer so enrolled.

Under the section 1838 amendment, with respect to the beginning of coverage—

- For one who enrolls in Medicare in a month during any part of which he or she is enrolled in a GHP or LGHP on the basis of current employment status, or the first full month when not so enrolled, Medicare coverage begins on the first day of the month of enrollment or, at the option of the individual, on the first day of any of the following three months.
- For one who enrolls in any other month of the SEP, there is no change: Medicare coverage begins on the first day of the month following the month of enrollment.

B. Conforming Changes in the Regulations: Special Enrollment Periods and Waiting Period

1. To reflect the statutory changes discussed above, we have made the following changes:

- Added a new paragraph (b)(3) to § 406.12, to specify that a second 24-month waiting period is not required for reentitlement to hospital insurance benefits if the previous period of entitlement ended on or after March 1, 1988 and the current impairment is the same as, or directly related to, the impairment on which the previous period of entitlement was based.
- Revised § 407.20(d) to set forth the new rule under which a disabled individual may qualify for a SEP if he or she had GHP coverage on the basis of the current employment of the individual or the individual's spouse, and to restate the rule for those who must qualify on the basis of LGHP coverage.
- Revised § 407.20(f) to specify the beginning date of a SEP for a disabled individual who had GHP coverage on the basis of current employment.
- Revised § 408.24(a)(8)(i) to change ''January 1992'' to ''October 1998'' and add a new paragraph (a)(9) to specify the months excluded in computing Medicare Part B premium increases (for late enrollment or reenrollment) for disabled individuals who had GHP coverage on the basis of current employment. The revisions to § 408.24(a)(8)(i) reflect the extension of the MSP provisions for the disabled. The new paragraph 408.24 (a)(9) is needed because the OBRA '89 amendment that extended the SEP provisions to disabled beneficiaries covered under a GHP (as distinguished from an LGHP) was effective July 1990.

C. Technical and Clarifying Changes

1. In § 406.6, we have amended paragraph (b) to clarify that an individual who is under age 65 and has been entitled, for more than 24 months, to monthly social security or railroad retirement benefits based on disability is also (in addition to those currently identified in the paragraph) automatically entitled to Medicare Part A without filing an application. This provision is part of section 226(b) of the Act and, through an oversight, this provision had not been reflected in our regulations.

2. Paragraph (e) of § 406.21, revised to reflect the statutory changes that affect SEPs, is redesignated as a new § 406.24.

3. In § 407.20(a), we have made the following changes:

- Removed the definitions and replaced them with reference to the definitions in Part 411 of the HCFA rules.
- Used the initials ''GHP'' and ''LGHP'' wherever appropriate.
- Explained, under paragraph (a)(1) why the ''former employee'' language of the § 411.101 definitions of GHP and LGHP does not apply with respect to SEPs.

4. In § 407.25, we have revised paragraph (c) to remove the current outdated content on beginning of entitlement and referenced new § 406.24. This new section incorporates the statutory changes that pertain to SEPs and apply to Medicare Part B as well as Medicare Part A.

5. In § 408.24(a), we have—

- Corrected the cross-reference to § 405.340, which has been redesignated as § 411.170.
- Used the initials ''GHP'' and ''LGHP'' wherever appropriate.
- Referenced the definitions in §§ 411.101, 411.104, and 411.201 of the HCFA regulations, which incorporate the Internal Revenue Code language.
- Removed references to Public Laws because reference to the implementing rules provides more precise guidance and is sufficient.

6. We have also taken advantage of this opportunity to make minor technical and editorial changes that we overlooked when § 416.35, which pertains to ambulatory surgical centers, was amended.

II. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite public comment. The Notice describes the terms and substance of the proposed rules and references the legal authority under which they are proposed. However, this procedure may be waived if the agency finds that notice and public comment rulemaking is impracticable, unnecessary, or contrary to the public interest.

These rules conform HCFA regulations to statutory amendments that are already in effect. Publication of these conforming amendments will ensure better understanding of beneficiary rights, but will have no fiscal or program impact. The technical and clarifying amendments make no substantive changes in the rules. For these reasons, we find that notice and opportunity for comment are unnecessary and that there is good cause to waive notice of proposed rulemaking procedures.

However, as indicated above under DATES, we will consider timely comments from anyone who believes that the conforming changes go beyond what the statute requires or permits, or that any of the technical amendments affect the substance of the rules.

III. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis for each rule unless the Secretary certifies that it will not have a significant economic impact on a substantial number of small entities. States and individuals are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

These rules conform the HCFA regulations to certain provisions of OBRA '87, OBRA '89, OBRA '90, OBRA '93, and the Social Security Act Amendments of 1994. The statutory effective dates of these provisions have already passed and the changes are already in effect.

These amendments to the regulations will have no fiscal or program impact. We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

We have reviewed these rules and determined that, under the provisions of Public Law 104–121, they are not major rules.

In accordance with the provisions of Executive Order 12866, these final rules with comment period were not reviewed by the Office of Management and Budget.

IV. Paperwork Reduction Act

These rules contain no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects

42 CFR Part 406

Health Facilities, Kidney diseases, Medicare.

42 CFR Part 407

Medicare.

42 CFR Part 408

Medicare.

42 CFR Part 416

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as follows:

A. Part 406 is amended as set forth below:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

1. The authority citation for Part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. Section 406.6 is amended to revise paragraph (b) to read as follows:

§ 406.6 Application or enrollment for hospital insurance.

* * * * *

(b) *Individuals who need not file an application for hospital insurance.* An individual who meets any of the following conditions need not file an application for hospital insurance:

(1) Is under age 65 and has been entitled, for more than 24 months, to monthly social security or railroad retirement benefits based on disability.

(2) At the time of attainment of age 65, is entitled to monthly social security or railroad retirement benefits.

(3) Establishes entitlement to monthly social security or railroad retirement benefits at any time after attaining age 65.

3. Section 406.12(b) is amended to remove footnote ''1'', revise the introductory text, remove the semicolon and the word ''or'' from the end of paragraph (b)(1) and insert a period in its place, and add a new paragraph (b)(3), to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(b) *Previous periods of disability benefits entitlement.* Months of a previous period of entitlement or deemed entitlement to disability benefits count toward the 25-month requirement if any of the following conditions is met:

* * * * *

(3) The previous period ended on or after March 1, 1988 and the current impairment is the same as, or directly related to, the impairment on which the previous period of entitlement was based.

* * * * *

4. In § 406.21, paragraph (e) is removed and reserved.

5. A new § 406.24 is added, to read as follows:

§ 406.24 Special enrollment period.[1]

(a) *Terminology.* As used in this subpart, the following terms have the indicated meanings.

(1) *Current employment status* has the meaning given this term in § 411.104 of this chapter.

(2) *Family member* has the meaning given this term in § 411.201 of this chapter.

(3) *Group health plan (GHP)* and *large group health plan (LGHP)* have the meanings given those terms in § 411.101 of this chapter, except that the ''former employee'' language of those definitions does not apply with respect to SEPs because—

(i) Section 1837(i)(1)(A) of the Act explicitly requires that GHP coverage of an individual age 65 or older, be by reason of the individual's (or the individual's spouse's) current employment status; and

(ii) The sentence following section 1837(i)(1)(B), of the Act refers to ''large group health plan''. Under section 1862(b)(1)(B)(i), as amended by OBRA '93, LGHP coverage of a disabled individual must be ''by virtue of the individual's or a family member's current employment status with an employer''.

(4) *Special enrollment period (SEP)* is a period provided by statute to enable certain individuals to enroll in Medicare without having to wait for the general enrollment period.

(b) *Duration of SEP.*[2] (1) The SEP includes any month during any part of which—

(i) An individual over age 65 is enrolled in a GHP by reason of the current employment status of the individual or the individual's spouse; or

(ii) An individual under age 65 and disabled—

(A) Is enrolled in a GHP by reason of the current employment status of the individual or the individual's spouse; or

(B) Is enrolled in an LGHP by reason of the current employment status of the individual or a member of the individual's family.

(2) The SEP ends on the last day of the eighth consecutive month during which the individual is at no time enrolled in a GHP or an LGHP by reason of current employment status.

(c) *Conditions for use of a SEP.*[3] In order to use a SEP, the individual must meet the following conditions:

(1) When first eligible to enroll for premium hospital insurance under § 406.20(b) or (c), the individual was—

(i) Age 65 or over and covered under a GHP by reason of the current employment status of the individual or the individual's spouse;

(ii) Under age 65 and covered under an LGHP by reason of the current employment status of the individual or a member of the individual's family ; or

(iii) Under age 65 and covered under a GHP by reason of the current employment status of the individual or the individual's spouse.

(2) For all the months thereafter, the individual has maintained coverage either under hospital insurance or a GHP or LGHP.

(d) *Special rule: Additional SEPs.* (1) Generally, if an individual fails to enroll during any available SEP, he or she is not entitled to any additional SEPs.

(2) However, if an individual fails to enroll during a SEP, because coverage under the same or a different GHP or LGHP was restored before the end of that particular SEP, that failure to enroll does not preclude additional SEPs.

(e) *Effective date of coverage.* (1) If the individual enrolls in a month during any part of which he or she is covered under a GHP or LGHP on the basis of current employment status, or in the first full month when no longer so covered, coverage begins on the first day of the month of enrollment or, at the individual's option, on the first day of any of the three following months.

(2) If the individual enrolls in any month of the SEP other than the months specified in paragraph (e)(1) of this section, coverage begins on the first day of the month following the month of enrollment.

B. Part 407 is amended as set forth below.

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

1. The authority citation for part 407 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 407.20 is revised to read as follows:

§ 407.20 Special enrollment period related to coverage under group health plans.

(a) *Terminology*—(1) *Group health plan (GHP) and large group health plan (LGHP).* These terms have the meanings given them in § 411.101 of this chapter except that the ''former employee'' language of those definitions does not apply with respect to SEPs for the reasons specified in § 406.24(a)(3) of this chapter.

(2) *Special enrollment period (SEP).* This term has the meaning set forth in § 406.24(a)(4) of this chapter. In order to use a SEP, an individual must meet the conditions of paragraph (b) and of paragraph (c) or (d) of this section, as appropriate.

(b) *General rule.* All individuals must meet the following conditions:

(1) They are eligible to enroll for SMI on the basis of age or disability, but not on the basis of end-stage renal disease.

(2) When first eligible for SMI coverage (4th month of their initial enrollment period), they were covered under a GHP or LGHP on the basis of current employment status or, if not so covered, they enrolled in SMI during their initial enrollment period; and

(3) For all months thereafter, they maintained coverage under either SMI or a GHP or LGHP. (Generally, if an individual fails to enroll in SMI during any available SEP, he or she is not entitled to any additional SEPs. However, if an individual fails to enroll during a SEP because coverage under the same or a different GHP or LGHP was restored before the end of that particular SEP, that failure to enroll does not preclude additional SEPs.)

(c) *Special rule: Individual age 65 or over.* For an individual who is or was covered under a GHP, coverage must be by reason of the current employment status of the individual or the individual's spouse.

(d) *Special rules: Disabled individual.*[4] Individuals entitled on the basis of disability (but not on the basis of end-stage renal disease) must meet conditions that vary depending on whether they were covered under a GHP or an LGHP.

(1) For a disabled individual who is or was covered under a GHP, coverage must be on the basis of the current employment status of the individual or the individual's spouse.

(2) For a disabled individual who is or was covered under an LGHP, coverage must be as follows:

(i) Before August 10, 1993, as an ''active individual'', that is, as an employee, employer, self-employed individual (such as the employer), individual associated with the employer

[1] Before August 1986, SEPs were available only for enrollment in supplementary medical insurance, not for enrollment in premium hospital insurance.

[2] Before March 1995, SEPs began on the first day of the first month the individual was no longer covered under a GHP or LGHP by reason of current employment status.

[3] Before August 10, 1993, an individual under age 65 could qualify for a SEP only if he or she had LGHP coverage as an ''active individual'', which the statute defined as ''an employee, employer, self-employed individual (such as the employer), individual associated with the employer in a business relationship, or as a member of the family of any of those persons''.

[4] Under the current statute, the SEP provision applicable to disabled individuals covered under an LGHP expires on September 1998. Unless Congress changes that date, the last SEP available under those provisions will begin with June 1998.

in a business relationship, or as a member of the family of any of those persons.

(ii) On or after August 10, 1993, by reason of current employment status of the individual or a member of the individual's family.

(e) *Effective date of coverage.* The rule set forth in § 406.24(d) for Medicare Part A applies equally to Medicare Part B.

3. In § 407.25, paragraph (c) is revised to read as follows:

§ 407.25 Beginning of entitlement: Individual enrollment.

* * * * *

(c) *Enrollment or reenrollment during a SEP.* The rules set forth in § 406.24(d) of this chapter apply.

C. Part 408 is amended as set forth below:

PART 408—SUPPLEMENTARY MEDICAL INSURANCE PREMIUMS

1. The authority citation for Part 408 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 408.24 is amended to republish the introductory text of paragraph (a), to revise paragraphs (a)(6), (a)(7), and (a)(8), to add a new paragraph (a)(9), and to revise paragraph (b)(2)(i), to read as follows:

§ 408.24 Individuals who enrolled or reenrolled before April 1, 1981 or after September 30, 1981.

(a) *Enrollment.* For an individual who first enrolled before April 1, 1981 or after September 30, 1981, the period includes the number of months elapsed between the close of the individual's initial enrollment period and the close of the enrollment period in which he or she first enrolled, and excludes the following:

* * * * *

(6) For premiums due for months beginning with September 1984 and ending with May 1986, the following:

(i) Any months after December 1982 during which the individual was—

(A) Age 65 to 69;

(B) Entitled to hospital insurance (Medicare Part A); and

(C) Covered under a group health plan (GHP) by reason of current employment status.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in § 407.20 of this chapter.

(7) For premiums due for months beginning with June 1986, the following:

(i) Any months after December 1982 during which the individual was:

(A) Age 65 or over; and

(B) Covered under a GHP by reason of current employment status.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in § 407.20 of this chapter.

(8) For premiums due for months beginning with January 1987, the following:

(i) Any months after December 1986 and before October 1998 during which the individual was:

(A) A disabled Medicare beneficiary under age 65;

(B) Not eligible for Medicare on the basis of end stage renal disease, under § 406.13 of this chapter; and

(C) Covered under an LGHP as described in § 407.20 of this chapter.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in § 407.20 of this chapter.

(9) For premiums due for months beginning with July 1990, the following:

(i) Any months after December 1986 during which the individual met the conditions of paragraphs (a)(8)(i)(A) and (a)(8)(i)(B) of this section, and was covered under a GHP by reason of the current employment status of the individual or the individual's spouse.

(ii) Any months of SMI coverage for which the individual enrolled during a special enrollment period as provided in § 407.20 of this chapter.

(b) * * *

(2) * * *

(i) The periods specified in paragraphs (a)(1) through (a)(9) of this section; and

* * * * *

D. Part 416 is amended as set forth below.

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 416.35 [Amended]

2. In § 416.35, the following changes are made:

a. In paragraph (b)(1)(i), ''§ 416.39'' is revised to read ''§ 416.26''.

b. In the introductory text of paragraph (d), ''shall be given'' is revised to read ''is given''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: July 26, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–19558 Filed 8–1–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This document updates addresses for the Office of the Solicitor.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: Because this action reflects agency management in announcing a change of address, the Department has determined that the provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b) and (d), allowing for public notice and comment and a 30-day delay in the effective date of a rule, are unnecessary and impracticable.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Therefore, part 4 of title 43 of the Code of Federal Regulations, is amended as follows:

PART 4—[AMENDED]

Subpart E—Special Procedures Applicable to Public Land Hearings and Appeals

1. The authority citation for subpart E of part 4 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

2. Section 4.413 is amended by revising the address in paragraph (c)(2)(iv) to read as follows:

§ 4.413 Service of notice of appeal and of other documents.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215;

* * * * *

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

3. The authority citation for subpart L of part 4 continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

§ 4.1109 [Amended]

4. In § 4.1109(a)(2), the seven undesignated paragraphs are designated as (i) through (vii).

5. In § 4.1109, newly designated paragraphs (a)(2) (iii), (v), and (vii) are revised to read as follows:

§ 4.1109 Service.

(a) * * *

(2) * * *

(iii) For mining operations in Colorado, Montana, North Dakota, South Dakota, and Wyoming, including mining operations located on Indian lands within those States: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

* * * * *

(v) For the challenge of permitting decisions affecting mining operations located on Indian lands within Arizona, California, and New Mexico: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

* * * * *

(vii) For the challenge of permitting decisions affecting mining operations in Washington: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

* * * * *

Dated: June 12, 1996.

Brooks B. Yeager,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 96–19392 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–79–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 96–264]

Compatibility of Wireless Services With Enhanced 911

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has adopted a Report and Order and Further Notice of Proposed Rulemaking that creates rules to govern the availability of basic 911 services and the implementation of Enhanced 911 (E911) for wireless services. (The summary of the Further Notice of Proposed Rulemaking portion of this decision may be found elsewhere in this edition of the Federal Register). The primary goal of this proceeding is to promote safety of life and property through the use of wireless communications, ensure broad availability of wireless 911 services, by creating a uniform, nationwide standard concerning the processing of 911 calls from wireless handsets, and establish a timetable for the development and deployment of technologies that will enable wireless carriers and emergency service providers to identify the location of wireless 911 callers.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Peter G. Wolfe, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Report and Order (''R&O'') portion of the Commission's Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94–104; FCC 96–264, adopted June 12, 1996, and released July 26, 1996. The summary of the Further Notice of Proposed Rulemaking portion of this decision may be found elsewhere in this edition of the Federal Register. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Report and Order

1. In the R&O, the Commission adopted several requirements and made them applicable to all cellular licensees, broadband Personal Communications Service (PCS), and certain Specialized Mobile Radio (SMR) licensees.[1] These SMR providers include 800 MHz and 900 MHz SMR licensees that hold geographic area licensees, as well as incumbent wide area SMR licensees defined as licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service, either by waiver or under Section 90.629 of the Commission's Rules. The covered SMR providers include only licensees that offer real-time, tow-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. These classes of licensees are hereafter referred to as ''covered carriers.'' Certain other SMR licensees and Mobile Satellite Service (MSS) carriers are exempt from our requirements.

2. For basic 911 services, the R&O first requires that, not later than 12 months after the effective date of the rules adopted in this proceeding, covered carriers must process and transmit to any appropriate PSAPs all 911 calls made from wireless mobile handsets which transmit a code identification,[2] including calls initiated by roamers. The processing and transmission of such calls shall not be subject to any user validation or similar procedure that otherwise may be invoked by the covered carrier.

3. In the case of 911 calls made from wireless mobile handsets that do not transmit a code identification, not later than 12 months after the effective date of the rules adopted in this proceeding, covered carriers must process and transmit such calls to any appropriate PSAP which previously has issued a formal instruction to the carrier

[1] The Notice of Proposed Rulemaking initiating this proceeding may be found at 59 FR 54878, November 2, 1994.

[2] The term ''code identification,'' when used in this Order in conjunction with 911 calls, means (1) in the case of calls transmitted over the facilities of a covered carrier other than a Specialized Mobile Radio carrier that is subject to the requirements of this Order, a call originated from a mobile unit which has a Mobile Identification Number (MIN); and (2) in the case of calls transmitted over the facilities of a Specialized Mobile Radio carrier that is subject to the requirements of this Order, a call originated from a mobile unit which has the functional equivalent of a MIN. A MIN is a 34-bit binary number that a PCS or cellular handset transmits as part of the process of identifying itself to wireless networks. Each handset has one MIN, and it is derived from the ten-digit North American Numbering Plan (NANP) telephone number that is programmed into the handset by a CMRS provider generally when it initiates service for a new subscriber. See, e.g., EIA/TIA Standard 553, Mobile Station—Land Station Compatibility Specification, September 1989, at 2.3.1.

involved that the PSAP desires to receive such calls from the carrier.

4. Not later than 12 months after the effective date of the rules adopted in this proceeding, covered carriers must be capable of transmitting calls by individuals with speech or hearing disabilities through devices used in conjunction with or as a substitute for traditional wireless mobile handsets, e.g., through the use of Text Telephone Devices (TTY) to local 911 services.

5. The implementation and deployment of enhanced 911(E911) features and functions will be accomplished in two phases. Under Phase I, not later than 12 months after the effective date of the rules adopted in this proceeding, covered carriers must have initiated the actions necessary to enable them to relay a caller's Automatic Number Identification (ANI) and the location of the base station or cell site receiving a 911 call to the designated PSAP. Not later than 18 months after the effective date of the rules adopted in this R&O, such carriers must have completed these actions. These capabilities will allow the PSAP attendant to call back if the 911 call is disconnected.

6. Under Phase II, not later than five years after the effective date of the rules adopted in this proceeding, covered carriers are required to achieve the capability to identify the latitude and longitude of a mobile unit making a 911 call, within a radius of no more than 125 meters in 67 percent of all cases.

7. The E911 (Phase I and Phase II) requirements imposed upon covered carriers in the Order shall apply only if (1) a carrier receives a request for such E911 services from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the services; and (2) a mechanism for the recovery of costs relating to the provision of such services is in place. If the carrier receives a request less than 6 months before the implementation dates of Phase I and Phase II, then it must comply with the Phase I and Phase II requirements within 6 months after the receipt of the notice specifying the request.

8. Covered carriers, in coordination with the public safety organizations, are also directed to resolve certain E911 implementation issues, including grade of service and interface standards, through industry consensus in conjunction with standard-setting bodies.

Final Regulatory Flexibility Analysis

9. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice.* The Commission sought written public comments on the proposals in the Notice, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA).[3]

I. Need For and Objective of the Rules

10. This Report and Order adopts policies concerning the operation of 911 and enhanced 911 (E911) emergency calling service and the services provided by cellular, broadband personal communications services (PCS), and geographic area specialized mobile radio (SMR) licensees. Commenters responding to the Notice in this proceeding have identified a number of ways in which 911 and E911 might be available through the use of wireless telephones, and have indicated that more widely available 911 and E911 services will save lives and property. Commenters also have indicated that various enhancements to wireless 911 service, such as the ability of the carrier to provide precise caller location information to the public safety answering point administrators, would make significant contributions to the effectiveness of wireless 911 services.

11. We find that the benefit of providing for more widely available and more effective 911 and E911 services for users of wireless telephones exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by requiring that wireless telephones operate effectively with E911 systems.

II. Summary of Issues Raised by the Public Comments In Response to the Initial Regulatory Flexibility Analysis

12. No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis. In general comments on the Notice, however, a number of commenters raised issues that might affect small entities. Most of the wireless industry supported exemption for site-specific Specialized Mobile Radio (SMR) licensees due to their limited interconnection with the public switched network. Rural cellular providers argued that they should be exempted from E911 requirements because of the high expense in low density markets, as well as the lack of emergency service provider capabilities in such markets.

III. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

13. There are no general reporting or recordkeeping requirements. There are, however, requirements for a group of trade and consumer organizations to report to the Commission on the status of industry discussions of technical standards and other implementation issues. We assume that these reports will be prepared by the professional staff of these associations, and we do not intend to impose any unnecessary burdens or costs on the entities involved in the preparation and submission of the reports. The rule will require cellular, broadband PCS, and geographic area SMR licensees to upgrade their equipment so that:

(1) 911 calls from wireless mobile handsets which transmit a code identification will be transmitted without delay or credit verification.

(2) 911 calls from any mobile handset will be transmitted without delay or credit verification to any emergency service provider who requests that they be transmitted.

(3) 911 calls may be transmitted by speech or hearing impaired individuals through Text Telephone Devices.

(4) Emergency service providers will be enabled to call back 911 calls which are disconnected.

(5) Emergency service providers will be sent the location of the 911 caller within a radius of 125 meters by longitude and latitude in 67 percent of all cases.

14. These upgrades will require engineering and construction work on switches, protocols, and network architectures. We recognize that full implementation of wireless E911 will incur additional expenses. However, we have found that E911 service to be in the public interest and that these relatively fixed costs will be spread over a widening base of subscribers as wireless subscribership grows, lowering unit costs per subscriber.

IV. Description and Estimate of Small Entities Subject to the Rules

15. The rule adopted in this Report and Order will apply to providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz Specialized Mobile Radio (SMR) services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under Section 90.629 of the Commission's Rules. However, the rule will apply to SMR

[3] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996,'' (SBREFA), codified at 5 U.S.C. § 601.

licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

a. Estimates for Cellular Licensees

16. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[4] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to make a precise estimate of the number of cellular firms which are small businesses.

17. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[5] We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[6] Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in the Final Regulatory Flexibility Analysis, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

18. We assume that all of the current rural cellular licensees are small businesses. Comments filed by small business associations, the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), state that ⅔ of its 440 members provide cellular service, and comments filed by the Rural Cellular Association (RCA) state that its members serve 80 cellular service areas. We recognize that these numbers represent only part of the current rural cellular licensees because there might be other rural companies not represented by either association.

b. Estimates for Broadband PCS Licensees

19. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR § 24.720(b), the Commission has defined ''small entity'' for Blocks C and F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[7]

20. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this Report and Order includes the 90 non-defaulting winning bidders that qualify as small entities in the Block C broadband PCS auction.

21. At present, no licenses have been awarded for Blocks D, E, and F for spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licensees is limited to ''entrepreneur'' with the average gross revenues of less than $125 million. However, we cannot estimate how many small businesses under the Commission's definition will win F Block licensees, or D and E Block licensees. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

c. Estimates for SMR Licensees

22. Pursuant to 47 C.F.R. 90.814(b)(1), the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[8]

23. The rule adopted in this Report and Order applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

24. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Report and Order includes these 60 small entities.

25. No auctions have been held for 800 MHz geographic area SMR licenses.

[4] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

[5] U. S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[6] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[7] See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[8] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

V. Steps Taken To Minimize the Burdens on Small Entities

26. The Commission in this proceeding has considered comments on ways of achieving wider 911 availability and E911 compatibility with wireless telephone services. In doing so, the Commission has adopted alternatives which minimize burdens placed on small entities. First, it has limited the regulations to mass market two-way voice services. In doing so, it excluded small local specialized mobile services which provide mainly dispatch services and do not provide the mass market services which most users rely on to send 911 calls. It has also excluded mobile satellite systems. Second, it provided for waivers for small rural cellular carriers, and also provided that most services would not be required unless specifically requested by the local emergency service providers. Third, it has taken industry concerns into account by basing the schedule for implementing E911 on that recommended by the Consensus Agreement between the Cellular Telephone Industry Association and public safety organizations, which does not require caller location information until five years after the rules adopted in the Order become effective. Finally, it has made the E911 requirements conditional on (1) a request by a local emergency service provider that is capable of receiving and using the information; and (2) a mechanism for the recovery of costs relating to the provision of the service. Therefore, the burden on small entities will be offset by the requirement that a cost recovery mechanism will be in place before their E911 obligations need to be implemented.

VI. Significant Alternatives Considered and Rejected

27. The Commission rejected the alternative proposal that the rules should be applicable to all providers of Commercial Mobile voice services because not all CMRS services are mass market voice services whose users expect to be able to use them to call 911. Specifically, the Commission found that the costs of requiring local SMR services to comply with the rules would outweigh the benefits and application of the rules to them, and would give them an incentive to eliminate their interconnection to the public network, which would not be in the public interest. The Commission did not exempt rural cellular carriers from these requirements, as requested by some of commenters, but instead provided for waivers. The Consensus Agreement between the Cellular Telephone Industry Association and public safety organizations indicated that the signatories would work with rural cellular carriers to resolve their problems in good faith, and that the issue of how such carriers would be treated need not delay the final rule, which would be required in the public interest. Instead, reviewing the need for applying the rules to rural cellular carriers could be reviewed on an individualized basis. Moreover, the Commission relied on the representations that many emergency service providers do not use 911 in rural areas, so that the requirement that the emergency service providers would have to request and be capable of receiving and using the E911 services would protect carriers from the obligation to provide unneeded services. Further, the requirement that there be a cost recovery mechanism would protect small carriers from having to absorb excessive costs.

28. The Commission rejected proposals to delay the provision of the upgrades necessary to expand the availability of 911 and the accuracy of location technology because these upgrades will result in saving lives and property and because the requirements of the rules were included in the Consensus Agreement. We rejected the argument that imposing 911 availability requirements on wireless carriers would competitively disadvantage wireless carriers, since several wireless carriers have been voluntarily transmitting 911 calls without a validation requirement. Moreover, the Commission rejected proposals that Federal grade of service and other standards should be developed by the Commission, and instead determined that parties should be allowed to develop standards with monitoring by the Commission, since these issues require a level of expertise which can best be achieved by intra-industry discussions.

VII. Report to Congress

29. The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this Order in a report to Congress pursuant of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this RFA will also be published in the Federal Register.

Ordering Clauses

30. Accordingly, it is ordered that the rule amendments specified below shall become effective October 1, 1996.

31. It is further ordered That the Petition of the Ad Hoc Alliance for Public Access to 911 is granted in part, as set forth in the text of the Order.

32. It is further ordered That the signatories to the Consensus Agreement, the Personal Communications Industry Association, and the Ad Hoc Alliance for Public Access to 911 file joint annual reports within 30 days after the end of each calendar year, as set forth in the text of this Order.

33. It is further ordered That the signatories to the Consensus Agreement, the Personal Communications Industry Association, and Telecommunications for the Deaf, Inc. file a joint report within one year of the effective date of the rules adopted herein, as set forth in the text of the Order.

34. This action is taken pursuant to Sections 1, 4(i), 201, 208, 215, 303, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201, 208, 215, 303, 309.

List of Subjects in 47 CFR Part 20

Communications common carriers, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 20 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Sections 4, 303 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332.

2. Section 20.03 is amended by adding the following definitions in alphabetical order to read as follows:

§ 20.3 Definitions.

Automatic Number Identification. A system which permits the identification of the caller's telephone number.

* * * * *

Code Identification. A Mobile Identification Number for calls carried over the facilities of a cellular or Broadband PCS licensees, or the functional equivalent of a Mobile Identification Number in the case of calls carried over the facilities of a Specialized Mobile Radio Services.

* * * * *

Mobile Identification Number. A 34-bit number that is a digital representation of the 10-digit directory telephone number assigned to a mobile station.

* * * * *

Pseudo Automatic Number Identification. A system which identifies the location of the base station or cell site through which a mobile call originates.

Public Safety Answering Point. A point that has been designated to receive 911 calls and route them to emergency service personnel.

* * * * *

3. Section 20.18 is added to read as follows:

§ 20.18 911 Service.

(a) The following requirements are only applicable to Broadband Personal Communications Services (part 24, subpart E of this chapter) and Cellular Radio Telephone Service (part 22, subpart H of this chapter), Geographic Area Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) and offer real-time, two-way voice service that is interconnected with the public switched network, and Incumbent Wide Area SMR Licensees.

(b) As of October 1, 1997, licensees subject to this section must process all 911 calls which transmit a Code Identification and must process all 911 wireless calls which do not transmit a Code Identification where requested by the administrator of the designated Public Safety Answering Point which is capable of receiving and utilizing the data elements associated with 911 service.

(c) As of October 1, 1997, licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices.

(d) As of April 1, 1998, licensees subject to this section must relay the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset or text telephone device accessing their systems to the designated Public Service Answering Point through the use of Pseudo Automatic Number Identification and Automatic Number Identification.

(e) As of October 1, 2001, licensees subject to this section must provide to the designated Public Service Answering Point the location of a 911 call by longitude and latitude within a radius of 125 meters using root mean square techniques.

(f) The requirements set forth in paragraphs (d) and (e) of this section shall be applicable only if the administrator of the designated Public Service Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the costs of the service is in place.

[FR Doc. 96–19662 Filed 8–1–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 072996C]

Atlantic Tuna Fisheries; Closure

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

ACTION: Fishery closure.

SUMMARY: NMFS closes the Angling category fishery for large school and small medium Atlantic bluefin tuna (ABT). Closure of this fishery is necessary because the annual quota of 100 metric tons (mt) of large school and small medium ABT allocated to the Angling category is projected to be attained by July 31, 1996. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective from 2330 hours local time July 31 through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Hogarth, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of large school and small medium ABT (measuring between 47 inches (119 cm) and 73 inches (185 cm) total curved fork length) to be harvested from the regulatory area. The Assistant Administrator for Fisheries, NOAA (AA), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of those statistics, to project a date when the catch of ABT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, ABT by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The AA has determined, based on the reported catch and estimated fishing effort, that the annual quota of large school and small medium ABT will be attained by July 31, 1996. Fishing for, catching, possessing, or landing any large school or small medium ABT must cease by 2330 hours local time on July 31, 1996.

However, anglers may continue to fish for ABT 47 inches (119 cm) or greater under the NMFS tag and release program (50 CFR 285.27). The Angling category fishery for school ABT (measuring between 27 inches (69 cm) and 47 inches (119 cm)) in the waters off Delaware and south was previously closed on July 25, 1996 (61 FR 38656, July 25, 1996). The Angling category fishery for school ABT for waters off New Jersey and states north (north of 38°47′ N. lat.) is not affected by this closure, and continues to remain open.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 29, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19635 Filed 7–29–96; 5:02 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 072696B]

Groundfish of the Gulf of Alaska; ''Other Rockfish'' Species Group in the Eastern Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening the directed fishery for the ''other rockfish'' species group in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of the ''other rockfish'' in that area.

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), July 31, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual TAC for the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA, was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 750 metric tons (mt) (see § 679.20(c)(3)(ii)). The Final 1996 Harvest Specifications of Groundfish also closed the directed fishery for the ''other rockfish'' in the Eastern Regulatory Area of the GOA (see § 679.20(d)(1)(iii)) in anticipation that the TAC would be needed as incidental catch to support other anticipated groundfish fisheries during 1996. NMFS has determined that as of July 13, 1996, 700 mt remain in the directed fishing allowance.

The Director, Alaska Region, NMFS, has determined that the 1996 directed fishing allowance of the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for the ''other rockfish'' species group in the Eastern Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 29, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19686 Filed 7–30–96; 12:40 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 072696A]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Central and Eastern Aleutian District and the Bering Sea Subarea

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Central and Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Atka mackerel in these areas.

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), July 31, 1996, until 2400 hours, 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 600 and 679.

The Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI (see § 679.20(c)(3)(iii)) and subsequent reserve apportionment (61 FR 16085, April 11, 1996) established 33,600 metric tons (mt) as the TAC of Atka mackerel for the Central Aleutian District and 26,700 mt as the TAC for the Eastern Aleutian District and the Bering Sea subarea, respectively.

The directed fisheries for Atka mackerel for the Central Aleutian District (61 FR 16883, April 18, 1996; 61 FR 37403, July 18, 1996) and the Eastern Aleutian District and the Bering Sea subarea (61 FR 6323, February 20, 1996; 61 FR 36306, July 10, 1996) were closed to directed fishing in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (see § 679.20(d)(1)). NMFS has determined that as of July 13, 1996, 1,000 mt in the Central Aleutian District and 800 mt in the Eastern Aleutian District and Bering Sea subarea remain in the respective directed fishing allowances.

The Director, Alaska Region, NMFS, has determined that the 1996 directed fishing allowances for Atka mackerel in the Central Aleutian District and Eastern Aleutian District and the Bering Sea subarea have not been reached. Therefore, NMFS is terminating the previous closures and is reopening directed fishing for Atka mackerel in the Central Aleutian District and Eastern Aleutian District and the Bering Sea subarea.

All other closures remain in full force and effect.

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 29, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19685 Filed 7–30–96; 12:40 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 150
Friday, August 2, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–10]

Karnal Bunt

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish criteria for levels of risk for areas with regard to Karnal bunt, and to establish criteria for seed planting and movement of regulated articles based on those risk levels. We believe this action is warranted because it would relieve unnecessary restrictions on areas regulated because of Karnal bunt, while guarding against the artificial spread of that disease.

DATES: Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–10, 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. 96–016–10. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a serious fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum X Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The spores can be carried on a variety of surfaces, including plants and plant parts, seeds, soil, elevators, buildings, farm equipment, tools, and even vehicles. Spores and the sporidia they produce also can be windborne. Although the sporidia are fragile and may be able to move only short distances, teliospores are thought to move longer distances.

Karnal bunt is a serious disease that can affect both yield and grain quality when present at levels over 3 to 5 percent. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from heavily infested wheat. Wheat containing a significant amount of bunted kernels is reduced in quality. Karnal bunt does not present a risk to human or animal health.

On March 8, 1996, Karnal bunt was detected in Arizona during a seed certification inspection done by the Arizona Department of Agriculture. On March 20, 1996, the Secretary of Agriculture signed a ''Declaration of Extraordinary Emergency'' authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas. In an interim rule effective on March 25, 1996, and published in the Federal Register on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), the Animal and Plant Health Inspection Service (APHIS) established the Karnal bunt regulations (7 CFR 301.89–1 through 301.89–11), and quarantined all of Arizona and portions of New Mexico and Texas because of Karnal bunt. The regulations define regulated articles and restrict the interstate movement of these regulated articles from the quarantined areas.

After the establishment of the regulations, Karnal bunt was detected in lots of seed that were either planted or stored in certain areas in California. On April 12, 1996, the Secretary of Agriculture signed a ''Declaration of Extraordinary Emergency'' authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within California. In an interim rule effective on April 19, 1996, and published in the Federal Register on April 25, 1996, APHIS also quarantined portions of California because of Karnal bunt (61 FR 18233–18235, Docket No. 96–016–5). In an interim rule effective on June 27, 1996, and published in the Federal Register on July 5, 1996, APHIS removed certain areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of Karnal bunt (61 FR 35107–35109, Docket No. 96–016–6). That list was amended in a technical amendment effective on July 9, 1996, and published in the Federal Register on July 15, 1996 (61 FR 36812–36813, Docket No. 96–016–8). In an interim rule effective June 27, 1996, and published in the Federal Register on July 5, 1996, APHIS amended the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt (61 FR 35102–35107, Docket No. 96–016–7). Comments on each of the interim rules must be received on or before September 3, 1996.

On July 17, 1996, APHIS conducted a public forum in Washington, D.C., to accept public comment on the Karnal bunt regulations, and, in a separate notice in today's Federal Register, gives notice of three additional public forums on Karnal Bunt to be held in mid-August. Members of the public are invited to comment on this proposed rule and the interim rules at the three remaining public forums.

APHIS developed the provisions of this proposed rule in consultation with State regulatory officials. The purpose of this proposal is to relieve unnecessary restrictions on the movement of articles regulated because of Karnal bunt, while at the same time maintaining restrictions on movement that are adequate to guard against the spread of the disease.

In § 301.89–3 of the existing regulations, criteria for quarantining areas because of Karnal bunt are set forth, along with a list of quarantined areas. Under the existing regulations, regulated articles from all quarantined areas are subject to the same restrictions, regardless of the relative

risks posed by different fields within the quarantined areas.

We considered such broad restrictions necessary immediately following the detection of Karnal bunt, in order to guard against the artificial spread of the disease. However, based on subsequent information, including preharvest survey data, investigations of the source and destination of contaminated seed, and our experience enforcing the regulations, we believe that establishing levels of risk for fields and regulated articles is warranted, and would be adequate in protecting against the artificial spread of Karnal bunt.

In the existing Karnal bunt regulations, areas regulated because of Karnal bunt are referred to as quarantined areas. Under this proposal, however, the type of restrictions imposed on regulated articles would in some cases differ depending on the risk level of individual areas within the currently quarantined areas. Therefore, we believe it would clarify the proposed regulations to use the term ''regulated areas'' rather than ''quarantined areas.'' Regulated areas would then be classified according to specific risk categories. We are proposing to make this terminology change throughout the Karnal bunt regulations.

The current regulations in § 301.89–3 set forth criteria for quarantining all or part of State due to Karnal bunt, and list those areas that are quarantined because of the disease. In addition to retaining the general criteria in the current regulations for regulating a State or part of a State, we are proposing to add a new paragraph (f) to § 301.89–3 that would set forth criteria for classifying regulated fields according to the following risk categories:

1. Fields in which preharvest samples tested positive for Karnal bunt;
2. Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;
3. Fields adjacent to fields in which preharvest samples tested positive;
4. Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive; and
5. Fields within a regulated area that are not fields described in ''2'' or ''4'' above, and that are part of a distinct definable area that includes no fields in which preharvest samples tested positive for Karnal bunt.

A definition of *distinct definable area* would be added to § 301.89–1 to mean ''a commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert, mountains, or other nonagricultural terrain as determined by an inspector.'' Additionally, a definition of *contaminated seed* would be added to mean ''seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist.''

Fields for which notification of classification has not been given to the owner or the person in possession of the field shall be considered to be in the same category as fields associated through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive.

Planting

We are proposing to establish restrictions on the planting of wheat, durum wheat, and triticale seed in certain fields within a regulated area. Because the pathogen of Karnal bunt can remain viable in soil for extended periods of time, it is important in the control of the disease to restrict the planting of wheat, durum wheat, and triticale in fields that present a high risk of containing the Karnal bunt pathogen. Therefore, we are proposing to add a new § 301.59–4 to the regulations that would provide that for the 1996–1997 crop season [1] (1) wheat, durum wheat, and triticale may not be planted in fields in which preharvest samples conducted by Federal or State official tested positive for Karnal bunt, and (2) wheat, durum wheat, and triticale may not be planted in fields known to have been planted in the past 5 years with seed contaminated with Karnal bunt. Additionally, proposed § 301.89–4 would require that, prior to planting, the seed of wheat, durum wheat, and triticale to be planted within a regulated area must have been treated with a fungicide that is registered with the Environmental Protection Agency and be sampled and tested negative for Karnal bunt.

Cleaning and Disinfection

In § 301.89–12 of this proposed rule, we are proposing to establish cleaning and disinfection requirements for farm equipment and soil-moving equipment according to the risk category of the field from which the equipment will be moved. Cleaning would be required for that equipment moved within the regulated area from fields considered to pose a significant risk of containing the causal agent of Karnal bunt.

[1] The 1996–1997 crop season is that season in which wheat is harvested in 1997.

Specifically, these would include the following categories of fields:

1. Fields in which preharvest samples tested positive for Karnal bunt;
2. Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt; and
3. Fields adjacent to fields in which preharvest samples tested positive.

Under § 301.89–12(b) of this proposal, equipment only from the above described fields would need to be disinfected before being moved from a regulated area.

Movement Within a Regulated Area

In the current regulations, conditions are set forth in § 301.89–4 for the interstate movement of regulated articles from regulated areas. In some cases, articles moved from a regulated area must be accompanied by certificate or limited permit. In other cases, because of mitigating measures, a certificate or limited permit is not required. In this proposed rule, we are proposing to establish conditions for certain movements of regulated articles within a regulated area. In § 301.89–5(a)(3) of this proposal, we are proposing that a regulated article need not be moved with a certificate or limited permit if it is moved within a regulated area, and if the regulated article has been cleaned as provided in § 301.89–12 and 301.89–13 of the proposed rule.

Vegetables

Under § 301.89–12(b) of this proposal, vegetable crops would need to be cleaned free of soil and plant debris prior to movement, or be moved under limited permit to processing facilities approved by the Administrator when moving from any of the following types of fields:

1. Fields in which preharvest samples tested positive for Karnal bunt;
2. Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt; or
3. Fields adjacent to fields in which preharvest samples tested positive.

Treatment of Millfeed

Millfeed, a byproduct of the process of milling grain, is used as feed for livestock. Teliospores of *telletia indica* in millfeed are not destroyed in the milling process, nor in the process of being digested by livestock. Therefore, manure from animals that have been fed millfeed contaminated with the pathogen of Karnal bunt is considered capable of introducing that agent to a field. Protocols developed for the control of Karnal bunt have required that millfeed from grain moved

interstate from a quarantined area be treated with heat to destroy any Karnal bunt pathogen that might be present. However, we believe that millfeed from grain from certain fields in regulated area poses such an insignificant risk of spreading Karnal bunt that it need not be heat treated. Therefore, § 301.89–13(c) requires that millfeed be treated with heat only if it is milled from grain from one of the following types of fields:

(1) Fields in which preharvest samples tested positive for Karnal bunt;

(2) Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;

(3) Fields adjacent to fields in which preharvest samples tested positive; or

(4) Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive.

We are proposing millfeed treated with heat be treated with a moist heat treatment of 170 °F for at least 1 minute. This treatment is considered effective based on the information currently available to us. The public would be notified in the Federal Register of any changes to this treatment that are developed through additional research.

Executive Order 12866 and Regulatory Flexibility Act

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

This action amends the regulations to establish criteria for levels of risk for areas with regard to Karnal bunt, and to establish criteria for seed planting and movement of regulated articles based on those risk levels. This proposed rule is being published on an emergency basis in order to give affected growers the opportunity to make planting decisions for the 1996–1997 crop season on a timely basis. This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 would be amended as follows:

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2,80, and 371.2(c).

2. Part 301 would be amended by revising ''Subpart—Karnal Bunt,'' §§ 301.89–1 through 301.89–11, to read as follows

Subpart—Karnal Bunt

Sec.

§ 301.89–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Certificate. A document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of this subpart and may be moved to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

Contaminated seed. Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has been determined to exist.

Conveyances. Containers used to move wheat, durum wheat, or triticale, or their products, including trucks, trailers, railroad cars, bins, and hoppers.

Distinct definable area. A commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert, mountains, or other nonagricultural terrain as determined by an inspector.

Farm tools. An instrument worked or used by hand, e.g., hoes, rakes, shovels, and axes.

Infestation (infected). The presence of Karnal bunt, or any stage of development of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

Inspector. An APHIS employee or designated cooperator/collaborator authorized by the Administrator to enforce the provisions of this subpart.

Karnal bunt. A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

Limited permit. A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for movement only to a specified destination and in accordance with conditions specified on the permit.

Mechanized cultivating equipment and mechanized harvesting equipment. Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—e.g., tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—e.g., combines, cotton harvesters, and hay balers.

Milling products and byproducts. Products resulting from processing wheat, durum wheat, or triticale,

including animal feed, and waste and debris.

Movement (moved). The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Premises. All structures, conveyances, or materials associated with a grain storage facility at a single location.

Soil. That part of the upper layer of earth in which plants can grow.

Soil-moving equipment. Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.89–2 Regulated articles.

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move wheat, durum wheat, or triticale;

(b) Grain elevators/equipment/structures used for storing and handling wheat, durum wheat, and triticale;

(c) Milling products or byproducts, except flour;

(d) Plants, or plant parts, including grain, seed, or straw of all varieties of the following species:

Wheat: *Triticum aestivum;*

Durum wheat: *Triticum durum;* and

Triticale: *Triticum aestivum* X *Secale cereale;*

(e) *Tilletia indica* (Mitra) Mundkur;

(f) Root crops with soil;

(g) Soil from areas where field crops are produced;

(h) Manure from animals that have fed on wheat, durum wheat, or triticale;

(i) Used bags, sacks and containers;

(j) Used farm tools;

(k) Used mechanized cultivating equipment;

(l) Used mechanized harvesting equipment;

(m) Used seed conditioning equipment;

(n) Used mechanized soil-moving equipment; and

(o) Any other product, article or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt due to its proximity to an infestation of Karnal bunt; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

§ 301.89–3 Regulated areas.

(a) The Administrator will regulate each State or each portion of a State that is infected.

(b) Less than an entire State will be listed as a regulated area only if the Administrator:

(1)(i) Determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.89–2 that are equivalent to the movement restrictions imposed by this subpart; and

(ii) Determines that designating less than the entire State as a regulated area will prevent the spread of Karnal bunt; or

(2) Exercises his or her extraordinary emergency authority under 7 U.S.C. 150dd.

(c) The Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulation purposes, as determined by:

(1) Projections of the spread of Karnal bunt along the periphery of the infestation;

(2) The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

(3) The necessity of including uninfected acreage within the regulated area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonregulated area as a regulated area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonregulated area, or, in the case of publicly owned land, to the person responsible for the management of the nonregulated area. Thereafter, the movement of any regulated article from an area temporarily designated as a regulated area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (e) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(e) The following areas are designated as regulated areas:

Arizona

Cochise County. The entire county.

Graham County. The entire county.

LaPaz County. The entire county.

Maricopa County. The entire county.

Mohave County. Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then east along Interstate 40 to U.S. Highway 93; then south along U.S. Highway 93 to the Mohave/Yavapai County line; then south along the Mohave County line to the Mohave/La Paz County line; then west along the Mohave County line to the Arizona/California State line; then north along the State line to the point of beginning.

Pima County. Beginning at the intersection of the Pima County line, the Pinal County line, and the Papago Indian Reservation boundary; then east along the Pima County line to its easternmost point; then south along the Pima County line to the Cochise and Santa Cruz County lines; then west along the Pima County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Papago Indian Reservation boundary; then north along the Papago Indian Reservation boundary to the point of beginning.

Pinal County. The entire county.

Yuma County. The entire county.

California

Imperial County. The entire county.

Riverside County. That portion of Riverside County in the Blythe and Ripley areas bounded by a line drawn as follows: Beginning at the intersection of State Highway 62 and the Riverside-San Bernardino County line, then east along the Riverside-San Bernardino County line to its intersection with the California-Arizona State line; then south along the California-Arizona State line to its intersection with the Riverside-Imperial County line; then west along the Riverside-Imperial County line to its intersection with Graham Pass Road; then northeast along Graham Pass Road to its intersection with Chuckwalla Valley Road; then west and northwest along Chuckwalla Valley Road to its intersection with Interstate Highway 10; then west along Interstate Highway 10 to its intersection with State Highway 177; then northeast and north along State Highway 177 to its intersection with State Highway 62; then northeast along State Highway 62 to the point of beginning.

New Mexico

Dona Ana County. The entire county.

Hidalgo County. Beginning at the intersection of the Arizona/New Mexico State line and Interstate 10; then east along Interstate 10 to the Hidalgo/Grant County line; then south and east along the Hidalgo County line to the Luna County line; then south along the Hidalgo County line to its southernmost point; then west and north along the Hidalgo county line to point of beginning.

Luna County. Beginning at the intersection of the Grant/Luna County line and Interstate 10; then east along Interstate 10 to U.S. Highway 180; then north along U.S. Highway

180 to State Route 26; then north along State Route 26 to State Route 27; then northeast along State Route 27 to the Luna/Sierra County line; then east along the Luna County line to the Dona County line; then south along the Luna County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Hidalgo County line; then north along the Luna County line to the point of beginning.

Sierra County. Beginning at intersection of the Luna/Sierra County line and State Route 27; then north along State Route 27 to State Route 152; then east along State Route 152 to Interstate 25; then north along Interstate 25 to State Route 52; then northwest along State Route 52 to the Sierra/Socorro County line; then east along the Sierra County line to the Lincoln County line; then south along the Sierra County line to the Dona County line; then west along the Sierra County line to the point of beginning.

Texas

El Paso County. The entire county.

Hudspeth County. Beginning at the intersection of the El Paso/Hudspeth County line and U.S. Highway 62/U.S. Highway 180; then east along U.S. Highway 62/U.S. Highway 180 to County Road 1111; then south along County Road 1111 to its terminus; then west along an imaginary line to the United States/Mexico boundary; then northwest along the United States/Mexico boundary to the El Paso/Hudspeth County line; then north along the El Paso/Hudspeth County line to the point of beginning.

(f) The Administrator will classify fields in regulated areas according to the following categories, and will notify the owner or person in possession of the field of the field's classification:

(1) Fields in which preharvest samples tested positive for Karnal bunt;

(2) Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;

(3) Fields adjacent to fields in which preharvest samples tested positive;

(4) Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive; and

(5) Fields within a regulated area that are not fields described in paragraphs (f)(2) and (f)(4) of this section, and that are part of a distinct definable area that includes no fields in which preharvest samples tested positive.

(g) Fields for which the Administrator has given no notification of classification to the owner or the person in possession of the field shall be considered to be fields as described in paragraph (f)(4) of this section.

§ 301.89–4 Planting.

(a) Wheat, durum wheat, and triticale may be planted in all fields within and outside a regulated area, except as follows:

(1) For the 1996–1997 crop season [1], wheat, durum wheat, and triticale may not be planted in fields in which preharvest samples conducted by Federal or State official tested positive for Karnal bunt;

(2) For the 1996–1997 crop season [1], wheat, durum wheat, and triticale may not be planted in fields known to have been planted in the past 5 years with seed contaminated with Karnal bunt.

(b) Prior to planting, wheat seed, durum wheat seed, and triticale seed to be planted within a regulated area must:

(1) Have been treated with a fungicide that is registered with the Environmental Protection Agency; and

(2) Be sampled and test negative for Karnal bunt.

§ 301.89–5 Movement of regulated articles from or within regulated areas.

(a) Any regulated article may be moved from a regulated area into or through an area that is not regulated only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.89–6 and 301.89–10;

(2) Without a certificate or limited permit, provided that each of the following conditions is met:

(i) The regulated article was moved into the regulated area from an area that is not regulated;

(ii) The point of origin is indicated on a waybill accompanying the regulated article;

(iii) The regulated article is moved through the regulated area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of contamination with Karnal bunt, or has been treated in accordance with the methods and procedures prescribed in § 301.89–13 while in or moving through any regulated area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity;

(3) Without a certificate or limited permit, for movement within the regulated area, if the regulated articles has been cleaned as provided in § 301.89–12 and 301.89–13 of this subpart; or

(4) Without a certificate or limited permit, provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator [2] to process, test, or analyze soil samples.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with the methods and procedures prescribed in § 301.89–13.

§ 301.89–6 Issuance of a certificate or limited permit.

(a) An inspector [3] or person operating under a compliance agreement will issue a certificate for the movement of a regulated article outside or within a regulated area if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved in compliance with any emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of Karnal bunt [4]; and

(3)(i) Is free of Karnal bunt infestation, based on laboratory results of testing, and history of previous infestation;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of Karnal bunt;

(iii) Meets the conditions of § 301.89–12(b); or

(iv) Has been treated in accordance with methods and procedures prescribed in § 301.89–13.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement within or outside the regulated area of a regulated article not eligible for a

[1] The 1996–1997 crop season is that season in which wheat is harvested in 1997.

[2] Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

[3] Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236, or from Karnal Bunt Project, 1688 W. Adams St. Phoenix, Arizona 85007.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 105dd) authorizes the Secretary of Agriculture to impose emergency measures necessary to prevent the spread of plant pests new to, or not widely prevalent or distributed within and throughout, the United States.

certificate if the inspector determines that the regulated article:

(1) Is to be moved to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this movement will not result in the artificial spread of Karnal bunt because Karnal bunt will be destroyed or the risk mitigated by the specified handling, utilization, or processing;

(2) Is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the artificial spread of Karnal bunt; and

(3) Is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.89–7 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

§ 301.89–7 Compliance agreements.

Persons who grow, handle, or move regulated articles may enter into a compliance agreement [5] if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with § 301.89–13, and meet applicable State training and certification standards under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

[5] Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236, or from the Karnal Bunt Project, 1688 W. Adams St., Phoenix, Arizona 85007.

§ 301.89–8 Cancellation of a certificate, limited permit, or compliance agreement.

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow, but within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

§ 301.89–9 Assembly and inspection of regulated articles.

(a) Persons requiring certification or other services must request the services from an inspector [6] at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.89–10 Attachment and disposition of certificates and limited permits.

(a) The consignor must ensure that the certificate or limited permit authorizing movement of a regulated article is, at all times during movement, attached to:

(1) The outside of the container encasing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill: Provided, that the descriptions of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing movement of a regulated article to the consignee at the shipment's destination.

[6] See footnote 2.

§ 301.89–11 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services.

The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

§ 301.89–12 Cleaning and disinfection.

(a) Used mechanized cultivating equipment, used mechanized harvesting equipment, used farm tools, and used mechanized soil-moving equipment must be cleaned of all soil and plant debris prior to movement within a regulated area, and cleaned and disinfected prior to movement outside the regulated area from the following fields:

(1) Fields in which preharvest samples tested positive for Karnal bunt;

(2) Fields known to have been planted in the past 5 years with seed contaminated with Karnal bunt; and

(3) Fields adjacent to a field in which preharvest samples tested positive for Karnal bunt.

(b) Vegetable crops must be cleaned of all soil and plant debris prior to movement, or be moved under limited permit to processing facilities approved by the Administrator, for movement from any fields described in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

§ 301.89–13 Treatments.

(a) All conveyances, mechanized farm equipment, seed-conditioning equipment, soil-moving equipment, farm tools, grain elevators and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned and disinfected under this subpart must be cleaned by removing all soil and plant debris and disinfected by:

(1) Wetting all surfaces to the point of runoff with a solution of sodium hypochlorite mixed with water applied at the rate of 1 gallon of commercial chlorine bleach (5.2 percent sodium hypochlorite) mixed with 2.5 gallons of water. The equipment or site should be thoroughly washed down after 15 minutes to minimize corrosion; or

(2) Applying steam to all surfaces until the point of runoff;

(3) Cleaning with a solution of hot water and detergent, under high pressure (at least 30 pounds per square inch), at a minimum temperature of 180° F.; or

(4) Fumigating with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(b) Soil, and straw/stalks/seed heads for decorative purposes must be treated

by fumigation with methyl bromide at the dosage of 15 pounds/1000 cubic feet for 96 hours.

(c) Millfeed must be treated with a moist heat treatment of 170 oF for at least 1 minute if the millfeed resulted from the milling of grain from one of the following types of fields:

(1) Fields in which preharvest samples tested positive for Karnal bunt;

(2) Fields known to be planted in the past 5 years with seed contaminated with Karnal bunt;

(3) Fields adjacent to fields in which preharvest samples tested positive; or

(4) Fields associated only through ownership, management, the movement of equipment, or proximity within a distinct definable area with fields in which preharvest samples tested positive.

§ 301.89–14 Compensation.

The following individuals are eligible to receive compensation from the United States Department of Agriculture (USDA) for losses or expenses incurred because of the Karnal bunt regulation and emergency actions, as follows:

(a) *Growers who have destroyed crops.* Growers in New Mexico and Texas who have destroyed crops of wheat pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated at the rate of $300 per acre of destroyed crop. To claim compensation, the grower must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA.

(b) *Growers and handlers who sell nonpropagative wheat grown in the regulated area.* Growers and handlers who sell nonpropagative wheat grown in the regulated area are eligible to be compensated for the loss in value of their wheat due to the regulation for Karnal bunt, as follows:

(1) *Growers who sell nonpropagative wheat.* For growers who sell wheat grown for nonpropagative purposes, compensation will be as described in paragraphs (b)(1)(ii) and (b)(1)(ii) of this section. However, compensation will not exceed $2.50 per bushel under any circumstances.

(i) If the wheat was grown under contract, compensation will equal the contracted price minus the salvage value, as described in paragraph (b)(3) of this section.

(ii) If the wheat was not grown under contract, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(2) *Handlers who sell nonpropagative wheat.* Handlers are eligible to be compensated only under the circumstances described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. Compensation for both circumstances will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed $2.50 per bushel under any circumstances.

(i) Handlers who honor contracts by paying the grower full contract price on wheat grown for nonpropagative purposes in the regulated area that was tested by APHIS and found positive for Karnal bunt; or

(ii) Handlers who purchase contracted or noncontracted wheat grown for nonpropagative purposes in the regulated area that was tested by APHIS and found negative for Karnal bunt prior to purchase but that was tested by APHIS and found positive for Karnal bunt after purchase.

(3) *Salvage value.* Salvage values will be as follows:

(i) If the wheat is positive for Karnal bunt and is sold for use as animal feed, salvage value equals $6.00 per hundredweight or $3.60 per bushel for all classes of wheat.

(ii) If the wheat is positive for Karnal bunt and is sold for a use other than animal feed, salvage value equals whichever is higher of the following: The average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) for the period between May 1 and June 30, 1996; or, $3.60 per bushel.

(iii) If the wheat is negative for Karnal bunt and is sold for any use, salvage value equals whichever is higher of the following: The average price paid in the region of the regulated area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) for the period between May 1 and June 30, 1996; or, $3.60 per bushel.

(4) *To claim compensation.* To claim compensation, a grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA. Growers must also submit a copy of the contract the grower has for the wheat, if the wheat was under contract; handlers must also submit a copy of the contract the handler had with the grower for the wheat, if the wheat was under contract. Finally, a grower or handler must submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold.

(c) *Nonpropagative wheat that is not sold.* If a grower or handler of nonpropagative wheat in the regulated area is not able to or elects not to sell their wheat, they will be eligible to receive compensation at the rate of $2.50 per bushel. Compensation will only be paid if the grower or handler has destroyed the wheat by burying it in a sanitary landfill. To claim compensation, the grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS form 578, and FCI Form 73. The forms will be furnished by USDA. In addition, the grower or handler must submit a receipt from the sanitary landfill verifying how much wheat was buried.

(d) *Decontamination of grain storage facilities.* Owners of grain storage facilities that have been decontaminated pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated, on a one time only basis, for up to 50 percent of the cost of decontamination. However, compensation will not exceed $20,000 per premises (as defined in § 301.89–1). Compensation is limited to the direct costs of decontaminating facilities. General clean-up, repair, and refurbishment costs are excluded from compensation. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility premises. The records must include a

copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show decontamination has been completed.

(e) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in the regulated area are eligible to be compensated at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). To claim compensation, the miller must submit to an inspector a copy of the limited permit under which the wheat was moved to the mill and a copy of the bill of lading for the wheat (showing the weight of the wheat in short tons). Flour millers must also submit verification that the millfeed was heat treated, in the form of a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement.

Done in Washington, DC, this 30th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–19757 Filed 8–1–96; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 301

[Docket 96–016–11]

Karnal Bunt; Public Forums

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public forums.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting three additional public forums on the Agency's program to control and eradicate Karnal bunt. One forum has already been held in Washington, DC. The forums will provide an additional opportunity for the public to comment on the regulations established and amended by a series of interim rules published in the Federal Register since March, 1996. Additionally, the forums will provide the public an opportunity to comment on proposed changes to the regulations contained in a proposed rule published elsewhere in this issue of the Federal Register. The regulations quarantine portions of Arizona, California, New Mexico, and Texas because of infestations of Karnal bunt, restrict the movement of regulated articles from the quarantined areas, and provide compensation for certain individuals in order to mitigate losses and expenses incurred because of Karnal bunt. Comments will also be accepted addressing any aspect of the Karnal bunt program not included in the regulations, including control and survey activities conducted in the quarantined areas, the national Karnal bunt survey program, and the certification of wheat for export. Information gathered at the public forums will be considered by the Department in developing guidelines and procedures for conducting the Karnal bunt program for the 1996–97 wheat growing season.

DATES: The public forums will be held in Kansas City, MO, on August 13; in Phoenix, AZ, on August 14; and in Imperial, CA, on August 15. Each public forum will begin at 9 a.m and is scheduled to end at 5 p.m. each day.

ADDRESSES: The public forums will be held at the following locations:

1. Kansas City, MO: Holiday Inn International Airport, Heartland Rooms 1 and 2, 11832 Plaza Circle, Kansas City, MO.

2. Phoenix, AZ: Embassy Suites Hotel, Manzana Room, 3210 Grand Avenue, Phoenix, AZ.

3. Imperial, CA: Veterans Memorial Home, 247 South Imperial Avenue, Imperial, CA.

Any persons who are unable to attend the forum, but who wish to comment on any aspect of the Karnal bunt program, may send written comments. Consideration will be given only to comments received on or before September 3, 1996. Please send an original and three copies of written comments to Docket No. 96–016–11, 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. 96–016–11. Comments received, including transcripts from the public forums, may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: The public forums are being held concerning the Animal and Plant Health Inspection Service's (APHIS) program to control and eradicate Karnal bunt. Comments will be accepted on the regulations established and amended by a series of interim rules published by APHIS in the Federal Register since March, 1996. Comments will also be accepted on a proposed rule (Docket No. 96–016–10, ''Karnal Bunt'') published in the ''Proposed Rules'' section of this issue of the Federal Register, which would amend the Karnal bunt regulations.

The interim rules were published on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), April 25, 1996 (61 FR 18233–18235, Docket No. 96–016–5), and July 5, 1996 (61 FR 35107–35109, Docket No. 96–016–6 and 61 FR 35102–35107, Docket No. 96–016–7). Comments are required to be received on the interim rules by September 3, 1996. Comments on the proposed rule (Docket No. 96–016–10) must be received by September 3, 1996.

A representative of the United States Department of Agriculture (USDA) will preside at the public forums. Any interested person may appear and be heard in person, or through an attorney or other representative. Persons who wish to speak at the public forums will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by calling the Legislative and Public Affairs staff of APHIS, USDA, at (202) 720–2511. Registration will also be held for each forum at that forum site from 8 a.m. until 8:45 a.m. on the day of the forum. Speakers will be scheduled in the order their registration is received. Advance registrations for the forums must be made no later than the following:

1. Kansas City, MO: 4 p.m. e.d.s.t., August 9, 1996;

2. Phoenix, AZ: 4 p.m. e.d.s.t., August 12, 1996; and

3. El Centro, CA: 4 p.m. e.d.s.t., August 13, 1996.

The public forums will begin at 9 a.m. and are scheduled to end at 5 p.m. local time. However, the forums may be terminated at any time after they begin if all persons desiring to speak have been heard. The presiding officer may limit the time for each presentation so

that all interested persons have an opportunity to participate. Attendees who wish to speak but who did not register will be provided time to speak only after all registered speakers have been heard.

The purpose of the forums is to give interested persons an opportunity for oral presentation of data, views, and information to the Department concerning APHIS' program to control and eradicate Karnal bunt. Questions about the content of the interim rules and the proposed rule concerning Karnal bunt may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of the Department will respond to the comments on the interim rules and proposed rule at the forums, except to clarify or explain provisions of the interim rules and the proposed rule.

We ask that anyone who reads a statement provide two copies to the presiding officer at the forum. A transcript will be made of the public forums and the transcript will be placed in the rulemaking record and will be available for public inspection.

Done in Washington, DC, this 30th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–19756 Filed 8–1–96; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 319

[Docket No. 95–082–1]

Importation of Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the cut flowers regulations by eliminating the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac. All cut flowers are routinely inspected upon arrival in the United States and, if necessary, fumigated. Cut flowers of camellia, gardenia, rhododendron, rose, and lilac appear to present no greater risk than other cut flowers of introducing plant pests, including serious plant diseases. We believe that this action would reduce barriers to trade and eliminate an unnecessary paperwork burden without increasing the risk of imported cut flowers introducing exotic plant pests into the United States.

DATES: Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–082–1, 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. 95–082–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319.74 through 319.74–7 (referred to below as ''the regulations'') govern the importation of certain cut flowers into the United States. These regulations, among other things, require that all cut flowers imported into the United States be inspected for serious plant pests and, if necessary, treated to eliminate any injurious plant pest. Sections 319.74–2a, 319.74–4, and 319.74–5 of the regulations also provide that import shipments of cut flowers of camellia (*Camellia* spp.), gardenia (*Gardenia* spp.), rhododendron (*Rhododendron* spp. [including Azalea]), rose (*Rosa* spp.), and lilac (*Syringa* spp.) be accompanied by an import permit and that a notice of arrival be submitted to the Collector of Customs immediately after a shipment of these cut flowers arrives in the United States. Currently, no other varieties of cut flowers require an import permit or a notice of arrival when they are imported into the United States.

In 1947, we determined that imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac presented a special risk of introducing injurious insects and plant diseases when imported into the United States and, therefore, should be accompanied by an import permit and should be subject to notice of arrival requirements. However, based on our experience enforcing the regulations, we have since determined that the import permit and notice of arrival requirements are no longer necessary for these varieties of cut flowers. Instead, procedures standard to the importation of all varieties of cut flowers appear to be sufficient to mitigate the risk of camellia, gardenia, rhododendron, rose, and lilac introducing exotic plant pests into the United States.

Our port inspectors are routinely notified of the arrival of imported cut flowers by examining a shipment's manifest or by receiving electronic correspondence from importers or shippers. After arrival at the port of entry in the United States, all cut flowers are routinely inspected for injurious insects, including agromyzids, and for symptoms of plant diseases by an inspector of the Animal and Plant Health Inspection Service (APHIS), and, if necessary, the cut flowers are treated in accordance with § 319.74–3. We have determined that these standard procedures are sufficient to allow the safe importation of cut flowers of camellia, gardenia, rhododendron, rose, and lilac into the United States. Therefore, we are proposing to eliminate the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac. This action would reduce barriers to trade in cut flowers between the United States and other countries, in accordance with the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA), and would eliminate an unnecessary paperwork burden without increasing the risk of imported cut flowers introducing exotic plant pests, including plant diseases, into the United States.

Because cut flowers of camellia, gardenia, rhododendron, rose, and lilac are the only varieties of cut flowers for which we require an import permit or notice of arrival, we are, therefore, proposing that all import permit and notice of arrival requirements, and all references to both, be removed from the regulations. If we remove the import permit requirement, APHIS will no longer need to confirm that an import permit has been issued for a shipment of cut flowers, and importers will no longer need to apply for import permits or seek renewels of import permits in order to import cut flowers into the United States. In addition, if we remove the notice of arrival requirement, there will be no need for importers to submit a notice of arrival to APHIS. These actions would save time and effort and would reduce the paperwork burden both for importers of cut flowers and for APHIS.

We are also proposing to remove paragraph (c) of § 319.74–2 in order to streamline the regulations and to make

the regulations consistent with the proposed changes in this document. By removing this paragraph, we would eliminate a provision that allows the Deputy Administrator of Plant Protection and Quarantine to deny certain importations of cut flowers into a State, Territory, or District of the United States by refusal of an import permit or by other means. Historically, this provision has not been utilized, and, if this proposed rule is adopted, this paragraph would no longer be necessary.

We believe that these actions would simplify and streamline import procedures and make compliance easier while maintaining high standards for the prevention of the introduction of exotic plant pests into the United States. Executive Order 12866 and Regulatory Flexibility Act.

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

We are proposing to eliminate the import permit and notice of arrival requirements for imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac.

The United States imported approximately $408 million worth of fresh cut flowers in 1994. Roses constitituted the largest category of fresh cut flowers imported into the United States in 1994, accounting for 36 percent of the total value.

Although the United States imports cut flowers from many countries, in 1994, five countries represented approximately 92 percent of the total value of cut flowers imported into the United States. Colombia supplied the greatest percentage, 66 percent, of the total value of cut flowers imported into the United States in 1994, followed by The Netherlands with 13 percent, Ecuador with 6.4 percent, Costa Rica with 3.7 percent, and Mexico with 3.3 percent. In 1994, four countries accounted for approximately 96.9 percent of the total value of rose imports into the United States; Colombia supplied the greatest percentage, 71.2 percent, of the total value, followed by Ecuador with 13.6 percent, Mexico with 6.8 percent, and Guatemala with 5 percent.

Entities in the United States that may be affected by this rule are U.S. producers, importers, and wholesalers of cut flowers. Of the estimated 1,409 producers of cut flowers in the United States, approximatly 85 percent are considered small entities. We do not expect that the volume of cut flowers imported into the United States will increase because of the proposed changes to the regulations, and, therefore, we expect little, if any, change in the market price of cut flowers of camellia, gardenia, rhododendron, rose, and lilac. As a result, we expect that the impact on domestic producers of these varieties of cut flowers would be insignificant.

At this time, we cannot determine the number of importers of cut flowers. However, we do not expect our proposed changes to affect the supply of cut flower importations, and, therefore, we expect any changes in costs or competition of the importation of cut flowers of camellia, gardenia, rhododendron, rose, and lilac to be insignificant. As a result, we anticipate that the effect on domestic importers of cut flowers of camellia, gardenia, rhododendron, rose, and lilac would be insignificant.

Of the estimated 3,043 wholesalers of cut flowers, approximately 96 percent are considered small entities. We do not expect that the volume of cut flowers imported into the United States will increase, and, therefore, we do not expect the price of cut flowers to be affected by the changes we are proposing. As a result, we expect that the effect of the proposed changes on wholesalers of imported cut flowers of camellia, gardenia, rhododendron, rose, and lilac would be insignificant.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Further, this proposed rule would reduce information collection or recordkeeping requirements in 7 CFR 319.74 from 10,495 hours to 10,036 hours.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.74–1 [Amended]

2. In § 319.74–1, paragraph (c) would be removed.

§ 319.74–2 [Amended]

3. Section 319.74–2 would be amended as follows:

a. By removing paragraph (b).

b. By removing paragraph (c).

c. By removing the designation ''(a)'' preceding the first paragraph.

§ 319.74–2a [Removed]

4. Section 319.74–2a would be removed.

§ 319.74–3 [Amended]

5. Section 319.74–3 would be amended as follows:

a. By removing paragraph (b).

b. By redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

c. In paragraph (a), in the first sentence, by removing the words ''imported from the named foreign countries and localities, whether or not subject to permit requirements,''.

d. In paragraph (a), in the second sentence, by removing the reference ''(d)'' and adding in its place the reference ''(c)''.

§ 319.74–4 [Removed]

6. Section 319.74–4 and footnote 1 would be removed.

§ 319.74–5 [Removed]

7. Section 319.74–5 would be removed.

§ 319.74–6 [Redesignated]

8. Section 319.74–6 would be redesignated as § 319.74–4.

§ 319.74–7 [Removed]

9. Section 319.74–7 would be removed.

Done in Washington, DC, this 29th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–19719 Filed 8–1–96; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 96–47]

Terms and Conditions for Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on terms and conditions for advances. The proposed rule requires a Federal Home Loan Bank (FHLBank) that wants to make putable advances available to member institutions to provide appropriate disclosures and to offer replacement advance funding if the FHLBank terminates the putable advance prior to its stated maturity date.

DATES: Comments on this proposed rule must be received in writing on or before September 3, 1996.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Assistant Director, Financial Management Division, Office of Policy, (202) 408–2976, or, Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under section 10 of the Federal Home Loan Bank Act (Bank Act), each FHLBank has the authority to make secured advances to its members. See 12 U.S.C. 1430. To ensure that the FHLBanks operate their advance programs in a safe and sound manner, id. § 1422a(a)(3)(A), and pursuant to its authority to supervise the FHLBanks and ensure that the FHLBanks carry out their housing finance mission and remain adequately capitalized and able to raise funds in the capital markets, id. § 1422a(a)(3)(B), the Finance Board promulgated a final rule governing FHLBank advance programs in May 1993. See 58 FR 29456 (May 20, 1993), codified at 12 CFR part 935.

Since that time, the FHLBanks have developed a new type of advance [1] product called a ''putable advance.'' A ''putable advance'' is an advance that a FHLBank may, at its discretion, terminate and put back to the member for immediate repayment after a specified period of time and on certain dates prior to the maturity date of the putable advance. A member borrowing a putable advance faces the risk that the FHLBank will exercise its discretion and terminate the putable advance prior to its maturity date. For example, a FHLBank might terminate a putable advance prior to its maturity date in a rising interest rate environment. Any replacement advance funding offered to the member would be extended at then current higher market interest rates. Since the member takes on the interest rate risk associated with putable advances, the FHLBank is able to offer advance funding at an interest rate that can be significantly lower than the market interest rate. Members have expressed considerable interest in taking advantage of the lower cost funding a FHLBank can offer through putable advances.

The Finance Board's advances regulation does not address putable advances, and the practices with respect to this type of advance funding vary from FHLBank to FHLBank. To provide for consistency among the FHLBanks that offer putable advances and to reinforce the role of the FHLBanks as sources of liquidity for member institutions, the Finance Board is proposing to amend its advances regulation to address specifically the issuance of putable advances. The Finance Board requests comment on any aspect of this proposed rule.

II. Analysis of the Proposed Rule

The Finance Board proposes to add a new paragraph (d), putable advances, to § 935.6 of its advances regulation, which concerns the terms and conditions for advances. To ensure that members are fully apprised of the risks associated with putable advance funding, proposed § 935.6(d)(1) would require a FHLBank that provides a putable advance to a member to disclose in writing to such member the risks associated with putable advance funding. Such risks include the interest rate risk described above in section I and the potentially adverse impact on a member's liquidity if a FHLBank exercises its discretion to terminate a putable advance prior to the stated maturity date. To preclude the possibility that putable advance funding might cause undue liquidity problems for members, proposed § 935.6(d)(2) would require a FHLBank that terminates a putable advance prior to its maturity date to offer replacement funding to the member at current market rates for the remaining term to maturity of the putable advance. The replacement funding would be considered a conversion of the putable advance rather than the extension of a new advance.

Proposed § 935.6(d)(3) provides a definition of the term ''putable advance.'' For purposes of proposed § 935.6(d), a putable advance would mean an advance that a FHLBank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the putable advance.

III. Regulatory Flexibility Act

This proposed rule contains only technical revisions to an existing rule and, therefore, does not impose any additional regulatory requirements on small entities. Thus, in accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the Board of Directors of the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. *Id.* section 605(b).

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks.

Accordingly, the Board of Directors of the Federal Housing Finance Board hereby proposes to amend chapter IX, title 12, part 935, Code of Federal Regulations, as follows:

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430(b), and 1431.

2. In § 935.6, paragraph (d) is added to read as follows:

§ 935.6 Terms and conditions for advances.

* * * * *

(d) *Putable advances.* (1) A Bank that provides a putable advance to a member shall disclose in writing to such member

[1] An ''advance'' is a loan from a FHLBank that is provided pursuant to a written agreement, supported by a note or other written evidence of the borrower's obligation, and fully secured by collateral in accordance with the Bank Act and Finance Board regulations. See 12 CFR 935.1.

the risks associated with putable advance funding.

(2) If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide market rate replacement funding to the member for the remaining term to maturity of the putable advance.

(3) For purposes of this paragraph (d), the term *putable advance* means an advance that a Bank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the advance.

Dated: July 3, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 96–19526 Filed 8–01–96; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ACE–9]

Proposed Establishment of Class E Airspace; Mosby, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Construction is near completion of the new Clay County Regional Airport at Mosby, MO, with a projected opening in late 1996. The FAA has developed Standard Instrument Approach Procedures (SIAP) to the Clay County Regional Airport based on the Global Positioning System (GPS) and the Non-directional Radio Beacon (NDB) which have made this action necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the SIAPs at the Clay County Regional Airport.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 96–ACE–9, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-address, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ACE–9.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which described the procedures.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for the new SIAPs at the Clay County Regional Airport. The additional airspace would segregate aircraft operating under Visual Flight Rules (VFR) conditions from aircraft operating under Instrument Flight Rules (IFR) procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Upon publication of the procedures, the airport status will change from VFR to IFR. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ACE MO E5 Mosby, MO [New]
Clay County Regional Airport
(Lat 39°19′50″ N., long. 94°18′36″ W.)
Mosby NDB
(Lat. 39°20′46″ N., long. 94°18′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Clay County Regional Airport and within 2.5 miles each side of the 007° bearing from the Mosby NDB extending from the 6.4-mile radius to 7.9 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on July 17, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 96–19676 Filed 8–1–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates (29 CFR Part 1); Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts (29 CFR Part 5)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on the Department's proposal to continue the suspension of the implementation of regulations previously issued under the Davis-Bacon and Related Acts while the Department conducts additional rulemaking proceedings to determine whether further amendments should be made to those regulations. These regulations govern the employment of ''semi-skilled helpers'' on federally-financed and federally-assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts (DBRA).

DATES: Comments are due September 3, 1996.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, DC 20210. Any commenters desiring notification of receipt of comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8353. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION

I. Paperwork Reduction Act

This rule does not contain any new information collection requirements and does not modify any existing requirements.

Thus, the rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1995.

II. Background

On May 28, 1982, the Department published revised final Regulations, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, and 29 CFR Part 5, Subpart A—Davis-Bacon and Related Acts Provisions and Procedures (47 FR 23644 and 23658, respectively), which, among other things, would have allowed contractors to use semi-skilled helpers on Davis-Bacon projects at wages lower than those paid to skilled journeymen, wherever the helper classification, as defined in the regulations, was ''identifiable'' in the area. These rules represented a reversal of a longstanding Department of Labor practice by allowing some overlap between the duties of helpers, and journeymen and laborers. To protect against possible abuse, a provision was included limiting the number of helpers which could be used on a covered project to a maximum of two helpers for every three journeymen. See 29 CFR 1.7(d), 29 CFR 5.2(n)(4), 29 CFR 5.5(a)(1)(ii)(A), and 29 CFR 5.5(a)(4)(iv).

As a result of a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions, implementation of the regulations was enjoined. *Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.,* 553 F. Supp. 352 (D.D.C. 1982). The U.S. Court of Appeals for the District of Columbia issued a decision upholding the Department's authority to allow increased use of helpers and approving the regulatory definition of a helper's duties, but struck down the provision for issuing a helper wage rate where helpers were ''identifiable,'' thereby requiring a modification to the regulations to provide that the helper classification be ''prevailing'' in the area before it may be used. *Building and Construction Trades Department, AFL–CIO, et al.,* v. *Donovan, et al.,* 712 F.2d 611 (D.C. Cir. 1983), cert. denied, 464 U.S. 1069 (1984).

On January 27, 1989, DOL published a final rule in the Federal Register (54 FR 4234) to add the requirement that the use of a particular helper classification must prevail in an area in order to be recognized, and to define the circumstances in which the use of helpers would be deemed to prevail. (54 FR 4234). Following the Court's lifting of the injunction by Order dated September 24, 1990, the Department published a Federal Register notice on December 4, 1990, implementing the helper regulations effective February 4, 1991 (55 FR 50148).

In April 1991, Congress passed the Dire Emergency Supplemental Appropriations Act of 1991, Public Law 102–27 (105 Stat. 130), which was signed into law on April 10, 1991. Section 303 of Public Law 102–27 (105 Stat. 152) prohibited the Department of Labor from spending any funds to implement or administer the helper regulations. In support of the prohibition, Chairman Ford of the House Education and Labor Committee stated that ''Congress should insist that the administration recognize that authorizing legislation is the only appropriate vehicle for dealing with fundamental changes in the operation of the Davis-Bacon Act.'' In compliance with the Congressional directive, the Department did not implement or administer the helper regulations for the remainder of fiscal year 1991.

After fiscal year 1991 concluded and subsequent continuing resolutions expired, a new appropriations act was passed which did not include a ban restricting the implementation of the helper regulations. The Department issued All Agency Memorandum No. 161 on January 29, 1992, instructing the contracting agencies to include the helper contract in contracts for which bids were solicited or negotiations were concluded after that date.

During the course of the ongoing litigation in this matter, the U.S. Court of Appeals for the District of Columbia (by decision dated April 21, 1992) upheld the rule defining the circumstances in which helpers would be found to prevail and the remaining helper provisions, but invalidated the provision of the regulations that prescribed a maximum ratio governing the use of helpers (*Building and Construction Trades Department, AFL–CIO* v. *Martin,* 961 F.2d 269 (D.C. Cir. 1992)). To comply with this ruling, on June 26, 1992, the Department issued a Federal Register notice removing 29 CFR 5.5(a)(4)(iv) from the Code of Federal Regulations. (57 FR 28776).

Subsequently, Section 103 of the 1994 Department of Labor Appropriations Act, Public Law 103–112, prohibited the Department of Labor from expending funds to implement or administer the helper regulations during fiscal year 1994. Accordingly, on November 5, 1993, the Department published a Federal Register notice (58 FR 58954) suspending the helper regulations and reinstituting the Department's prior policy regarding the use of helpers. The 1995 Department of Labor Appropriations Act again barred the Department from expending funds to implement the helper regulations (Section 102. Pub. L. 103–333); this prohibition extended into fiscal 1996 through several continuing resolutions. There is no such prohibition in the Department of Labor's Appropriations Act for fiscal year 1996, Public Law 104–134, signed into law by President Clinton on April 26, 1996.

III. Discussion

During the brief period since the passage of the appropriations act for fiscal year 1996, the Department has carefully considered whether the suspended regulation governing the use of helpers should be modified. Fourteen years have passed since the Department first promulgated the regulation, and more than four years have passed since the Department last attempted to put a revised version of that regulation in effect. During the extended period of time in which the regulation was suspended, additional information has become available which warrants review of the suspended rule.

The suspended helper regulation was proposed and adopted principally because it was believed that it would result in a construction workforce on Federal construction projects that more closely mirrored the private construction workforce's widespread use of helpers and, at the same time, effect significant cost savings in federal construction costs. However, data developed from the Department's experience implementing the helper regulation (which was not available during the rulemaking proceedings and upon which the public has had no opportunity to comment) reveals that the use of helpers might not be as widespread as previously thought. The Department conducted 78 prevailing wage surveys during the period January 29, 1992, through October 21, 1993, when the (now suspended) semi-skilled helper regulations were in effect. In 45 of the 78 areas surveyed, the Department determined that the use of helpers was not the prevailing practice in any of the job classifications analyzed. In the remaining 33 areas, the use of helpers was the prevailing practice in only about 7 percent (*i.e.*, 65 of 888) of job classifications surveyed. The Department is preparing a preliminary regulatory impact analysis to accompany a proposed rule which will discuss the Department's updated estimate of costs savings which would be realized from the suspended helper rule.

The Department is concerned that the helper regulation may create an unwarranted potential for abuse of the helper classification to justify payment of wages which are less than the prevailing wage in the area. As initially proposed, the 1982 helper regulation imposed a numerical limitation on the use of helpers under which there could be no more than two helpers for every three journeymen. 47 FR 23655. As the Court of Appeals stressed in its 1983 decision, this limitation ''increased the likelihood that gross violations will be caught, or at least that evasion will not get too far out of line.'' However, the specific ratio adopted by the Department was subsequently invalidated by the Court in 1992. The Department's subsequent efforts to develop enforcement guidelines led it to conclude that administration of the revised helper criteria would be much more difficult than anticipated, particularly in light of the court-ordered abandonment of the ratio provision. When the Department implemented the Court's decision in 1992, it did not conduct notice and comment rulemaking proceedings on the regulation as revised. Instead, the Court's order was implemented by publication of a notice in the Federal Register removing the numerical ratio from the regulation. Consequently, the public has never had an opportunity to comment on the regulation in its current form.

The Department is also concerned about the possible impact of the helper regulations on formal apprenticeship and training programs. These factors, and the obvious Congressional controversy over the regulation, have led the Department to conclude that the basis and effect of the semi-skilled helper regulation should be reexamined. Accordingly, the Department intends to propose, and seek public comment on, a rule that would amend the currently suspended helper regulations, 29 C.F.R. 1.7(d), 29 C.F.R. 5.2(n)(4), and 29 C.F.R. 5.5(a)(1)(ii). The Department anticipates that these rulemaking proceedings will be concluded, and any final amendment to the regulations promulgated, within one year.

The Department has carefully considered whether the regulations which have been in effect during the past three years, while the suspension has been in effect, should continue to apply during the interim period or, alternatively, whether the suspended helper regulation in its current form should be made effective during that period. Given the information now available, the fact that the public has never had an opportunity to comment on the suspended regulation in its present form, and the Department's decision to initiate proceedings proposing further amendments to the rule, the Department has decided to seek public comment concerning whether or not to continue the suspension of the helper regulation while further action is being taken with respect to possibly amending the rule.

In addition to the problems with the suspended helper regulation discussed above, the Department is preliminarily of the view that implementation of the regulation on a short-term basis would create unwarranted disruption and uncertainty for both federal agencies and the contracting community. Accordingly, the rule proposed here would make no change to the regulations currently in effect, and thereby continue the suspension of the helper regulations that has been in effect since October 1993, while the Department engages in substantive rulemaking concerning the helper regulations.

The Department's past experience indicates that implementation of the suspended helper regulations, even on an interim basis, would likely require a substantial period of time. When the Department promulgated the helper regulations in 1982 (47 FR 23658, May 28, 1982) and in 1990 (55 FR 50149, December 4, 1990), it provided a 60-day effective date, applicable to bids advertised or negotiations concluded after the date, to allow agencies an opportunity to amend their

implementing regulations and their contract clause forms to incorporate the new provisions. Solicitations for bids are ordinarily advertised for at least 30 to 60 days before a contract may be awarded. In accordance with the Department's usual practice, an effective date at least 60 days after publication would be afforded if the Department were to begin implementation of the suspended rule today.

Conforming changes then have to be made by the appropriate responsible federal agencies to the Federal Acquisition Regulations (FAR) and the Defense Acquisition Regulations (DAR), which are applicable to contracts subject to the Davis-Bacon Act. It is likely that such changes would also have an effective date 60 days after their publication, as did amendments to the FAR and DAR following the Department's 1992 notice of implementation (September 1992–November 1992). In fact, when the Department implemented the helper rule in January 1992, conforming changes in the FAR and the DAR did not actually become effective until November 1992, approximately ten months after the Department issued its notice implementing the rule.

Moreover, under the suspended rule, helpers could be used on a given contract only after the Department determines that the use of helpers is the prevailing practice in a particular job classification in the area in which the work will be performed. Thus, the time necessary for the Department to perform surveys in response to requests to use helper classifications adds further delay before contractors may lawfully pay their workers at helper rates.

Thus, the suspended regulation would be fully effective for only a brief period, if at all, before the Department expects it would complete substantive rulemaking proceedings to consider amending the regulation. Given the pendency of those proceedings, and the history of the regulation, contractors would be uncertain to reconfigure their staffing patterns and work site procedures for the purpose of submitting bids in reliance upon a regulation which they are aware the Department may amend shortly thereafter. Similarly, repeated changes in the regulations within a short period of time would create unwarranted disruption in the contracting process of federal agencies which would be required to amend their regulations and contract forms on an interim basis only to repeat the entire process if proposed amendments to the helper regulation are finalized. Finally, the Department of Labor would have to postpone or abandon planned surveys needed to update prevailing wage determinations in order to divert resources to the collection and analysis of prevailing practice and wage data under helper regulations which may be modified shortly thereafter.

In short, the Department believes that the disruption and uncertainty associated with implementation of the suspended helper regulations for such a brief period would be unwarranted. The Department expects to complete its analysis of public comments on this proposed rule to continue the suspension of the helper regulations, and publish a final rule within 120 days after the date of publication.

IV. Executive Order 12866; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

This proposed rule is not ''economically significant'' within the meaning of Executive Order 12866; nor does it require a statement under § 202 of the Unfunded Mandates Reform Act of 1995. This rule merely continues the suspension of the helper regulations that has been in effect since November 1993 in order that the Department may proceed with rulemaking while avoiding the unnecessary disruption and confusion that would result from implementation of the helper regulations during the interim. Therefore, there would be no cost or savings that would result from continuing the suspension since this would merely preserve the status quo. Moreover, as discussed above, a substantial period of time is required before the regulations would be implemented by their incorporation in contracts, and the Department's experience in the brief period in 1992 and 1993 when the suspended regulation was in effect was that relatively few surveys were completed in which helpers were found to prevail.

Thus, any theoretical savings that would be lost from a failure to implement the helper regulations during the rulemaking period would be minimal. Accordingly, it is expected that this proposal will not result in a rule that may have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy or a sector of the economy. Because this rule will not have a significant economic impact, no economic analysis is required. For the same reason, this rule does not constitute a ''major rule'' within the meaning of section 804(2) of the Small Business Regulatory Enforcement Fairness Act.

Because the alternative to the proposed rule—lifting of the suspension and implementing the helper regulations while rulemaking is ongoing—could possibly interfere with actions planned or taken by other government agencies, the Department has concluded that it will treat the proposed rule as a ''significant regulatory action'' within the meaning of section 3(f)(2) of Executive Order 12866.

V. Regulatory Flexibility Act

The Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. As a continuation of the status quo, there is no economic impact. Furthermore, the Department has determined that if the suspension were lifted and the regulation implemented, there would not be a significant economic impact on a substantial number of small entities during the interim period prior to completion of rulemaking action on the helper regulations—expected to be completed within a year. Because of the lag times in agency procedures to amend their regulations and incorporate the contract clauses, and the relatively small number of helper classifications which the Department found prevailing in its surveys in 1992 and 1993, it is unlikely that a substantial number of small entities would have the opportunity to use helper classifications during the period before the rulemaking is completed. Accordingly, the proposed rules are not expected to have a ''significant economic impact on a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act, and the Department has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Thus, a regulatory flexibility analysis is not required.

VII. Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, D.C., this 29th day of July 1996.

John R. Fraser,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 96–19649 Filed 7–31–96; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedure Governing Advisory Opinions and Rules Governing Summary Judgment Motions and Advisory Opinions

AGENCY: National Labor Relations Board.

ACTION: Notice of extension of time for filing comments to proposed rulemaking.

SUMMARY: Pursuant to a request from the American Bar Association Subcommittee on NLRB Practice and Procedure, the NLRB gives notice that it is extending by approximately 30 days the time for filing comments on the proposed rule changes published on July 5, 1996 (61 FR 35172) which would eliminate the notice-to-show-cause procedure in summary judgment cases and remove provisions which permit parties to pending state proceedings to file petitions with the Board for an advisory opinion on jurisdiction.

DATES: The comment period which currently ends on August 5, 1996, is extended to September 5, 1996.

ADDRESSES: Comments on the proposed rulemaking should be sent to: Office of the Executive Secretary, 1099 14th Street, NW, Rm 11600, Washington, D.C. 20570.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

Dated, Washington, D.C., July 29, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–19696 Filed 8–1–96; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–019–FOR]

Oklahoma Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter, the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of additions and revisions to Oklahoma's regulations pertaining to repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by underground coal mining operations. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., September 3, 1996. If requested, a public hearing on the proposed amendment will be held on August 27, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on August 19, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive on free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (404) 521–3859.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Proposed Amendment

By letter dated July 17, 1996, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–975). Oklahoma submitted the proposed amendment in response to a May 20, 1996, letter that OSM sent to Oklahoma in accordance with 30 CFR 732.17(c). Oklahoma proposed to revise the Oklahoma Coal Rules and Regulations at Oklahoma Administrative Code (OAC) 460:20–3–5, definitions; OAC 460:20–31–7, hydrologic information; OAC 460:20–31–13, subsidence control plan; OAC 460:20–45–8, hydrologic-balance protection; and OAC 460:20–45–47, subsidence control. Specifically, Oklahoma proposes the following additions and revisions to its regulations.

1. OAC 460:20–3–5 Definitions

Oklahoma proposes to add definitions for the terms ''drinking, domestic or residential water supply''; ''material damage''; ''non-commercial building''; and ''replacement of water supply.''

2. OAC 460:20–31–7 Hydrologic Information

Oklahoma proposes to add a new provision at OAC 460:20–31–7(e)(3)(D) that requires the PHC determination to include findings on ''whether the underground mining activities conducted after October 24, 1992 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas.''

3. OAC 460:20–31–13 Subsidence Control Plan

Oklahoma proposes to remove the existing introductory paragraph and to replace it with new subsections (a) and (b). Paragraphs (a) (1) through (3) contain requirements for an application to include a map, a narrative, and a pre-subsidence survey indicating the location, type, and condition of structures and renewable resource lands that subsidence may materially damage or diminish in value and of drinking, domestic, and residential water supplies that subsidence may contaminate, diminish, or interrupt.

Subsection (b) contains revised requirements for a subsidence control plan. A new introductory paragraph provides that no further information need be provided in the application if the survey conducted under paragraph (a) shows that no structures; drinking,

domestic, or residential water supplies; or renewable resource lands exist or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence. The Department must agree with the conclusion of the survey. A subsidence control plan is required if the survey identifies the existence of structures, renewable resource lands, or water supplies; if subsidence could cause material damage or diminution in value or foreseeable use, or contamination, diminution, or interruption of protected water supplies; or if the Department determines that such damage or diminution could occur.

The language in existing paragraph (7) was removed and new language was added to require operators conducting operations that result in planned and controlled subsidence to describe the subsidence control measures they will use to minimize subsidence and subsidence-related material damage to non-commercial buildings and occupied residential dwellings and related structures; or to submit the written consent of the owner of the structure or facility that minimization measures need not be taken; or to demonstrate that the costs of minimizing damage to these structures exceed the anticipated cost of repair and are not needed to prevent a threat to health or safety.

Existing paragraph (8) was redesignated paragraph (b)(9) and new paragraph (b)(8) requires a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to protected land and structures.

4. OAC 460:20–45–8 Hydrologic-balance protection

Oklahoma proposes to add new subsection (j) that requires the permittee to replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992.

5. OAC 460:20–45–47 Subsidence Control

Oklahoma proposes to revise subsection (a) by adding the title ''Operator measures to prevent or minimize damage''; by numbering the existing provision (1); and by adding two new provisions. Paragraph (a)(2) provides that if planned subsidence is used, the operator must minimize material damage to the extent technologically and economically feasible unless he has the written consent of the owners or the costs would exceed the anticipated costs of repair. Paragraph (a)(3) provides that the standard method of room-and-pillar mining is not prohibited.

Oklahoma proposes to revise subsection (b) by adding the title ''Operator compliance.''

Oklahoma proposes to revise subsection (c) by adding the title ''Repair of damage to surface lands''; by deleting the existing language and adding new language in paragraph (2); and by adding new paragraphs (3), (4), and (5). New paragraph (c)(2) requires the operator to repair or compensate the owner for subsidence-related material damage to non-commercial buildings or occupied residential dwellings that existed at the time of mining.

New paragraph (c)(3) provides for repair or compensation for subsidence-related material damage to structures or facilities not protected by paragraph (c)(2).

New paragraph (c)(4)(A) provides that if damage to non-commercial buildings or occupied residential dwellings and related structures occurs as a result of earth movement within the area determined by projecting a specified angle of draw from underground mine workings to the surface, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a 30-degree angle of draw. New paragraph (c)(4)(B) provides that the operator may request that the presumption apply to a different site-specific angle of draw based on a site-specific geotechnical analysis of the potential surface impact of the mining operation that demonstrates that the proposed angle of draw has a more reasonable basis than the one established in the Oklahoma program. New paragraph (c)(4)(C) provides that no rebuttable presumption will exist if the operator is denied access to the land or property for the purpose of conducting a pre-subsidence survey. New paragraph (c)(4)(D) provides for a rebuttal of presumption under specified circumstances. New paragraph (c)(4)(E) provides that all relevant and reasonably available information will be considered in determining whether damage to protected structures was caused by subsidence. New paragraph (c)(5) provides for an adjustment of bond amount for subsidence-related material damage to protected land, structures, or facilities and for contamination, diminution, or interruption to a water supply. No additional bond is required if repairs, compensation or replacement is completed within 90 days of the occurrence of damage. Oklahoma may extend the 90-day time frame, not to exceed one year, under specified circumstances.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the cementer's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 19, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to

discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 25, 1996.

Deborah Watford,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–19610 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5545–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Northwest 58th Landfill Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces its intent to delete the Northwest 58th Street Landfill Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before: September 3, 1996.

ADDRESSES: Comments may be mailed to: Richard D. Green, Acting Director, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Comprehensive information on this Site is available through the Region IV public docket, which is available for viewing at the Northwest 58th Street information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Record Center, 345 Courtland Street, NE, Atlanta, Georgia 30365, Phone: (404)347–0506, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday By Appointment Only

Metropolitan Dade County, Department of Environmental Resource Management, Hazardous Waste Section, 33 S.W. 2nd Avenue, Suite 800, Miami, Florida 33130, Phone: (305) 372–6804, Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Pamela Scully, U.S. EPA Region IV, Mail Code: WD–SSRB, 345 Courtland Street NE, Atlanta, Georgia 30365, (404)347–2643 x6246.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction

The EPA Region IV announces its intent to delete the Northwest 58th Street Site, Dade County, Florida, from the NPL, which constitutes Appendix B of the NCP, 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this Site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion. The following procedures were used for the intended deletion of the Site:

1. FDEP has concurred with the deletion decision;

2. Concurrently with this Notice of Intent, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL; and

3. The Region has made all relevant documents available at the information repositories.

The Region will respond to significant comments, if any, submitted during the comment period.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management.

A deletion occurs when the Regional Administrator places a final notice in the Federal Register. Generally, the NPL will reflect any deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Northwest 58th Street Landfill is a one square mile site in Northwest Dade County, Florida, near the western perimeters of the Town of Medley and the City of Miami Springs. The Site began operation as an open dump in 1952. Shallow trenches were dug for waste disposal, resulting in deposition of refuse in the saturated zone of the Biscayne Aquifer. The landfill received an estimated one million tons of waste each year during its latter years of operation. In January 1975, a program of providing daily cover was instituted. Initially, this cover consisted of muck and crushed rock, but subsequently, calcium carbonate sludge from the County's water treatment plants was used as cover.

In 1975, the U.S. Geologic Survey completed a study, which defined a migrating groundwater contaminant plume, downgradient of the Site. The study estimated the location of the leading edge of the plume to be one mile east (downgradient) of the landfill. A feasibility study (FS) was completed in January 1976. Six alternatives were considered for remediating ground water contamination at the Site, including: site groundwater recovery, onsite groundwater recovery with deep well injection, containment of contaminants, excavation of the landfill and leachate control measures.

In June 1979, Dade County and the Florida Department of Environmental Protection entered into a Consent Order which required the county to cease accepting waste at the Northwest 58th Street Landfill by August 1, 1981. Dade County continued to operate the landfill until October 1982. Since then, the landfill has received only construction debris, quarry wastes, and water plant sludges; no municipal waste has been received. In October 1981, the landfill was proposed for the National Priorities List (NPL). The site was placed on the NPL in September 1983.

In 1982 EPA initiated the Biscayne Aquifer Study to determine the effect of three NPL sites on the Biscayne aquifer: The Varsol Spill Site; the Miami Drum Site; and the Northwest 58th Street Landfill. The regional study was not able to define a groundwater plume associated with the site. Rather, a widespread low-to-moderate plume was found throughout most of the study area. A 1986 Endangerment Assessment identified the following as site-related groundwater contaminants of concern: arsenic, chromium, zinc, benzene, chlorobenzene, 1,1,2,2-tetrachloroethane, trichloroethene and vinyl chloride. These contaminants were found in exceedence of existing federal or State of Florida maximum contaminant levels, and were found to be of concern due to their relative mobility, persistence and toxicity.

Based on the USGS study, the 1976 FS, and the Biscayne aquifer study, EPA approved a Record of Decision (ROD) for the Northwest 58th Street Landfill on September 21, 1987. The remedy selected by the ROD was closure of the landfill. The closure was to include leachate control through a combination of stormwater management, grading, drainage control, leachate collection, and capping techniques. These measures were expected to minimize the infiltration of rainwater into the landfill, thus controlling the production of leachate. Methane gas migration and odor controls were also to be implemented. Long-term monitoring of ground water quality and O&M of the landfill closure was also required.

In addition to closure of the landfill, the remedy required that the county provide public drinking water to those residences and businesses located east of the landfill, where it had been determined exposure to ground water contaminated by the landfill caused unacceptable risk.

On April 26, 1988, Dade County signed a Consent Decree with EPA, to implement the remedial actions identified in the ROD. The closure plan was submitted to EPA June 27, 1988. Municipal water was provided to private well users east of the landfill in January 1989. A leachate interceptor trench was installed along the eastern perimeter of the landfill, in an area designated as Zone 1, by April 1989. Construction of the landfill cover system began in August 1991, and construction completion was completed January 1995.

A statutory five-year review of the remedy was conducted in 1993. Because the remedial action was not complete, EPA recommended that another five-year review be conducted by November 22, 1998.

EPA, with concurrence of FDEP, has determined that all appropriate actions at the Northwest 58th Street Landfill Site have been completed, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the Site from the NPL.

Dated: July 18, 1996.

A. Stanley Meiburg,

Acting Regional Administrator, USEPA Region IV.

[FR Doc. 96–19432 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3600, 3610, and 3620

[WO–420–1050–00–24 1A]

RIN 1004–AC68

Mineral Materials Disposal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the mineral materials sales regulations by accepting qualified certificates of deposits as surety bonds, and by changing bonding requirements for sales of $2,000 or more. For such sales, the current rule sets the bond amount at $500 or 20 per cent of the contracted price, whichever is greater. The new rule will be more flexible. The bond will be set at 5 percent of the contract value plus an amount large enough to meet the anticipated reclamation work. The rule still requires $500 as the minimum amount for the bond. The rule makes the bond amount more realistic and ensures that the amount of bond is adequate to accomplish the projected reclamation work. Other changes simplify certain paragraphs by amending or removing confusing language.

DATES: Comments on the proposed rule must be received by September 3, 1996 to be assured of consideration. Comments received or postmarked after this date may not be considered in the preparation of the final rule.

ADDRESSES: Comments should be sent to: Director (420), Bureau of Land Management, Room 401 LS, 1849 C Street NW., Washington, DC 20240, or the Internet address: WoComment@WO0033wp.wo.blm.gov [For Internet, please include ''ATTN: AC68'', and your name and return address.] You may also hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Durga N. Rimal, Resource Use and Authorization Team, at (202) 452–0350.

SUPPLEMENTARY INFORMATION: The proposed rule would amend 43 CFR Group 3600, subpart 3602, part 3610, and Part 3620 in order to simplify certain paragraphs by amending or removing confusing language. Changes proposed on bonding (§ 3610.1–5) will reduce unnecessary financial burden to some operators, while assuring that the amount of bond required is not less than that projected for the reclamation work. Certificates of deposit issued by Federally insured financial institutions would be acceptable as bonds. Such certificates of deposit would be held by the BLM. Accrued interest would be returned to the purchaser.

The principal author of this proposed rule is Dr. Durga N. Rimal of the Resource Use and Authorization Team, assisted by the Regulatory Management Team, BLM.

BLM has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council of Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The proposed rule would have little effect on costs or prices for consumers, nor would there be a need for increasing Federal, State, or local agency budget or personnel requirements. The proposed rule will not have a gross annual effect on the economy of more than $100 million, nor will it cause major increases in costs or prices for any private or government section of the economy.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities. The BLM issues or manages an estimated 2,500 mineral materials sales contracts per year, valued at $4.4 million. The percentage of small entities involved in these contracts is unknown. Small entities such as subcontractors and local construction companies as well as larger companies buy mineral materials. The proposal favors no demographic group, imposes no direct or indirect costs on small entities, and does not change the application process and requirements of contract issuance, which do not favor or disfavor small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will result in no taking of private property. As required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

BLM has submitted the information collection requirement contained in this rule to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information would not be required until it has been approved by the Office of Management and Budget.

List of Subjects for 43 CFR Parts 3600, 3610, 3620

Government contracts, Public lands-mineral resources, Appraisal, Reporting and recordkeeping requirements, Surety bonds.

Under the authorities of the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602), Parts 3600, 3610, and 3620, Group 3600, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3600—MINERAL MATERIALS DISPOSAL; GENERAL

1. The authority citation for 43 CFR part 3600 continues to read as follows:

Authority: 30 U.S.C. 601, 602.

Subpart 3602—Disposal of Mineral Materials: General

2. Section 3602.1–3 is revised to read as follows:

§ 3602.1–3 Approval and modification of mining and reclamation plans.

(a) After reviewing the mining and reclamation plans, the BLM will promptly notify the applicant of any deficiencies in the plans and will recommend the changes necessary to prevent unnecessary or undue degradation of the lands, and hazards to public health and safety. Mining and reclamation plans as approved, will be attached to, and made a part of the contract or permit.

(b) The permittee's operation must not deviate from the plan approved by the BLM.

(c) The BLM and the permittee may agree to modify an approved mining or reclamation plan to adjust to changed conditions, or to correct any oversight that could result in unnecessary or undue degradation. Any change must be consistent with the requirements of § 3601.1–3.

(d) When a permittee requests to change an approved mining or reclamation plan, the BLM will review the proposed modification and within 30 days will notify the permittee of its approval, needed changes, or denial.

PART 3610—SALES

3. The authority citation for 43 CFR part 3610 is revised to read as follows:

Authority: 30 U.S.C. 601, 602.

Subpart 3610—Mineral Material Sales

4. Section 3610.1–2 is amended by revising paragraph (b) to read as follows:

§ 3610.1–2 Appraisal, reappraisal and measurements.

* * * * *

(b) Two years after the contract or reappraisals the BLM may reappraise the value of mineral materials disposed of and adjust the contract price accordingly.

* * * * *

5. Section 3610.1–5 is amended by revising the heading and paragraph (a), amending paragraphs (b) by removing the phrase ''reclamation or'' and (c) introductory text by removing the phrase ''and reclamation'', revising paragraphs (c)(2) and (c)(3), and adding new paragraph (c)(4), to read as follows:

* * * * *

§ 3610.1–5 Performance bond.

(a) The BLM will require, for contracts of $2,000 or more, a performance bond of:

(1) at least 5 percent of total contract value, plus; and

(2) an amount large enough to meet the reclamation standards provided for in the contract or permit, but at least $500. Where contract sales or permits are made from a community pit and a reclamation fee is paid by the permittee, BLM will not require this sum for reclamation for the bond amount.

* * * * *

(c) * * *

(2) Certificate of deposit which:

(i) Is issued by a financial institution whose deposits are Federally insured;

(ii) Does not exceed the maximum insurable amount set by Federal Deposit Insurance Corporation;

(iii) Is made payable or assigned to the United States;

(iv) Grants the BLM authority to demand immediate payment for failure to meet the terms and conditions of the contract or permit;

(v) Indicates that the BLM's approval is required before any party can redeem it; and

(vi) Otherwise conforms to BLM's instructions as found in the contract terms.

(3) Cash bond, with a power of attorney to the BLM to convert it upon the permittee's failure to meet the terms and conditions of the contract or permit; or

(4) Negotiable Treasury bond of the United States of a par value equal to the amount of the required bond, together with a power of attorney to the BLM to sell it upon the permittee's failure to meet the terms and conditions of the contract or permit.

* * * * *

§ 3610.3–2 [Amended]

6. In § 3610.3–2 paragraph (a) (7) is amended by removing the term ''require'' and adding in its place ''required''.

PART 3620— FREE USE

7. The authority citation for 43 CFR part 3620 is revised to read as follows:

Authority: 30 U.S.C. 601, 602.

8. Sec. 3621.1–6 is revised to read as follows:

* * * * *

§ 3621.1–6 Performance bond.

The BLM may require a bond to guarantee faithful performance of the provisions of the permit and applicable regulations.

Dated: July 8, 1996.

Sylvia V. Baca,

Deput Assistant Secretary for Land and Minerals Management.

[FR Doc. 96–18945 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102: FCC 96–264]

Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a Report and Order and Further Notice of Proposed Rulemaking regarding the availability of the advanced emergency capabilities of E911 systems to wireless service providers and customers. The Report and Order portion of this decision is summarized elsewhere in this issue of the Federal Register. The Further Notice of Proposed Rulemaking (FNPRM) seeks comment on a variety of relevant issues. The Commission also tentatively concludes that covered carriers should continue to upgrade and improve 911 service to increase its accuracy, availability, and reliability, and that a consumer education program should be initiated to inform the public of the capabilities and limitations of 911 service. This action is taken to ensure that E911 system performance keeps pace with the latest technologies.

DATES: Comments are due on or before August 26, 1996, and reply comments are due on or before September 10, 1996. Written comments by the public on the proposed and/or modified information collections are due by August 26, 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 October 1, 1996.

ADDRESSES: Federal Communications Commission, 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, DC 20554, or via the

Internet to dconway@fcc.gov, and to Timothy Fair, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503, or via the Internet to fain__t@l.eop.gov.

FOR FURTHER INFORMATION CONTACT: Peter Wolfe, Wireless Telecommunications Bureau (202) 418–1310. For additional information concerning the information collections contained in this FNPRM, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice of Proposed Rulemaking segment of the Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94–102, FCC 96–264, adopted June 12, 1996, and released July 26, 1996. The Report and Order portion of this decision is summarized elsewhere in this edition of the Federal Register. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. This FNPRM 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.

Synopsis of Further Notice of Proposed Rulemaking

1. In this Report and Order and Further Notice of Proposed Rulemaking, the Commission takes several important steps to foster major improvements in the quality and reliability of 911 services available to the customers of wireless telecommunications service providers. The Notice of Proposed Rulemaking initiating this proceeding may be found at 59 FR 54878, November 2, 1994. The Commission issues the FNPRM to develop additional means of ensuring that improvements made possible by technological advances are incorporated into E911 systems. The FNPRM portion of the decision represents the Commission desire to ensure continuity of our dedication to new and innovative 911 services by seeking comment on further refinements of the Commission's wireless 911 rules.

2. The FNPRM first seeks comment on possible approaches to avoid customer confusion that could be generated by a system under which customers in the same geographic area may or may not be able to complete non-code identification [1] 911 calls depending upon the practices of the various Public Safety Answering Points (PSAPs) serving that area. Specifically, the Commission requests comment regarding whether, within a reasonable time after the one-year period, PSAPs should no longer have the option to refuse to accept non-code identification 911 calls. Thus, covered carriers would be obligated to transmit all 911 calls to PSAPs.

3.The Commission next tentatively concludes that covered carriers should continue to upgrade and improve 911 service to increase its accuracy, availability, and reliability, while also recognizing that our rules should ensure that covered carriers' development and application of new technologies for E911 services also contribute to the overall quality of service and range of services that carriers provide to all their customers. These efforts will ensure that the public benefits from technological innovations, through the application of those innovations to public safety needs.

4. The Commission seeks comment on a range of related issues, including the following: (1) Should covered carriers provide PSAPs information that locates a wireless 911 caller within a radius of 40 feet, using longitude, latitude, and altitude data, and that provides this degree of accuracy for 90 percent of the 911 calls processed? (2) Should wireless service providers be required to supply location information to the PSAP regarding a 911 caller within a certain number of seconds after the 911 call is made? (3) Should wireless service providers be required to update this location information throughout the duration of the call? (4) What steps could be taken to enable 911 calls to be completed or serviced by mobile radio systems regardless of the availability (in the geographic area in which a mobile user seeks to place a 911 call) of the system or technology utilized by the user's wireless service?

5. The Commission also tentatively concludes that a consumer education program should be initiated to inform the public of the capabilities and limitations of 911 service, and we seek comment regarding the scope of such a program and carrier obligations that could be established in connection with such a program. One purpose of such a program would be to address a concern that consumers currently may not have a sufficient understanding of technological limitations that can impede transmission of wireless 911 calls and the delivery of emergency assistance.

Administrative Matters

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 26, 1996, and reply comments on or before September 10, 1996. To file formally in this proceeding, you must file an original plus four 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 plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Paperwork Reduction Act

8. This FNPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwok burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this FNPRM, 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 this FNPRM; OMB notification of action is due October 1, 1996. Comments should address: (a) whether the proposed collection of information is

[1] The term ''non-code identification,'' when used in this decision in conjunction with 911 calls, means (1) in the case of calls transmitted over the facilities of a covered carrier other than a Specialized Mobile Carrier that is subject to the requirements of this Order, a call originated from a mobile unit which does not have a Mobile Identification Number (MIN); and (2) in the case of calls transmitted over the facilities of a Specialized Mobile Carrier that is subject to the requirements of this Order, a call originated from a mobile unit that does not have the functional equivalent of a MIN.

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.

OMB Approval Number:

Title: Consumer Education Concerning Wireless 911.

Form No.:

Type of Review: New collection.

Respondents: Cellular, broadband PCS, and certain SMR carriers subject to the proposed rule.

Number of Respondents: 2,500.

Estimated Time Per Response: 30 Minutes—1 Hour.

Total Annual Burden: 1,562.5 Hours.

Needs and Uses: The information will be used by consumers to determine rationally and accurately the scope of their options in accessing 911 services from mobile handsets.

Initial Regulatory Flexibility Act Statement

9. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Initial Regulatory Flexibility Analysis For Further Notice of Proposed Rulemaking

I. Reason for Action

10. This FNPRM responds to the petition submitted by the Ad Hoc Alliance for Public Access to 911 to amend the Commission's Rules to require that all newly constructed mobile and portable units be equipped to select the strongest signal whenever a 911 call is placed. Telephone stations for wireless services are not adequately identifying caller location to permit a timely response by emergency services personnel and are not providing 911 service for all caller locations.

II. Objectives and Legal Basis for Proposed Rules

11. One objective of this FNPRM is to collect additional information on the technical issues related to the improvement of wireless E911 services, including higher accuracy standards for the Automatic Location Identification (ALI), a latency period requirement, and the provision of 911 services without interruption where one wireless provider does not provide complete area coverage. Another objective is to collect information with respect to informing consumers what their wireless phones can and cannot do. A third objective is to determine whether all 911 calls should be transmitted without any preconditions.

12. The proposed action is authorized under Sections 1, 4(i), 201, 208, 215, 303, 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201, 208, 215, 303, 309.

III. Description and Estimate of Small Entities Subject to the Rules

13. The proposed changes in the regulations will apply to providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under Section 90.629 of the Commission's Rules. However, the rule will apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

14. In the full text of this decision, we have estimated the number of small entities for each category, or else stipulated that all providers are small entities where we were unable to make an estimate. We request comment on whether these estimates should be improved or refined. We especially request comment on the number of small entities in the categories that we were unable to estimate, i.e., cellular service providers; PCS service providers in the D, E, and F Blocks; 800 MHz geographic area SMR licensees; and providers of 800 MHz or 900 MHz geographic area SMR service pursuant to waiver or pursuant to Section 90.629 of our rules.

IV. Reporting, Recordkeeping, and Other Compliance Requirements

15. Commercial mobile radio services will be required to improve the accuracy and time of the identification of the location of mobile transmitters and to permit interoperability of their 911 service with those of their competitors and to provide consumer education materials. Equipment used for commercial mobile radio services will have to be capable of providing this information to the local telephone exchanges to which they are connected. Local telephone exchanges will incur costs storing and relaying this information to E911 public safety answering points. We request comment with respect to ways in which these proposed requirements can be modified to reduce the burden on small entities and at the same time meet the objectives of this proceeding.

V. Significant Alternatives Considered and Rejected

16. The Commission concluded that it is also necessary to begin the task of exploring the need for further action to spur improvements in the features and delivery of the 911 and E911 services. We believe that continuing involvement of the Commission in developing rules that take the resources of small businesses into account as well as the public safety needs are in the public interest. Therefore, the Commission rejected alternative proposals that the future development of the E911 technologies should be left to the market forces and the industry without the Commission's involvement.

17. The Commission considered and rejected proposals that the rules should be expanded to apply to all providers of Commercial Mobile Radio Services (CMRS) because not all CMRS services are mass market voice services whose users expect to be able to use them to call 911. Specifically, the Commission believes that the costs of requiring local SMR services and 220 MHz licensees operating on 5 kHz channels to comply with the proposed rules would outweigh the benefits and application of the proposed rules to them, and would give them an incentive to eliminate their interconnection to the public network, which would not be in the public interest. Similarly, because it is not certain how multilateration Location and Monitoring Service (LMS) will develop, we concluded that it is premature to propose to require such licensees to provide E911 at this time. In the future if these wireless service providers not covered by the current rules develop into a mobile telephone

service like cellular or broadband PCS, we may revisit this decision.

18. The Commission considered and rejected proposals to adopt a specific technology for providing ALI, because we believe that various technologies are currently under development which can provide more advanced public safety technology than those that are currently available. The Commission also considered and rejected proposals to adopt rules to require a minimum latency period to locate 911 callers at this time, because the record is insufficient to determine the technical feasibility and the costs of implementing such requirements, especially the financial impact on small business entities. The Commission instead decided to seek comment on these proposals, including the benefits and feasibility of such requirements.

VI. Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules

19. There are no Federal rules which overlap, duplicate, or conflict with the rules we are proposing.

List of Subjects in 47 CFR Part 20

Communications common carriers, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19661 Filed 8–1–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960318084–6199–02; I.D. 071596C]

RIN 0648–AG55

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

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

ACTION: Proposed rule; notice of public meetings and request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy for an incidental small take exemption under the Marine Mammal Protection Act (MMPA) to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. By this notice, NMFS is proposing regulations to govern that take. NMFS also announces the times, dates, and locations of public meetings in order to receive comments from the general public on the Navy application and the proposed regulations. In order to grant the exemption and issue the regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and the proposed regulations.

DATES: Comments must be received no later than September 17, 1996. Public meetings are scheduled as follows:

1. August 19, 1996, 10 a.m.–4 p.m. Silver Spring, MD.
2. August 20, 1996, 7–10 p.m. Norfolk, VA.
3. August 21, 1996, 7–10 p.m. Atlantic Beach, FL.

ADDRESSES: Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to the above address, telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**) or by leaving a voice mail request at (301) 713–4070. A copy of the draft environmental impact statement (draft EIS) may be obtained from Will Sloger, U.S. Navy, at (803) 820–5797.

The public meetings will be held at the following locations:

1. Norfolk—Lafayette Winona Middle School auditorium, 1701 Alsace Avenue, Norfolk, VA.
2. Atlantic Beach—Mayport Middle School cafeteria, 2600 Mayport Road, Atlantic Beach, FL.
3. Silver Spring—Silver Spring Metro Center Building 4, 1st floor, 1305 East-West Highway, Silver Spring, MD.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of these species for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On June 7, 1996, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the USS SEAWOLF submarine off the U.S. Atlantic coast. The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. In accordance with 10 U.S.C. 2366, each new class of ships constructed for the Navy cannot proceed beyond initial production until realistic survivability testing of the ship and its components are completed. Realistic survivability testing means testing for vulnerability in combat by firing munitions likely to be encountered in combat. This testing and assessment is commonly referred to as ''Live Fire Test & Evaluation (LFT&E).'' Because realistic testing by detonating torpedoes or mines against a ship's hull could result in the loss of a multi-billion dollar Navy asset, the Navy has established an LFT&E program consisting of computer modeling, component and surrogate testing, and shock testing the entire ship. Together, these components complete the survivability testing as required by 10 U.S.C. 2366.

The shock test component of LFT&E is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. While computer modeling and laboratory testing provide useful information, they

cannot substitute for shock testing under realistic, offshore conditions. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The Navy proposes to shock test the USS SEAWOLF by detonating a single 4,536-kg (10,000-lb) explosive charge near the submarine once per week over a 5-week period between April 1 and September 30, 1997. If the Mayport, FL site is selected, the shock tests would be conducted between May 1 and September 30, 1997 in order to minimize risk to sea turtles. Detonations would occur 30 m (100 ft) below the ocean surface in a water depth of 152 m (500 ft). The USS SEAWOLF would be underway at a depth of 20 m (65 ft) at the time of the test. For each test, the submarine would move closer to the explosive so the submarine would experience a more severe shock.

As part of a separate review under the National Environmental Policy Act (NEPA), two sites are being considered by the Navy for the USS SEAWOLF shock test effort. The Mayport site is located on the continental shelf of Georgia and northeast Florida and the Norfolk site is located on the continental shelf offshore of Virginia and North Carolina. The Mayport site is the preferred location because of a lower abundance of marine mammals at that site. Because of the potential impact to marine mammals, the Navy has requested NMFS to grant an exemption under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking and issue regulations governing the take.

Comments

On June 14, 1996 (61 FR 30212), NMFS published a notice of receipt of the Navy's application for a small take exemption and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. The comment period closed on July 15, 1996, but no comments were received.

Description of Habitat and Marine Mammals Affected by Shock Testing the USS SEAWOLF

A description of the U.S. Atlantic coast environment, its marine life and marine mammal abundance, distribution and habitat can be found in the draft EIS on this subject and is not repeated here. Additional information on Atlantic coast marine mammals can be found in Blaylock *et al.* (1995).[1] These documents are available upon request.

Summary of Potential Impacts

Potential impacts to the several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Death or injury may occur as a result of the explosive blast, and harassment may occur as a result of non-injurious physiological responses to the explosion-generated shockwave and its acoustic signature. The Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur. While the Navy does not anticipate any lethal takes would result from these detonations, theoretical calculations indicate that the Mayport site has the potential to result in 1 lethal take, 5 injurious takes, and 570 harassment takes, while the Norfolk site has the potential to result in 8 lethal takes, 38 injurious takes, and 4,819 harassment takes. Detailed descriptions on the definitions of take categories; calculation of ranges for potential mortality, injury, and harassment; incidental take calculations; and impacts on marine mammal habitat can be found in the Navy application, which is available upon request (see **ADDRESSES**).

Summary of Proposed Mitigation and Monitoring Measures

The Navy's proposed action includes mitigation that would minimize risk to marine mammals and sea turtles. The Navy would: (1) Through pre-detonation aerial surveys, select a test area with potentially, the lowest number of marine mammals and turtles; (2) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if either (a) any marine mammal or sea turtle is detected within a safety zone of 3.8 km (2.05 nmi) or a buffer zone of an additional 1.8 km (0.05 nmi), or (b) the sea state exceeds Beaufort 4 (i.e., wind velocity >16 kt), or the visibility is not 1.85 km (1 nmi) or greater and the ceiling is not 305 m (1,000 ft) or greater; and (3) monitor the area after each test to find and treat any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

A detailed description on the proposed measures for mitigation and monitoring the shock test can be found in the Navy application and draft EIS, which are available upon request (see **ADDRESSES**).

Reporting

Within 120 days of the completion of shock testing, the Navy would be required to submit a final report to NMFS. This report must include the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Preliminary Conclusions

While NMFS believes that detonation of five 4,536-kg (10,000-lb) charges may affect some marine mammals, the latest abundance and seasonal distribution estimates indicate that such taking will have a negligible impact on the populations of marine mammals inhabiting the waters of the U.S. Atlantic Coast. NMFS concurs with the U.S. Navy that impacts can be mitigated by mandating a conservative safety range for marine mammal exclusion, incorporating aerial and acoustic survey monitoring efforts in the program both prior to, and after detonation of explosives, and provided detonations are not conducted whenever marine mammals are detected within the safety zone, or if weather and sea conditions preclude adequate aerial surveillance.

NEPA

On June 14, 1996 (61 FR 30232), the Environmental Protection Agency noted the availability for public review and comment a draft EIS prepared by the U.S. Navy under NEPA on this action. NMFS is a cooperating agency as defined by the Council on Environmental Quality regulations (40 CFR 1501.6).

[1] Blaylock, Robert A., James W. Hain, Larry J. Hansen, Debra L. Palka, and Gordon T. Waring. 1995. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS–SEFC–363. 211 pp.

Endangered Species Act (ESA)

NMFS will be consulting with the U.S. Navy under section 7 of the ESA for this action. In that regard, the Navy submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection has been approved previously by OMB under section 3504(b) of the PRA issued under OMB Control No. 0648–0151. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 80 hours, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. It does not include time for monitoring the activity by observers. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 30, 1996.

Charles Karnella,

Acting Director, Office of Operations Management Information.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart O is added to read as follows:

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

Sec.

Subpart O—Taking of Marine Mammals Incidental to Shock Testing the USS SEAWOLF by Detonation of Conventional Explosives in the Offshore Waters of the U.S. Atlantic Coast

§ 216.161 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in the detonation of conventional military explosives within the waters of the U.S. Atlantic Coast offshore Mayport, FL or Norfolk, VA for the purpose of shock testing the USS SEAWOLF.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: Blue whale (*Balaenoptera musculus*); fin whale (*B. physalus*); sei whale (*B. borealis*); Bryde's whale (*B. edeni*); minke whale (*B. acutorostrata*); humpback whale (*Megaptera novaeangliae*); northern right whale (*Eubalaena glacialis*); sperm whale (*Physeter macrocephalus*); dwarf sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); pilot whales (*Globicephala melas, G. macrorhynchus*); Atlantic spotted dolphin (*Stenella frontalis*); Pantropical spotted dolphin (*S. attenuata*); striped dolphin (*Stenella coeruleoalba*); spinner dolphin (*S. longirostris*); Clymene dolphin (*S. clymene*); bottlenose dolphin (*Tursiops truncatus*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); killer whale (*Orcinus orca*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Fraser's dolphin (*Lagenodelphis hosei*); harbor porpoise (*Phocoena phocoena*); melon-headed whale (*Peponocephala electra*); northern bottlenose whale (*Hyperoodon ampullatus*); Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale (*Mesoplodon densirostris*); Gervais' beaked whale (*M. europaeus*); Sowerby's beaked whale (*M. bidens*); True's beaked whale (*M. mirus*); common dolphin (*Delphinus delphis*); Atlantic white-sided dolphin (*Lagenorhynchus acutus*); and harbor seals (*Phoca vitulina*).

(c) The incidental take of marine mammals identified in paragraph (b) of this section is limited to a total of 8 mortalities, 38 injuries and 4,819 harassment takes for detonations in the Norfolk, VA area, or 1 mortality, 5 injuries and 570 harassment takes for detonations in the Jacksonville, FL area, except that the taking by serious injury or mortality for species listed in paragraph (b) of this section that are also listed as threatened or endangered under § 17.11 of this title, is prohibited.

§ 216.162 Effective dates.

Regulations in this subpart are effective from April 1, 1997, through September 30, 1997.

§ 216.163 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, injury or mortality in the course detonating five 4,536 kg (10,000 lb) conventional explosive charges within the area described in § 216.161(a) provided all terms, conditions, and requirements of the regulations in this subpart and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When detonating explosives, the following mitigation measures must be utilized:

(1) If marine mammals are observed within the designated safety zone prescribed in the Letter of Authorization, or within the buffer zone prescribed in the Letter of Authorization and on a course that will put them within the safety zone prior to detonation, detonation must be delayed until the marine mammals are no longer within the safety zone or on a course

within the buffer zone that is taking them away from the safety zone.

(2) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.164 Prohibitions.

Notwithstanding takings authorized by § 216.161(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the appropriate Regional Director at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The Atlantic Ocean test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 3 weeks prior to detonation, 48–72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian, examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS SEAWOLF. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.166 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.161(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.161(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.

§§ 216.167–216.169 [Reserved]

[FR Doc. 96–19659 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–22–W

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50 CFR Part 679

[Docket No. 960717195–6195–01; I.D. 070196E]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), and Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP). This action also would repeal regulations implementing the North Pacific Fisheries Research Plan (Research Plan). This action is necessary to respond to the North Pacific Fishery Management Council's (Council) recommendation to repeal the Research Plan and implement Amendments 47 and 47 to the Groundfish FMPs to establish mandatory groundfish observer coverage requirements through 1997. Amendment 6 to the Crab FMP would remove reference to the Research Plan. This action is intended to establish an Interim Groundfish Observer Program until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs,

and observer compensation and working conditions is recommended by the Council and implemented by NMFS.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 W. 9th Street, Juneau, AK.

Copies of the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed Interim Groundfish Observer Program may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

Copies of the Observer Plan and information regarding observer qualifications, observer training/briefing requirements, and NMFS' selection criteria for observer contractors are available from the Observer Program Office, Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206–526–4197.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) in the exclusive economic zone are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620. Regulations that implement the Research Plan appear at 50 CFR part 679. The Crab FMP delegates management of the crab resources in the BSAI to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the Crab FMP appear at 50 CFR part 679.

A data collection program to obtain information necessary for conservation and management of the groundfish fisheries was authorized by regulations implementing Amendments 18 and 13 to the Groundfish FMPs (54 FR 50386, December 6, 1989). One of the measures in Amendments 18 and 13 authorized a comprehensive U.S. fishery observer program. NMFS, in consultation with the Council, prepared and implemented an Observer Plan to implement provisions of that program (55 FR 4839; February 12, 1990; 56 FR 30874, July 8, 1991; 59 FR 22133, April 29, 1994). The Alaska Board of Fisheries implemented a Shellfish Onboard Observer Program for the king and Tanner crab fisheries off Alaska in April 1988 (5 AAC 39.645).

A final rule implementing the Research Plan was published in the Federal Register (59 FR 46126, September 6, 1994), under the authority of section 313 of the Magnuson Act, as amended by section 404 of the High Seas Driftnet Fisheries Enforcement Act, Public Law 102–582. The Research Plan requires that observers be stationed on certain fishing vessels and U.S. fish processors participating in the BSAI groundfish, GOA groundfish, and BSAI king and Tanner crab fisheries. These requirements may be extended to the halibut fishery off Alaska. Observers are deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries under the Council's authority. The Research Plan also established a system of fees to pay for the costs of implementing the Research Plan. Minor additions and/or changes to the regulations implementing the Research Plan were published in the Federal Register on January 9, 1995 (60 FR 2344); July 5, 1995 (60 FR 34904); and August 16, 1995 (60 FR 42470).

Full implementation of the Research Plan was delayed until 1997 (60 FR 66755; December 26, 1995) after the Council requested additional time to reconsider certain elements of the Research Plan that it had previously adopted. This action maintained 1995 observer coverage requirements through 1996 and retained effectiveness of the following sections of the Observer Plan: (1) Standards of observer conduct; and (2) description, specifications, and work statement for certified observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation.

At its December 1995 meeting, the Council requested that NMFS repeal the Research Plan and pursue an alternative to the Research Plan that would revert back to direct payment for observer services rather than a fee-based program. The proposed repeal of the Research Plan is explained further in an interim final rule published in the Federal Register on March 28, 1996 (61 FR 13782), and in a notice of availability published in the Federal Register on July 12, 1996 (61 FR 36702).

One alternative long-term observer program being considered by the Council to supersede the Research Plan would require NMFS to contract with a third party to serve as a liaison between persons requiring observer services and companies providing those services. NMFS met with the Council's newly named Observer Advisory Committee (OAC) in March 1996 to review the proposed Research Plan alternatives. The OAC highlighted to the Council at its April 1996 meeting that even though observer compensation and certain other costs were not currently quantifiable, the third-party alternative would be more expensive than the observer program prior to the Research Plan. At its April 1996 meeting, the Council reviewed a draft analysis of alternatives to the Research Plan and determined that additional cost comparisons of these alternatives must be completed before it adopts an alternative to the Research Plan. The Council is scheduled to receive more information on a long-term replacement to the Research Plan at its September 1996 meeting.

Existing observer coverage requirements under Amendment 1 to the Research Plan are scheduled to expire on December 31, 1996. At its April 1996 meeting, the Council adopted an Interim Groundfish Observer Program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The Interim Groundfish Observer Program would extend 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program. Proposed changes to the groundfish observer program are described below. The Interim Groundfish Observer Program would remain effective through December 31, 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council's OAC. Under this action, observer coverage requirements for the BSAI king and Tanner crab fisheries would no longer be specified in Federal regulations. Observer coverage requirements for the crab fisheries

would revert back to a category 3 measure in the Crab FMP and would be specified by the Alaska Board of Fisheries.

Elements of the Proposed Interim Groundfish Observer Program

1. Observer coverage requirements would apply to vessels issued a Federal fisheries permit and processors issued a Federal processor permit. Fishing operations by these vessels and processors in Federal and state waters would be subject to Federal observer coverage requirements. This applicability of the Observer Program would be unchanged from the applicability of the domestic observer program implemented prior to the Research Plan.

2. Current observer coverage requirements for groundfish vessels and shoreside processors receiving groundfish would remain unchanged and are set out in this proposed rule at § 679.50 (c) and (d). Participants in the groundfish fisheries would continue to be responsible for making their own arrangements with certified observer contractors and paying for required observer coverage.

3. The Director, Alaska Region, NMFS, (Regional Director) could make inseason adjustments in observer coverage requirements similar to the Research Plan. Any inseason adjustment would be based on specified findings and implemented using the procedure for inseason adjustments at § 679.25(c). Similar to the Research Plan, any inseason adjustment to observer coverage requirements would be published in the Federal Register at least 10 calendar days prior to the effective date. Regulations implementing the Regional Director's ability to make inseason adjustments in observer coverage requirements are set out in this proposed rule at § 679.50(e).

4. Vessel and shoreside processor responsibilities would remain unchanged. These regulations are set out in this proposed rule at § 679.50(f).

5. The interim program would expand regulations governing the Observer Program to include criteria and procedures for observer and observer contractor certification, suspension, and decertification. Previously, these criteria and procedures were included in the Observer Plan. Certification, suspension, and decertification criteria and procedures now are included in this proposed rule at § 679.50(h), (i), and (j). The proposed criteria and procedures are essentially unchanged from the provisions under the Observer Plan, except that:

a. Observer contractors certified by NMFS prior to January 1, 1997, would receive a 1-year certification extension that expires December 31, 1997. The currently certified observer contractors would not have time to go through a new certification process, nor would NMFS have adequate time to carry out the administrative procedures necessary for their recertification prior to implementation of the Observer Program on January 1, 1997. Any certified observer contractor could be decertified according to the decertification procedures that are set out in this proposed rule.

b. Observers and observer contractors cannot have a direct financial interest or a conflict of interest in any commercial fishery in State or Federal waters off Alaska. The conflict of interest standards in the Observer Plan were more narrowly applied to the observed fishery.

c. Observer qualifications have been revised as follows and would be available from the Observer Program Office (see **ADDRESSES**.):

A. Prospective observers must have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences.

B. Candidates must have a minimum of 30 semester hours or equivalent in applicable biological sciences and must also have successfully completed at least one undergraduate course each in math and statistics (minimum of 5 semester hours total). In addition, all applicants are required to have computer skills that enable them to work competently with standard database software and computer hardware.

C. Prospective observers are also required to successfully complete any screening test(s) administered by NMFS. These tests would measure basic math, algebra, and computer skills as well as other abilities necessary for successful job performance.

D. If a sufficient number of candidates meeting these educational prerequisites is not available, the observer contractor may seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or with an Associate of Arts (A.A.) degree in fisheries, wildlife science, or an equivalent.

E. If a sufficient number of individuals meeting the above qualifications is not available, the observer contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

F. To qualify for certification, all prospective observers would undergo safety and cold water survival training that requires the prospective observers to demonstrate their ability to properly put on an immersion suit in a specified time period, enter the water, travel approximately 50 m to a ladder, and climb out of the water.

The additional math, statistics, and computer skills requirements reflect the increased responsibilities of observers and are similar to the observer qualifications under the Research Plan, had it been fully implemented. The observer qualifications are presented here to provide an opportunity for public comment.

d. Training/briefing requirements for certification have been revised as follows and would be available from the Observer Program Office (See **ADDRESSES**.):

A. Observers who have completed a deployment must be recertified prior to another deployment. Individuals whose last deployment was within 12 months must complete a 2-day briefing and individuals whose last deployment was 12 to 24 months ago must complete a 4-day briefing. If 2 years have passed since the completion of an individual's last deployment, he or she must complete the full training course.

B. If an observer remains undeployed from 1 to 3 months after completion of training, the individual must complete a 2-day briefing. If the individual is not deployed from 3 to 6 months after training, a 4-day briefing must be completed. If more than 6 months have passed since the completion of training, the individual must retake the full training course.

C. Briefings (2- or 4-day) expire after 1 month. Individuals may be required to complete a 4-day briefing or the full training course if deemed necessary by the Observer Program Office.

These recertification requirements are identical to those under the Research Plan, had it been implemented and are presented here to provide an opportunity for public comment.

e. Selection criteria for observer contractors would be used by NMFS to gauge the adequacy of the applicant to provide observer services. These criteria are unchanged from the Observer Plan and would be available from the Observer Program Office (See **ADDRESSES**.). They are presented here to provide an opportunity for public comment. Applicants for observer contractor certification would be evaluated by NMFS using the following criteria:

A. Ability to supply required observer services:

i. Methods to be used to recruit, evaluate, and select qualified applicants to serve as observers.

ii. Methods to be used in establishing, organizing and performing all logistics associated with the deployment of observers.

iii. Methods to be used in scheduling observers for certification training or briefing, observer deployments, assignments to vessels and shoreside facilities so that observer coverage and sampling requirements are met.

iv. Provisions for communications with observers, vessels, shoreside facilities, and NMFS to provide and exchange required information on scheduling, weekly logistics reports, emergencies, and instructions for observers, vessels, and shoreside facilities.

v. Methods to be used in monitoring observer performance, observer work between vessels and upon return from sea or duty station, NMFS debriefing upon completion of each deployment and final preparation and submission of reports and data.

B. Expertise and capability of applicant's organization:

i. Technical competence of staff based on resumes of key personnel that show their abilities, education, training, and experience in relation to their proposed assignments and areas of responsibilities on a particular project.

ii. Organizational structure including number of personnel to be assigned, in categories of professional, technical, and clerical positions, to each phase of the project including provisions for the backup of each key staff member during planned and unplanned absences.

C. Expressed understanding of the purpose of the Observer Program, the role of the observer contractor, and the important aspects of this type of project that lead to successful performance of work.

D. Summaries of similar work recently completed, including description of work and contact person and telephone number of client.

f. Observer contractors must provide a certificate of insurance that verifies compliance with the insurance coverage recommendations of the Council's Insurance Technical Committee. This coverage must include the following provisions:

A. Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

B. Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

C. States Worker's Compensation as required.

D. Contractual General Liability.

g. Observer contractors would be required to submit information to NMFS that would be used to: Coordinate and conduct effective and efficient scheduling of observers for training, briefing, and debriefing sessions, maintain an observer deployment database, and monitor the requirements of a certified observer contractor. This information would include:

A. A list of prospective observers to be hired upon approval by NMFS and observer training/briefing registration.

B. Projected observer assignments.

C. Observer deployment/logistics reports.

D. Observer debriefing registration.

E. Notification that prospective observers have passed a physical examination during the 12 months prior to deployment.

F. A copy of each type of signed and valid contract an observer contractor has with vessels and shoreside processors requiring observer services and with observers. Copies of signed and valid contracts with specific entities requiring observer services or with specific observers also may be requested.

G. Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems.

Observers' social security numbers are requested with the training/briefing registration to provide a unique numerical identifier for each observer. This information has been requested in the past and observers' social security numbers are included in the existing Observer Program database. Regulations for the information collection are set out in this proposed rule at § 679.50(i)(2)(xiv).

7. Criteria for the suspension and/or decertification of observers or observer contractors include the following appeals process whereby documentary evidence, disputes, and petitions may be submitted:

a. Within 30 days of receipt of a suspension or decertification notice, observers and observer contractors may provide written documentary evidence and argument in opposition to the notice. They are also afforded the opportunity to submit additional evidence that was previously unavailable and in some instances, may appear in person and present witnesses.

b. Observers and observer contractors also may petition for review of a suspension or decertification decision within 30 days after the date the decision was served.

These criteria are unchanged from the Observer Plan. Regulations for this information collection are set out in this proposed rule at § 679.50(k) (6), (7), and (8).

8. Observer contractors would be restricted in how they could assign observers to vessels or shoreside processors in the following ways:

a. Observers must not be deployed on the same vessel for more than 90 days in a 12-month period;

b. A deployment to a vessel or a shoreside processing facility cannot exceed 90 days without approval from the Observer Program Office (See **ADDRESSES**.); and

c. A deployment cannot include assignments to more than four vessels and/or shoreside processors. NMFS began instituting these policies in 1990 to reduce the likelihood of conflicts of interest and to ensure that debriefings occurred more frequently, so that NMFS could process the observers' collected fisheries data.

9. A revision to regulations at § 679.7(g)(2) would clarify NMFS' intent that fish sorting of any kind prior to observer sampling procedures is prohibited. Concerns exist that mechanical and/or physical sorting could be occurring. For example, modifications to the angle and speed of incline belts in processing lines and bin openings that restrict the flow of fish act effectively to sort fish prior to observer sampling procedures. NMFS specifically requests comments on what, if any, impact this clarification could have on vessel or processor operations.

10. A prohibition at § 679.7(f)(14) would be removed to maintain consistency with the proposed removal of Research Plan regulations at part 679. Section 679.7(f)(14) prohibits permitted registered buyers required to obtain a Federal processor permit from transferring or receiving sablefish harvested in Federal waters or halibut, unless the person possesses a valid Federal processor permit. The intent of this prohibition was to reinforce the requirement that all Research Plan processors pay their fees in a timely manner and would thus be eligible for a Federal processor permit. This prohibition is no longer necessary because Research Plan fee collections have been terminated.

Three elements of the proposed Interim Groundfish Observer Program would not be codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS' selection criteria for observer contractors. These elements are available upon request. Although they would not be codified, they are viewed as a part of the rule and are presented in the preamble specifically to provide opportunity for public comment. Prior to proposing future changes to these three elements, NMFS would publish a

notice in the Federal Register describing the proposed change(s) and providing an opportunity for public comment.

Classification

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

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

NMFS prepared an IRFA as part of the regulatory impact review, which describes the impact this proposed rule would have on small entities, if adopted. Based on that analysis, it was determined that this proposed rule could, if issued in final, have a significant economic impact on a substantial number of small entities. Observer costs are based on whether an observer is aboard a vessel and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. For individual vessels, the impact would increase as the percentage of observer costs relative to total exvessel value of catch increases. In 1995, about 400 vessels carried observers; of these vessels about 280 were catcher vessels. About one half of the catcher vessels equal to or greater than 60-ft (18.3-meters (m)) length overall (LOA) but less than 125-ft (38.1-m) LOA paid observer costs that were equal to or less than 1 percent of the exvessel value of catch. About 20 percent of vessels incurred observer costs that ranged from 2 to almost 8 percent of the exvessel value of catch. This represents cost increases from Research Plan costs that were limited to 2 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. This represents cost increases from the processor's portion of Research Plan costs that were limited to 1 percent of the exvessel value of catch. The Research Plan represents an alternative to this proposed rule which could minimize the economic impact on some small entities. But for reasons already explained elsewhere (this preamble; 61 FR 13782, March 28, 1996; and 61 FR 36702, July 12, 1996), this proposed rule would repeal the Research Plan. Copies of the EA/RIR/IRFA can be obtained from NMFS (see **ADDRESSES**).

This proposed rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection of information has been submitted to OMB for approval. The new information requirement consists of certification applications for new observer contractors, reports submitted by observer contractors to NMFS that would be used by NMFS to facilitate Observer Program Office operations and to monitor the ongoing requirements of a certified observer contractor, and appeals of suspension and/or decertification from observers and observer contractors. The annual public reporting burden for this collection of information is estimated to be: 60 hours per certification application (a contractor would apply every 3 years); 3 minutes per certificate of insurance; 7 minutes per training/briefing registration; 2 minutes per notification of observer physical examination; 2 hours per physical examination; 7 minutes per projected observer assignment; 7 minutes per weekly deployment/logistics report; 7 minutes per debriefing registration; 15 minutes per copies of five contracts; 2 hours per report of observer harassment, observer safety concerns, or observer performance problems; 80 hours per suspension/decertification appeal by an observer contractor (projected to occur only once in 5 years); and 4 hours per suspension/decertification appeal by an observer, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule contains requirements for electronic transmission of observer data by vessels and shoreside processors receiving pollock harvested in the catcher vessel operational area. This information collection already was approved by OMB (OMB control number 0648–0307). Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: July 29, 1996.

Charles Karnella,

Acting, Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 679.1, paragraph (f) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(f) *Groundfish Observer Program.* Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

* * * * *

3. In § 679.2, the following definitions are removed: ''Bimonthly'', ''Exvessel price'', ''Fee percentage'', ''Research Plan'', ''Research Plan fisheries'', '' Retained catch'', and ''Standard exvessel price''.

a. In § 679.2, the following definitions are added: ''Briefing'', ''Debriefing'', ''Deployment'', ''Direct financial interest'', ''North Pacific fishery'', ''Observer contractor'', and ''Observer Program Office'',.

b. In § 679.2, the following definitions are revised: ''Buying station'', paragraph (3) of ''Catcher/processor'', paragraph (1) of ''Catcher vessel'', ''Fishing day'', paragraph (3) of ''Fishing trip'', paragraph (2) or ''Mothership'', ''Observed or observed data'', ''Observer'', ''Processor'', ''Round weight or round-weight equivalent'', and ''Shoreside processor''.

§ 679.2 Definitions.

* * * * *

Briefing means a short (usually 2–4 day) training session that observers must complete to fulfill certification requirements.

Buying station means a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a shoreside processor or mothership and that does not process those fish.

* * * * *

Catcher/processor * * *

(3) With respect to subpart E of this part, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher vessel * * *

(1) With respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

* * * * *

Debriefing means the post-deployment process that includes a one-on-one interview with NMFS staff, a NMFS preliminary data review, observer completion of all data corrections noted, observer preparation of affidavits and reports, and completion of tasks related to biological specimens or special projects.

Deployment means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing.

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or observer contractor duties.

* * * * *

Fishing day means a 24-hour period, from 0001 A.l.t. through 2400 A.l.t., in which fishing gear is retrieved and groundfish are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

* * * * *

Fishing trip * * *

(3) With respect to subpart E of this part, one of the following time periods:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver groundfish to other than a mothership, the time period during which one or more fishing days occur that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

* * * * *

Mothership * * *

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish.

* * * * *

North Pacific fishery means any commercial fishery in State or Federal waters off Alaska.

Observed or observed data refers to data collected by observers (see § 679.21(f)(7) and subpart E of this part).

Observer means any individual that is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor for the purpose of providing observer services to vessels or shoreside processors under this part, and is acting within the scope of his/her employment.

Observer contractor means any person that is awarded NMFS certification to provide observer services to vessels and shoreside processors under subpart E and who contracts with observers to provide these services.

Observer Program Office means the administrative office of the Groundfish Observer Program located at Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206–526–4197.

* * * * *

Processor means any shoreside processor, catcher/processor, mothership, any person who receives groundfish from fishermen for commercial purposes, any fisherman who transfers groundfish outside of the United States, and any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption.

* * * * *

Round weight or round-weight equivalent, for purposes of this part, means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

* * * * *

Shoreside processor means any person or vessel that receives unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

* * * * *

4. In § 679.4, paragraph (g) is removed and paragraphs (f)(1)(i), (f)(1)(ii), and (f)(2)(ii) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(f) *Federal Processor permit*—(1) *General*—(i) *Applicability*. In addition to the permit and licensing requirements in paragraphs (b) and (d) of this section, and except as provided in paragraph (f)(1)(ii) of this section, a processor of groundfish must have a Federal processor permit issued by the Regional Director.

(ii) *Exception*. Any fisherman who transfers groundfish outside the United States, or any fisherman who sells groundfish directly to a restaurant or to an individual for use as bait or for personal consumption is not required to have a Federal processor permit.

(2) * * *

(ii) The fishery or fisheries for which the permit is requested.

* * * * *

5. In § 679.5, paragraph (a)(2) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(2) *Applicability, Federal processor permit.* Any processor that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

* * * * *

6. In § 679.7, paragraph (b)(1) is removed, paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(1) through (b)(3), respectively, paragraph (f)(14) is removed, paragraph (f)(15) is redesignated as paragraph (f)(14), paragraphs (g)(5) through (g)(7) are removed, paragraphs (g)(3) and (g)(4) are redesignated as paragraphs (g)(4) and (g)(5), respectively, a new paragraph (g)(3) is added, paragraphs (g)(8) and (g)(9) are redesignated as paragraphs (g)(6) and (g)(7), respectively, and paragraphs (a)(3), (g)(2), and newly redesignated paragraph (g)(7) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(3) *Groundfish Observer Program*. Fish for groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

* * * * *

(g) * * *

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer. * * *

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

* * * * *

7. In § 679.21, paragraph (c)(3) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(c) * * *

(3) *Exemption.* Motherships and shoreside processors that are not required to obtain observer coverage during a month under § 679.50 (c) and (d) are not required to retain salmon.

* * * * *

8. Subpart E is revised to read as follows:

Subpart E—Groundfish Observer Program

Sec.

679.50 Groundfish Observer Program

Subpart E—Groundfish Observer Program

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel subject to this part or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their environment.

(c) *Observer requirements for vessels.* (1) Observer coverage is required as follows:

(i) A mothership of any length that processes 1,000 mt or more in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(iii) Each mothership that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on August 15 under § 679.23(e)(2) is required to have a second observer aboard, in addition to the observer required under paragraphs (c)(1) (i) and (ii) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(iv) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry an observer during 100 percent of its fishing days except for a vessel fishing for groundfish with pot gear as provided in paragraph (c)(1)(vii) of this section.

(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(vi) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (c)(1)(v) of this section must carry an observer at all times during at least one fishing trip in the Eastern Regulatory Area of the Gulf of Alaska during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(vii) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(2) *Groundfish fishery categories requiring separate coverage*—(i) *Pollock fishery.* Directed fishing for groundfish that results in a retained catch of pollock, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(ii) *Pacific cod fishery.* Directed fishing for groundfish that results in a retained catch of Pacific cod, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iii) *Sablefish fishery.* Directed fishing for groundfish that results in a retained catch of sablefish, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iv) *Rockfish fishery.* Directed fishing for groundfish that results in a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus,* during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(v) *Flatfish fishery.* Directed fishing for groundfish that results in a retained aggregate catch of all flatfish species, except Pacific halibut, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(vi) *Other species fishery.* Directed fishing for groundfish that results in a retained catch of groundfish, during any fishing trip, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (c)(2) (i) through (v) of this section.

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round weight or round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

(i) *Catcher/processors.* A catcher/processor will be assigned to a fishery category based on the retained groundfish catch composition reported

on the vessel's weekly production report submitted to the Regional Director under § 679.5(i).

(ii) *Catcher vessel delivery in Federal waters.* A catcher vessel that delivers to a mothership in Federal waters will be assigned to a fishery category based on the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership under § 679.5(i).

(iii) *Catcher vessel delivery in Alaska State waters.* A catcher vessel that delivers groundfish to a shoreside processor or to a mothership processor vessel in Alaska State waters will be assigned to a fishery category based on the retained groundfish catch composition reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(d) *Observer requirements for shoreside processors.* Observer coverage is required as follows:

(1) A shoreside processor that processes 1,000 mt or more in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) A shoreside processor that processes 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on August 15, under § 679.23(e), is required to have an observer, in addition to the observer required under paragraphs (d) (1) and (2) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(e) *Inseason adjustments in observer coverage requirements.* (1) The Regional Director may adjust the observer coverage requirements set out under paragraphs (c) and (d) of this section at any time to improve the accuracy, reliability, and availability of observer data, so long as the standards of the Magnuson Act and other applicable Federal regulations are met, and the changes are based on one or more of the following:

(i) *Adjustment.* A finding that fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component have significantly changed, or are likely to change significantly.

(ii) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(2) *Procedure.* The procedure for an inseason adjustment of observer coverage requirements will comply with § 679.25(c). No change to observer coverage requirements may be implemented under this paragraph (e) until NMFS has published changes in observer coverage requirements in the Federal Register, with the reasons for the changes and any special instructions to vessels or shoreside processors required to carry observers, at least 10 calendar days prior to their effective date.

(f) *Responsibilities*—(1) *Vessel responsibilities.* An operator of a vessel required to carry one or more observers must provide the following:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have onboard:

(*1*) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in Titles 33 CFR Chapter I and 46 CFR Chapter I;

(*2*) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(*3*) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) Allowing observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) Ensuring that each mothership that receives pollock harvested in the catcher vessel operational area during the pollock season that starts on August 15, under § 679.23(e), is equipped with INMARSAT Standard A satellite communication capabilities, cc:Mail remote, and the data entry software provided by the Regional Director for use by the observer. The operator of each mothership shall also make available for the observers' use the following equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: A personal computer with a 486 or better processing chip, a DOS 3.0, or better operating system with 10 megabytes free hard disk storage, and 8 megabytes RAM.

(C) Ensuring that the communication equipment that is on motherships as specified at paragraph (f)(1)(iii)(B) of this section, and that is used by observers to transmit data, is fully functional and operational.

(iv) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(vii) *Records.* Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Collecting bycatch when requested by the observers.

(D) Collecting and carrying baskets of fish when requested by observers.

(E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea via small boat or raft are carried out during

daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) *Shoreside processor responsibilities.* A manager of a shoreside processor must do the following:

(i) *Safe conditions.* Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) *Operations information.* Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) Allowing observers to use the shoreside processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) Ensuring that each shoreside processor that is required to have observer coverage under paragraph (d)(3) of this section and that receives pollock harvested in the catcher vessel operational area during the pollock season that starts on August 15, under § 679.23(e), makes available to the observer the following equipment or equipment compatible therewith: A personal computer with a minimum of a 486 processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, 10 megabytes free hard disk storage, 8 megabytes RAM, and data entry software provided by the Regional Director for use by the observers.

(C) Ensuring that the communication equipment that is in the shoreside processor as specified at paragraph (f)(2)(iii)(B) of this section, and that is used by observers to transmit data is fully functional and operational.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's DCPL, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(vi) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Cooperating with product recovery tests.

(C) Providing a secure place to store baskets of sampling gear.

(g) *Procurement of observer services.* Owners of vessels or shoreside processors required to carry observers under paragraphs (c) and (d) of this section must arrange for observer services from an observer contractor or contractors. A list of observer contractors is available upon request from the Observer Program Office.

(h) *Certification and decertification of observers.*—(1) *Certification of observers*—(i) *Requirements.* NMFS will certify individuals who:

(A) Meet education and/or experience standards available from the Observer Program Office.

(B) Have successfully completed a NMFS-approved observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(C) Have not been suspended or decertified under paragraph (j) of this section.

(ii) *Term.* An observer's certification expires upon completion of a deployment. Observers can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Standards of observer conduct*—(i) *Conflict of interest.*

(A) Observers:

(*1*) May not have a direct financial interest in a North Pacific fishery, other than the provision of observer services, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to said vessels or shoreside facilities, or concerns purchasing raw or processed products from said vessels or shoreside facilities.

(*2*) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

(*4*) May not serve as observers during the 12 consecutive months immediately following the last day of the observer's employment as paid crew members or employees in a North Pacific fishery.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest under this paragraph (h)(2).

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(*A*) Observers must diligently perform their assigned duties.

(*B*) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations of regulations relevant to conservation of marine resources or their environment that are observed.

(*C*) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(*D*) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Engaging in excessive drinking of alcoholic beverages;

(*2*) Engaging in the use or distribution of illegal drugs; or

(*3*) Becoming physically or emotionally involved with vessel or processing facility personnel.

(i) *Certification and decertification of observer contractors*—(1) *Certification of observer contractors*—(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Director describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors certified prior to

January 1, 1997, are exempt from submitting an application.

(ii) *Selection.* The Regional Director may select one or more observer contractors based on the information submitted by applicants under paragraph (i)(1)(i) of this section and on other selection criteria that are available from the Observer Program Office.

(iii) *Term.* Observer contractors will be certified through December 31, 1997. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Responsibilities and duties of observer contractors* include but are not limited to the following:

(i) Recruiting, evaluating, and hiring of qualified candidates to serve as observers, including minorities and women.

(ii) Ensuring that only observers provide observer services.

(iii) Providing observer coverage as requested by vessels and processors to fulfill requirements under paragraphs (c) and (d) of this section.

(iv) Providing observers' salary, benefits and personnel services in a timely manner.

(v) Providing all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities. Placement of observers must occur according to the following:

(A) Observers must not be deployed on the same vessel for more than 90 days in a 12-month period.

(B) A deployment to a vessel or a shoreside processor cannot exceed 90 days without approval from the Observer Program Office.

(C) A deployment cannot include assignments to more than four vessels and/or shoreside processors.

(vi) Supplying alternate observers or prospective observers if one or more observers or prospective observers are rejected by NMFS, fail to successfully complete observer training or briefing, are injured and must be replaced, or resign prior to completion of duties.

(vii) Maintaining communications with observers at sea and shoreside facilities. Each observer contractor must make arrangements to have an employee responsible for observer activities on call 24 hours a day whenever they have observers at sea, stationed at shoreside facilities, in transit, or in port awaiting boarding, to handle emergencies involving observers, or problems concerning observer logistics.

(viii) In cooperation with vessel or processing facility owners, ensuring that all observers' in-season catch messages and other required transmissions between observers and NMFS are delivered to NMFS within a time specified by the Regional Director.

(ix) Ensuring that observers complete mid-deployment data reviews when required.

(x) Ensuring that observers complete debriefing as soon as possible after the completion of their deployment and at locations specified by the Regional Director.

(xi) Ensuring all data, reports, and biological samples from observer deployments are complete and submitted to NMFS at the time of the debriefing interview.

(xii) Ensuring that all sampling and safety gear are returned to the Observer Program Office and replacing any gear and equipment lost or damaged by observers according to NMFS requirements.

(xiii) Monitoring observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS' standards of observer conduct under paragraph (h)(2) of this section.

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail) or by fax at fax number 206–526–4066.

(A) Observer training and briefing registration. Observer training registration consisting of a list of individuals to be hired upon approval by NMFS and a copy of each person's academic transcripts and resume. The list must include the person's name and sex. The person's social security number is requested. Observer briefing registration consisting of a list of the observer's name and requested briefing class date. This information must be submitted to the Observer Program Office at least 5 working days prior to the beginning of a scheduled observer certification training or briefing session.

(B) Projected observer assignments that include the observer's name, vessel or shoreside processor assignment, vessel length and type, port of embarkation, target species, and area of fishing. This information must be submitted to the Observer Program Office prior to the completion of the training or briefing session.

(C) Observer deployment/logistics reports that include the observer's name, cruise number, current vessel or shoreside processor assignment and code, embarkation date, and estimated and actual disembarkation dates. This information must be submitted weekly as directed by the Observer Program Office.

(D) Observer debriefing registration that includes the observer's name, cruise number, vessel or shoreside processor name(s), and requested debriefing date.

(E) Copies of ''certificates of insurance'' that name the NMFS Observer Program Task Leader as a ''certificate holder''. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or cancelled:

(*1*) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Worker's Compensation as required.

(*4*) Contractual General Liability.

(F) Notification that, based upon a physical examination during the 12 months prior to an observer's deployment, examining physicians have certified that observers do not have any health problems or conditions that would jeopardize their safety or the safety of others while deployed, or prevent them from performing their duties satisfactorily, and that prior to examination, the certifying physician was made aware of the dangerous, remote and rigorous nature of the work. This information must be submitted prior to the completion of the training or briefing session.

(G) A copy of each type of signed and valid contract an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Copies of contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request.

(H) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems. These reports must be submitted within 24 hours of when the observer contractor becomes aware of the problem.

(3) *Conflict of interest.* (i) Observer contractors:

(A) Must not hold any direct financial interest in a North Pacific fishery, other than the provision of observer services, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to said vessels or shoreside

facilities, or concerns purchasing raw or processed products from said vessels or shoreside facilities.

(B) Must assign observers without regard to any preference by representatives of vessels and shoreside facilities based on observer race, gender, age, religion, or sexual orientation.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer contractors.

(j) *Decertification Process*—(1) *Applicability.* This paragraph (j) sets forth the procedures for suspension and decertification of observers and observer contractors under this section.

(2) *Policy.* (i) NMFS must certify responsible and qualified observers and observer contractors only. Suspension and decertification are discretionary actions that, taken in accordance with this section, are appropriate means to effectuate this policy.

(ii) The serious nature of suspension and decertification requires that these actions be taken only in the public interest for the promotion of fishery conservation and management and not for purposes of punishment. NMFS may impose suspension or decertification only for the causes and in accordance with the procedures set forth in this section.

(3) *Definitions.* (i) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(ii) *Affiliates* means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer contractor that has the same or similar management, ownership, or principal employees as the observer contractor that was decertified, suspended, or proposed for decertification.

(iii) *Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

(iv) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(v) *Decertification,* as used in this paragraph (j) means action taken by a decertifying official under paragraph (j)(8) of this section to revoke indefinitely certification of observers or observer contractors under this section; an observer or observer contractor whose certification is so revoked is decertified.

(vi) *Decertifying official* means a designee authorized by the Regional Director to impose decertification.

(vii) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

(viii) *Legal proceedings* means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

(ix) *NMFS investigator* means a designee authorized by the Regional Director to conduct investigations under this section.

(x) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(xi) *Suspending official* means a designee authorized by the Regional Director to impose suspension.

(xii) *Suspension,* as used in this section, means action taken by a suspending official under this paragraph (j) to suspend certification of observers or observer contractors temporarily until a final decision is made with respect to decertification.

(4) *Public availability of suspension or decertification records.* Public availability of suspension or decertification records will depend upon the provisions of the Freedom of Information Act and other applicable law.

(5) *Effect and timing of suspension or decertification.* (i) Observers or observer contractors decertified or suspended must not provide services prescribed by this section to vessels and shoreside processors.

(ii) Suspension and decertification actions may be combined and imposed simultaneously.

(6) *Suspension*—(i) *General.* (A) The suspending official may, in the public interest, suspend observers or observer contractors for any of the causes in paragraph (j)(6)(ii) of this section, using the procedures in paragraph (j)(6)(iii) of this section.

(B) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when NMFS determines that immediate action is necessary. In assessing the adequacy of the evidence, the suspending official should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(C) Suspension includes all divisions or other organizational elements of observer contractors, unless the suspension decision is limited by its terms to specific divisions or organizational elements. The suspending official may include any affiliates of observer contractors if they are specifically named and given written notice of the suspension and an opportunity to respond.

(ii) *Causes for suspension.* (A) The suspending official may suspend observers or observer contractors upon a determination, based upon adequate evidence, that observers or observer contractors committed any acts or omissions constituting a cause for decertification under paragraph (j)(7)(ii) of this section.

(B) Indictment for any of the causes for decertification in paragraphs (j)(7)(ii)(A)(*1*) or (j)(7)(ii)(B)(*1*) of this section constitutes adequate evidence for suspension.

(iii) *Procedures.*—(A) *Review.* The suspending official must review all available evidence and must promptly determine whether or not to proceed with suspension. The suspending official may refer the matter to the NMFS investigator for further investigation, or to the decertifying officer.

(B) *Notice of suspension.* When observers or observer contractors and any specifically named affiliates are suspended, they must be immediately advised personally or by certified mail, return receipt requested, at the last known residence or place of business:

(*1*) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that observers or observer contractors have committed acts or omissions constituting grounds for suspension under paragraph (j)(6)(ii) of this section. Such acts or omissions may be described in terms sufficient to place observers or observer contractors on notice without disclosing NMFS' evidence.

(*2*) That the suspension is for a temporary period pending the completion of an investigation and such decertification proceedings as may ensue.

(*3*) Of the cause(s) relied upon under paragraph (j)(6)(ii) of this section for imposing suspension.

(*4*) Of the effect of the suspension.

(*5*) That, within 30 days after receipt of the notice, the observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the suspension, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(*6*) That additional proceedings to determine disputed material facts will be conducted unless:

(*i*) the action is based on an indictment; or

(*ii*) a determination is made, on the basis of NOAA General Counsel advice, that the substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(C) *Dispute.* In actions not based on an indictment, if NMFS determines that the observers' or observer contractors' submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of NOAA General Counsel advice, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official:

(*1*) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of suspension.

(*2*) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The suspending official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(D) *Suspending official's decision.* (*1*) The suspending official's decision must be based on all the information in the administrative record, including any submission made by observers or observer contractors on action based on an indictment:

(*i*) in which observers or observer contractors' submission does not raise a genuine dispute over material facts; or

(*ii*) in which additional proceedings to determine disputed material facts have been denied on the basis of NOAA General Counsel advice.

(*2*) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The suspending official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(*3*) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part.

(*4*) The suspending official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(*5*) Prompt written notice of the suspending official's decision to affirm, modify or terminate the notice of suspension issued under this paragraph (j)(6) must be served on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(E) *Period of suspension.* (*1*) Suspension must be for a temporary period pending the completion of investigation and any ensuing legal proceedings or decertification proceedings, including any administrative review under paragraph (j)(8) of this section, unless sooner terminated by the suspending official or as provided under this paragraph (j). If suspension is in effect, the decertifying official will expedite any related decertification proceedings.

(*2*) If legal proceedings or decertification proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated.

(F) *Scope of suspension for observer contractors.* The scope of suspension must be the same as that for decertification under paragraph (j)(7)(v) of this section, except that the procedures set out under paragraph (j)(6) of this section must be used in imposing suspension.

(7) *Decertification*—(i) *General.* (A) The decertifying official may, in the public interest, decertify observers or observer contractors for any of the causes in paragraph (j)(7)(ii) of this section using the procedures in paragraph (j)(7)(iii) of this section. The existence of a cause for decertification does not necessarily require that observers or observer contractors be decertified; the seriousness of the acts or omissions and any mitigating factors should be considered in making any decertification decision. The existence or nonexistence of any mitigating factors is not necessarily determinative of an observers' or observer contractors' present fitness. Accordingly, if a cause for decertification exists, observers or observer contractors have the burden of demonstrating, to the satisfaction of the decertifying official, present fitness and that decertification is not necessary.

(B) Decertification of observer contractors includes all divisions or other organizational elements of the observer contractor, unless the decertification decision is limited by its terms to specific divisions or organizational elements. The decertifying official may, at his or her sole discretion, include any affiliates of observer contractors if they are specifically named and given written notice of the proposed decertification and an opportunity to respond under paragraph (j)(7)(iii)(C) of this section.

(ii) *Causes for decertification*—(A) *Observers.* (*1*) The decertifying official may decertify observers for a conviction of or civil judgment for the following:

(*i*) Commission of fraud or a criminal offense in connection with obtaining or attempting to obtain certification, or in performing the duties of observers as prescribed by NMFS;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the present fitness of observers.

(*2*) The decertifying official may decertify observers, based upon a preponderance of the evidence, upon a determination that observers have:

(*i*) Failed to satisfactorily perform the duties of observers as prescribed by NMFS; or

(*ii*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (h)(2) of this section.

(B) *Observer contractors.* (*1*) The decertifying official may decertify observer contractors for a conviction of or civil judgment for the following:

(*i*) Commission of fraud or a criminal offense in connection with obtaining or attempting to obtain certification, or in performing the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(*iii*) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present fitness of observer contractors.

(*2*) The decertifying official may decertify observer contractors, based upon a preponderance of the evidence, upon a determination that observer contractors have:

(*i*) Failed to satisfactorily perform the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section; or

(*ii*) A conflict of interest as set out under paragraph (i)(3) of this section.

(iii) *Procedures*—(A) *Investigation and referral.* NMFS personnel must promptly report to the NMFS investigator matters appropriate for further investigation. The NMFS investigator must investigate matters so referred and submit the investigative material to the decertifying official or, if appropriate, to the suspending official.

(B) *Review.* The decertifying official must review all available evidence and must promptly determine whether or not to proceed with decertification. The decertifying official may refer the matter to the NMFS investigator for further investigation or, if appropriate, to the suspending official.

(C) *Notice of proposed decertification.* If the decertifying official determines to proceed with decertification, he or she must serve a notice of proposed decertification upon observers or observer contractors and any specifically named affiliates, personally or by certified mail, return receipt requested, at the last known residence or place of business, advising:

(*1*) That decertification is being considered.

(*2*) Of the reasons for the proposed decertification in terms sufficient to put observers or observer contractors on notice of the conduct or transaction(s) upon which it is based.

(*3*) Of the cause(s) relied upon under paragraph (j)(7)(ii) of this section for proposing decertification.

(*4*) That, within 30 days after receipt of the notice, observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the proposed decertification, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(*5*) Of NMFS' procedures governing decertification decision making.

(*6*) Of the effect of the issuance of the notice of proposed decertification.

(*7*) Of the potential effect of an actual decertification.

(D) *Dispute.* In actions not based upon a conviction or civil judgment, if it is found that observers' or observer contractors' submission raises a genuine dispute over facts material to the proposed decertification, the decertifying official:

(*1*) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of proposed decertification.

(*2*) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The decertifying official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(E) *Decertifying official's decision.* (*1*) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the decertifying official must make a decision on the basis of all the information in the administrative record, including any submission made by observers or observer contractors. The decision must be made after receipt of any timely information and argument submitted by observers or observer contractors.

(*2*) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The decertifying official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(*3*) The decertifying official may refer matters involving disputed material facts to another official for findings of fact. The decertifying official may reject any such findings, in whole or in part.

(*4*) The decertifying official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(*5*) In any action in which the proposed decertification is not based upon a conviction or civil judgment, the cause for decertification may be established by a preponderance of the evidence.

(F) *Notice of decertifying official's decision.* (*1*) If the decertifying official decides to impose decertification, observers or observer contractors and any affiliates involved must be given prompt notice personally or by certified mail, return receipt requested, at the last known residence or place of business. Such notice must:

(*i*) Refer to the notice of proposed decertification;

(*ii*) Specify the reasons for decertification; and

(*iii*) Advise that the decertification is effective immediately, unless the decertifying official determines that there is a compelling reason for maintaining certification for a specified period under conditions and restrictions necessary and appropriate to protect the public interest or promote fishery conservation and management and states the reasons in the notice.

(*2*) If decertification is not imposed, the decertifying official must promptly notify observers or observer contractors and any affiliates involved, by certified mail, return receipt requested, at the last known residence or place of business.

(iv) *Period of decertification.* (A) Decertification must be in force indefinitely or until rescinded.

(B) The decertifying official may rescind decertification, upon observers or observer contractors' request, supported by documentation, for reasons such as:

(*1*) Newly discovered material evidence;

(*2*) Reversal of the conviction or civil judgment upon which the decertification was based;

(*3*) Bona fide change in ownership or management;

(*4*) Elimination of other causes for which the decertification was imposed; or

(*5*) Other reasons the decertifying official deems appropriate.

(v) *Scope of decertification.* (A) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with observer contractors may be imputed to the observer contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of observer contractors, or with observer contractors' knowledge, approval, or acquiescence. Observer contractors' acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(B) The fraudulent, criminal, or other seriously improper conduct of observer contractors may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with observer contractors who participated in, knew of, or had reason to know of the contractors' conduct.

(8) *Administrative review of suspension or decertification.* (i) Observers or observer contractors may petition for review of a suspension decision issued under paragraph (j)(6)(iii) of this section or a decertification decision issued under paragraph (j)(7)(iii) of this section within 30 days after the date the decision was served. The petition must be addressed to the appeals officer identified in the notice of suspension or decertification. Any petitioned suspension will remain in effect pending the appeals officer's written decision to affirm, modify or terminate the suspension.

(ii) Administrative review is discretionary. Petitions for discretionary review may be filed only upon one or more of the following grounds:

(A) A finding of material fact is clearly erroneous based upon the administrative record;

(B) A substantial and important question of policy or discretion is involved; or

(C) A prejudicial error has occurred.

(iii) If the appeals officer declines review based on the written petition, observers or observer contractors must be immediately advised of the decision to decline review personally or by certified mail, return receipt requested, at the last known residence or place of business.

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraph (j)(6) or (i)(7) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(v) An appeals officer's decision imposing suspension or decertification or an unpetitioned suspending or decertifying official's decision is the final administrative decision of the U.S. Department of Commerce.

(k) *Release of observer data to the public*—(1) *Summary of weekly data.* The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and ''other salmon'' observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (k)(2)(i)(A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (k)(2)(i) of this section are collected will not be released.

(3) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (k) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

Nomenclature Amendments

PART 679—[AMENDED]

9. In part 679, remove ''NMFS-certified'' wherever it occurs.

[FR Doc. 96–19644 Filed 7–30–96; 9:38 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 150
Friday, August 2, 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

Forest Service

California Spotted Owl—Sierra Nevada—Management Direction for National Forests in California

AGENCY: Forest Service, USDA.

ACTION: Issue a Revised Draft Environmental Impact Statement (EIS) and change the anticipated date for filing the Final EIS.

SUMMARY: The USDA, Forest Service, Pacific Southwest Region, will issue a Revised Draft EIS for amending the Pacific Southwest Regional Guide and significantly amending 10 National Forest Plans. Changes, including a new preferred alternative, have been made from the original Draft EIS in response to public comments. The Forest Service now anticipates filing the Final EIS during the first quarter of Calendar Year 1997.

ADDRESSES: Send written comments to Janice Gauthier, California Spotted Owl EIS Team Leader, Ecosystem Conservation, 2999 Fulton Avenue, Sacramento, CA 95821.

FOR FURTHER INFORMATION CONTACT: Janice Gauthier, California Spotted Owl EIS Team Leader, Ecosystem Conservation, (916) 979–2026.

SUPPLEMENTARY INFORMATION: On March 18, 1993, a Notice of Intent (NOI) to prepare an EIS was published in the Federal Register (Vol. 58, No. 51, Pages 14554–14555). A Revised NOI was published in the Federal Register on March 1, 1996 (Vol. 61, No. 42, Page 8025).

Dated: July 29, 1996.

Katherine Clement,

Assistant Regional Forester, Ecosystem Conservation.

[FR Doc. 96–19648 Filed 8–1–96; 8:45 am]

BILLING CODE 3410–11–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services; Submission for OMB Review; Comment Request

July 26, 1996.

The Institute of Museum Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Institute of Museum Services, Program Director, Rebecca Danvers (202) 606–8539. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through 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.

Agency: Institute of Museum Services.

Title: Status of Educational Programming between Museums and Schools.

OMB Number: N/A.

Agency Number: 3136.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 200 hours.

Total Annualized capital/startup costs: 0.

Total annual costs (operation/maintaining systems or purchasing services): 0.

Description: IMS supports museum school partnerships for K–12 school children through the Museum Leadership Initiative program. In the fall of 1995, IMS sponsored a conference on museum school partnerships. Information about the projects IMS has supported an on selected conference proceedings will be published and disseminated widely to the museum and school communities. IMS also intends to collect, analyze and disseminate data to document the current status of educational programming activity between museums and schools.

Currently, no body of data exists to identify how museums are interacting with schools to advance the education of the nation's school age population. Therefore, we propose to survey a portion of the museums community with a brief questionnaire to collect this information. The data collection is intended to provide the basis of statistical conclusions about the nature and level of educational programming between museums and schools, but rather to illustrate the current status and the possibilities for further development.

Diane B. Frankel,

Director.

[FR Doc. 96–19630 Filed 8–1–96; 8:45 am]

BILLING CODE 7036–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 3, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 26 and May 10, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 2494 and 21444) of proposed additions to the Procurement List.

Comments were received from the company which is the current contractor for these proposed additions to the Procurement List. The contractor listed its current contracts, and noted that two thirds of them, including the two affected by the Committee's proposals, will expire in 1998 if all options are exercised. The contractor claimed that loss of all these contracts would reduce its total revenues substantially.

According to information available to the Committee, the contracts for these two services represent only a fifth of the total revenue loss which the contractor predicted to occur in 1998, and even a smaller percentage of the contractor's total sales. The contractor admitted to the Committee staff that it would not be precluded from bidding on the successor contracts to those expiring in 1998, other than for the two services being added to the Procurement List, and that the company could seek other business as well.

Under these circumstances, the Committee does not believe that adding these two services to the Procurement List would have a severe adverse impact on the contractor. The sales loss is below the level which the Committee considers to cause severe adverse impact, the contractor has opportunities to mitigate the loss, and the length of time until the contracts expire will give the contractor both motive and opportunity to find replacement business for the contracts being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Switchboard Operation, Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma

Unclassified Technical Order & Decal Distribution, Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–19699 Filed 8–01–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 3, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Pouchfastener, Swivel Assembly
P.S. NIB 38 NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Services

Janitorial/Custodial, Luke Air Force Base, Arizona
NPA: The Centers for Habilitation/TCH, Tempe, Arizona
Janitorial/Custodial, Base Fitness Center, MacDill Air Force Base, Florida
NPA: The Pinellas Association for Retarded Children St. Petersburg, Florida
Janitorial/Custodial, Caven Point USARC, Chapel Avenue, Jersey City, New Jersey
NPA: The First Occupational Center of New Jersey, Orange, New Jersey
Military Unique Subsistence Items Coord., Defense Personnel Support Center, Philadelphia, Pennsylvania

NPA: The Advocacy and Resources Corp. (ARC), Cookeville, Tennessee

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–19700 Filed 8–1–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 61–96]

Foreign-Trade Zone 17—Kansas City, Kansas Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 17, requesting authority to expand its zone in the Kansas City, Kansas area, adjacent to the Kansas City, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 24, 1996.

FTZ 17 was approved on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74) and expanded on January 31, 1989 (Board Order 428, 54 FR 5992, 2/7/89) and January 15, 1993 (Board Order 631, 58 FR 6112, 1/26/93). The zone project currently consists of five sites in the Kansas City area: *Site 1* (405,000 sq. ft.)—6500 Inland Drive, Kansas City; *Site 2* (220,000 sq. ft.)—5203 Speaker Road, Kansas City; *Site 3* (5 acres, 26,000 sq. ft.)—30 Funston Road, Kansas City; *Site 4* (50,000 sq. ft.)—830 Kindleberger Road, Kansas City; and, *Site 5* (23 acres)—1800 South Second Street, Leavenworth.

The applicant is now requesting authority to expand the general-purpose zone to include two sites in Topeka, Kansas (proposed Sites 6 and 7): *Proposed Site 6* (2,400 acres)—Forbes Field Airport/Topeka Air Industrial Park, 6700 South Topeka Blvd., Topeka; and, *Proposed Site 7* (972 acres)—Philip Billard Airport/Industrial Park Complex, 3600 Sardue, Topeka. Both sites are owned and managed by the Metropolitan Topeka Airport Authority and include air cargo facilities and jet fuel storage/distribution facilities. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 1, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 16, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 601 East 12th Street, Rm. 635, Kansas City, MO 64106.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 25, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–19723 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–427–812]

Calcium Aluminate Flux From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from one respondent, Lafarge Fondu International (LFI) and its U.S. subsidiary, Lafarge Calcium Aluminates, Inc. (LCA) (collectively, Lafarge), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on calcium aluminate (CA) flux from France. This review covers one manufacturer/exporter of the subject merchandise to the United States, Lafarge, for the period June 15, 1994 through May 31, 1995.

We have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the differences between the United States Price (USP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman, Office 8 of the Deputy Assistant Secretary's Enforcement Group 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1994, the Department published in the Federal Register (59 FR 30337) the antidumping duty order on CA flux from France. On June 6, 1995 (60 FR 29821), the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on CA flux from France. In accordance with 19 CFR 353.22(a)(1)(1995), we received a timely request for review from a respondent, Lafarge. We published a notice of initiation of this antidumping duty administrative review on July 14, 1995 (60 FR 36260), for the period June 15, 1994 through May 31, 1995.

The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of CA flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 2523.10.0000. The HTSUS subheading is provided for convenience and U.S. Customs' purposes only. The written description of the scope of this order remains dispositive.

Constructed Export Price

In calculating Lafarge's USP, the Department treated respondent's sales as CEP sales, as defined in section 772(b) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser after importation into the United States.

We calculated CEP based on packed or bulk, ex-U.S. warehouse or delivered prices to unaffiliated customers in the United States. We made deductions from the gross unit price, where appropriate, for the following movement charges: loading material at the Fos plant in France, foreign inland freight from plant to port, international freight, marine insurance, U.S. brokerage and handling, inland freight from port to U.S. warehouse, unloading costs, inland freight to processors, demurrage charges, and U.S. freight from the warehouse to the customer, in accordance with section 772(c)(2)(A) of the Act. Pursuant to section 772(d)(1)(B), we also deducted credit expenses, product liability insurance, and travel expenses for technical services. Pursuant to section 772(d)(1)(D), we deducted U.S. indirect selling expenses and inventory carrying costs incurred in the United States. We did not deduct indirect selling expenses (*i.e.*, administrative expenses, inventory carrying costs, personnel costs for technicians) incurred by LFI in France because we did not deem these expenses to be specifically related to commercial activity in the United States. We also deducted commissions in accordance with section 772(d)(1)(A) of the Act.

For reasons stated in the level-of-trade section of this notice, we granted Lafarge a CEP offset under section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR § 353.56(b), we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset.

Further Manufacture

In addition, we adjusted CEP, where appropriate, for all value added in the United States, including the proportional amount of profit attributable to the value added, pursuant to section 772(d)(2) and 772(d)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than costs associated with the imported products. To determine the costs incurred to produce the further manufactured products, we included (1) the costs of manufacture, (2) movement and repacking expenses, (3) selling, general and administrative expenses, and interest expenses. Profit was calculated by deducting all applicable costs, charges, adjustments, and expenses from the sales price. The total profit was then allocated proportionally to all components of cost. We deducted only the profit attributable to the value added in the United States. No other adjustments to CEP were claimed or allowed.

Normal Value (NV)

A. Viability

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country by Lafarge was sufficient to permit a proper comparison with Lafarge's sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(B)(i) of the Act. Therefore, in accordance with sections 773(a)(1)(B)(i) and 773(a)(5), we based NV on the prices at which the foreign like products were sold to the first unaffiliated purchaser for consumption in the exporting country.

B. Model Match

In accordance with section 771(16)(B) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Since there were no sales of identical merchandise in the home market to compare to U.S. sales, we matched U.S. sales to the most similar foreign like product based on the physical characteristics reported by the respondent, Lafarge. Among similar products sold in the home market we chose that product with the least difference in variable costs of manufacture between the home market and the U.S. product. We did not use any home market product which, when compared to the U.S. model, had a variable cost of manufacture in excess of 20 percent of the total cost of manufacture of the U.S. model (see Certain Stainless Steel Cooking Ware from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 8253, 8254 (March 4, 1996)).

C. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA, at 829–831, the Department will, to the extent practicable, calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find a sale of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sales to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the NV to account for the difference in levels of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the comparison market sale used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a constructed export price (CEP) ''offset'' may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

To implement these principles in this review, we requested information on the selling activities associated with each channel of distribution in each of Lafarge's markets. We asked Lafarge to establish any claimed levels of trade based on the selling functions provided to each proposed customer group, and to document and explain any claims for a level-of-trade adjustment.

To determine whether a separate level of trade existed within or between the United States and the home market, we examined the selling functions performed by Lafarge for each of the customer groups. Since all of Lafarge's U.S. sales were CEP sales, we considered the selling functions reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the home market Lafarge claimed two customer groups: end-users and distributors. We reviewed the sales

functions between these two types of customers in the home market. There were no significant distinctions in the selling functions performed for end-users and distributors in the home market. The distribution systems, pricing policies, inventory maintenance, sales order processing, and sales agreements were very similar within customer groups in each market. We concluded, therefore, that Lafarge's home market sales were made at the same level of trade because the aggregate selling functions performed within each channel of distribution were essentially identical.

We then examined the level of trade of the CEP sale in the U.S. market (*i.e.*, the level of trade for sales from LFI to LCA). We determined that the selling functions of the level of trade of the home market sales were sufficiently different from the level of trade of Lafarge's CEP sales to establish a different level of trade. For example, the level of trade of the CEP sale did not involve extensive technical assistance, product liability, credit insurance, inventory maintenance, and sales administration costs. Since the same level of trade as that of the CEP did not exist in the home market, we could not match U.S. sales to home market sales at the same level of trade, nor could we determine whether there was a pattern of consistent price differences between the levels of trade, in accordance with section 773(a)(7)(A) of the Act, based on Lafarge's home market sales of merchandise under review. However, the SAA states that ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *SAA* at 830. Accordingly, we examined the alternative methods for calculating a level-of-trade adjustment. In this review, we did not have information that would allow us to apply these alternative methods.

Because the data available do not provide an appropriate basis for making a level-of-trade adjustment, but the level of trade in the home market is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate, in accordance with section 773(a)(7)(B) of the Act. We also determined NV at the same level of trade as the starting price for the CEP and made a CEP offset adjustment. We deducted from NV the general and administrative overhead expenses and inventory carrying costs reported by Lafarge as home market indirect selling expenses. We limited the home market indirect selling expense deduction by the amount of indirect selling expenses incurred in the United States as determined under section 772(d)(1)(A).

D. Price to Price Comparisons

Pursuant to section 777(A)(d)(2) of the Act, we compared the CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product.

We based NV on the price at which the foreign like product is sold for consumption in the exporting country to the first unaffiliated party, in the usual commercial quantities and in the ordinary course of trade in accordance with sections 773(a)(1)(B)(i) and 773(a)(5) of the Act. Where appropriate, we deducted loading expenses, inland freight, credit, credit insurance, travel expenses incurred by technicians, product liability insurance, and packing. Prices were reported net of value-added taxes (VAT) and, therefore, no adjustment for VAT was necessary. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Lafarge Fondu Inter'l. Inc.	06/15/94–05/31/95	16.15
All Others	06/15/94–05/31/95	37.93

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between CEP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon the publication of the final results of this administrative review for all shipments of CA flux from France entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Lafarge will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 37.93 percent, the rate established in the less-than-fair value investigation (59 FR 5994, February 9, 1994).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 26, 1996.

Robert. L. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19726 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–803]

Certain Corrosion-Resistant Carbon Steel Flat Products From Australia: Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 29, 1996, the Department of Commerce published the final results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Australia. The review covered one manufacturer/exporter and the period February 4, 1993, through July 31, 1994. Based on the correction of a ministerial error, we are amending the final results.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1996, the Department of Commerce (the Department) published in the Federal Register the final results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Australia (61 FR 14049). The review covered one manufacturer/exporter, The Broken Hill Proprietary Company Ltd. (BHP), and the period February 4, 1993, through July 31, 1994.

After publication of our final results, we received a timely allegation from respondent that the Department had made ministerial errors in calculating the final results for corrosion-resistant steel from Australia. The petitioners (Bethlehem Steel Corporation, U.S. Steel Company, a Unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company) filed a timely rebuttal to respondent's ministerial error allegation.

BHP alleges that the Department incorrectly applied a BIA credit rate for certain sales by BHP Steel Building Products USA (Building Products). BHP agrees that for sales in which respondent did not report payment dates it was appropriate for the Department to use a BIA rate for credit expenses. However, BHP states that in applying the BIA rate to all sales where the credit expense equaled zero, the Department applied the punitive rate to a certain number of sales for which a payment date was in fact reported. Petitioners argue that in correcting its program in response to BHP's allegation, the Department should ensure that BIA will only be applied to those sales which had missing payment and shipment dates. We agree with respondents that we incorrectly applied a BIA credit rate on certain sales by Building Products in which payment dates had been submitted. We also agree with petitioners' rebuttal that the Department must continue to apply BIA to those sales in which payment and shipment dates were not reported. Therefore, we have recalculated credit costs using BIA only for those sales where payment and shipment dates were inaccurately reported.

In addition, respondent alleges that the Department incorrectly used both the average foreign manufacturing cost and average profit as derived from Coated Steel Corp. (Coated) to calculate a surrogate further manufacturing cost for BHP Trading, Inc. (Trading). BHP stated that once Coated's average foreign manufacturing figure was derived in the Department's calculation of further manufacturing costs for Trading, an actual profit could have been calculated using Trading's data, and using a surrogate profit from Coating was unnecessary. Petitioners argue the Department made a reasonable and correct decision to apply BIA (i.e., surrogate amounts for average foreign manufacturing cost and average profit) to certain of Trading's sales because respondent failed to provide the Department with the necessary information for calculating further manufacturing cost and profit for these sales. Petitioners state that the Department was correct to rely on Coated's further manufacturing cost and profit in calculating the same for Trading and that this is not a ministerial error as defined in 19 CFR section 353.28(d) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.''

The determination to calculate a surrogate profit on Trading's further manufactured sales of subject merchandise by relying on the average profit of Coating's sales of the same merchandise was intentional. The Department determined that since Trading had not submitted its cost of manufacturing and actual profit for each of these sales, calculating an average profit, then applied to each sale at issue, was an appropriate methodology, regardless of whether Trading made a profit on every sale. Respondent is correct in stating that the Department could have constructed Trading's actual profit on every sale in which Trading had a profit because the Department could have derived Trading's actual profit by using Coating's surrogate foreign manufacturing costs and Trading's's gross unit price. However, the Department rejected this methodology as inappropriate under the circumstances. Therefore, using a surrogate profit was not a ministerial error and the Department will not amend its final results.

Amended Final Results of Review

As a result of our correction of the ministerial error, we have determined the following margin exists for the period February 4, 1993, through July 31, 1994:

Manufacturer/exporter	Margin (percent)
BHP	39.05

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. Furthermore, the

following deposit requirements shall be effective, upon publication of this notice of amended final results of administrative review, for all shipments of the subject merchandise from Australia that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for BHP will be the rate established above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.96 percent, the all others rate established in the final results of the less than fair value investigation (58 FR 44161, August 19, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended and 19 CFR 353.28(c).

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19728 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–703]

Certain Internal-Combustion Industrial Forklift Trucks From Japan Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain internal-combustion industrial forklift trucks from Japan. The review covers 3 manufacturers/exporters. The period of review (the POR) is June 1, 1994, through May 31, 1995.

We have preliminarily determined that sales have been made below normal value (NV) by one of the companies subject to this review. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the constructed export price (CEP) and NV.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Thomas O. Barlow, Davina Hashmi or Kris Campbell at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On June 7, 1988, the Department published in the Federal Register (53 FR 20882) the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. On August 16, 1995, we initiated an administrative review of this order for the period June 1, 1994 through May 31, 1995 (60 FR 42500). On March 14, 1996, we extended the time limits for preliminary and final results for this administrative review since we determined that it was not practicable to complete the review within the time limits mandated by the Act (61 FR 10562). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8427.20.00, 8427.90.00, and 8431.20.00. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

This review covers the following firms: Toyota Motor Corporation (TMC), Nissan Motor Company (Nissan), and Toyo Umpanki Company, Ltd (Toyo).

Verification

As provided in section 782(i) of the Act, we verified information provided by TMC using standard verification procedures, including on-site inspection of TMC's sales facility, the examination of relevant sales and financial records, and original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

No Shipments

Nissan and Toyo reported no shipments or sales subject to this review and the Department has preliminarily confirmed these facts with the U.S. Customs Service. Based on the information on the record, the Department has preliminarily determined that Nissan and Toyo had no shipments to the United States during the POR.

Constructed Export Price

The Department based its margin calculation on CEP as defined in section 772(b) of the Act because the subject merchandise was first sold in the United States to a person not affiliated with TMC after importation by a seller affiliated with TMC.

We calculated CEP based on the packed, f.o.b. or delivered price to unaffiliated purchasers in the United States (the starting price). We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Uruguay Round Agreements Act Statement of Administrative Action (SAA) (at 823–824), we made additional adjustments to the starting price by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses (including direct advertising incurred by TMC in Japan), expenses assumed on behalf of the buyer and U.S. indirect selling expenses. Where appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, ''swapping'' of forks, masts, etc., and installation of certain accessories by a U.S. affiliate of TMC, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act did not apply because the value added in the United States by the affiliated person did not exceed substantially the value of the subject merchandise. Therefore, for subject merchandise further manufacturered in the United States, we used the starting price of the subject merchandise and deducted the further manufacturing to determine the CEP for such merchandise.

Normal Value

Because the aggregate quantity of the foreign like product sold in the home market was more than 5% of the aggregate quantity of sales of the subject merchandise to the U.S., in accordance with sections 773(a)(1) (c) and (a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

We treated sales to affiliates as made at arm's length and therefore used them in our NV calculations, as we determined that the prices to both affiliated and unaffiliated customers were based exclusively on a published price-list.

Based on an allegation of sales below the cost of production (COP), the Department had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(i) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by TMC in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP, on a model-specific basis, based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by TMC in its questionnaire and supplemental responses.

After calculating COP, we tested whether home market sales of the foreign like product were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable adjustments.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given model were at prices less than the COP, we disregarded the below-cost sales if they (1) were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to TMC.

We calculated NV using sales of the foreign like product in the home market. Where the Department could not match to identical merchandise in the home market, the Department matched to similar merchandise based on load capacity and six matching criteria, each assigned specific weight factors which reflected the criterion's relative importance. For a more detailed description of the product-matching criteria see Appendix III, Department's Sales Questionnaire, July 31, 1995.

Home market prices were based on ex-factory or delivered prices to purchasers in the home market. Where applicable, we made adjustments for packing and for movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 353.56. We made COS adjustments by deducting home market discounts and rebates and warranty expenses. Based on the results of verification, we are disallowing TMC's reported home market direct advertising expense and we are adjusting TMC's home market REBATE2H downward. We added to NV revenue earned on home market sales, including revenue from transportation insurance received by a TMC affiliate and for interest revenue. Based on the results of verification, we are using interest revenue earned on U.S. sales as facts otherwise available for home market interest revenue. We also made adjustments, where applicable, for certain home market indirect selling expenses to offset U.S. commissions and U.S. indirect selling expenses in CEP calculations. Because we preliminarily determined that TMC's sales to the home market which are used to establish normal value were at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP, and because the data available do not permit an appropriate basis to determine a level-of-trade adjustment pursuant to section 773(a)(7)(A)(ii) of the Act, we allowed a

CEP ''offset'' pursuant to section 773(a)(7)(B) of the Act (see *Level of Trade*, below). This offset was permitted only with respect to those claimed home market indirect selling expenses that we were able to verify. Based on the results of verification, we are disallowing reported home market indirect advertising and sales promotion expenses, TMC's wage and salary expense and TMC's general & administrative (G&A) expenses.

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of comparable merchandise in the home market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by TMC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. We included U.S. packing pursuant to section 773(e)(3) of the Act. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences and level-of-trade differences. We made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for certain home market indirect selling expenses to offset U.S. commissions. Since CV was calculated at a more advanced level of trade than the level of trade of the CEP, we made an adjusment in accordance with sections 773(a)(7) and (a)(8) of the Act, *i.e.*, the CEP offset. See *Level of Trade*, below.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

When CEP is applicable, section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In implementing these principles in this review, we obtained information about the selling activities performed by TMC for each channel of distribution and asked TMC to establish claimed levels of trade based on these selling activities. TMC claimed that the level of trade of the CEP was different than the level of trade of its home market sales. TMC claimed one level of trade and one channel of distribution with regard to its sales to its U.S. affiliate, Toyota Motor Sales U.S.A., Inc. (TMS). For its home market, TMC claimed only one channel of distribution, from TMC to dealers, which it claimed to be at a more advanced stage of distribution than the level of trade of the CEP (*i.e.*, the sales from TMC to TMS) based on the selling functions performed for the particular markets.

In order to determine whether the CEP and the home market sales were at different levels of trade, we reviewed the selling activities associated with the CEP and those associated with home market sales. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Whenever sales were made by or through an affiliated company as agent, we considered all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act in CEP situations.

In this review, we determined that the selling functions performed by TMC for the home market were dissimilar to those performed by TMC for CEP sales, and that TMC's home market level of trade constituted a more advanced stage of distribution than the level of trade of the CEP. For further discussion see *Analysis Memorandum to File,* July 26, 1996.

Further, we examined whether a level-of-trade adjustment was appropriate. In this review, the same level of trade as that of the CEP did not exist in the home market as TMC's home market sales were made at a more advanced stage of distribution than its CEP sales. We could not determine whether there was a pattern of consistent price differences between the levels of trade, in accordance with section 773(a)(7)(A) of the Act, based on TMC's home market sales of merchandise under review because TMC had only one level of trade in the home market and such data did not exist. However, the SAA states that, ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *SAA* at 830. Accordingly, we examined the alternative methods for calculating a level-of-trade adjustment. In this review, we did not have information that would allow us to apply these alternative methods. Therefore, for TMC, in accordance with section 773(a)(7)(B) of the Act, because we determined that TMC's home market sales upon which we established NV were at a level of trade which constituted a more advanced stage of distribution than the level of the CEP, but no data were available to adjust for differences in level of trade, we made a CEP offset to NV.

Fair Value Comparisons

To determine whether sales of forklift trucks to the United States were made at less than fair value, we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins (in percent) for the period June 1, 1994, through May 31, 1995 to be as follows:

Manufacturer/exporter	Margin (percent)
TMC	41.29

Manufacturer/exporter	Margin (percent)
Nissan	[1] 7.36
Toyo	[1] 4.48

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A hearing, if requested, will be held 44 days from the date of publication of this notice at the main Commerce Department building.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties are due within 30 days of publication of this notice. Rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 37 days of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 180 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific *ad valorem* duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory CEP, by the total statutory CEP value of the sales compared, and adjusting the result by the average difference between CEP and customs value for all merchandise examined during the POR.) The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 39.45 percent, the ''All Others'' rate made effective by the final determination of sales at LTFV, as explained below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993), *and Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993), decided that once an ''All Others'' rate is established for a company it can only be changed through an administrative review. The Department has determined that, in order to implement these decisions, it is appropriate to reinstate the ''All Others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Therefore, the Department is reinstating the ''All Others'' rate made effective by the final determination of sales at LTFV (see Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks From Japan (53 FR 20882 (June 7, 1988)).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22(c)(5).

Dated: July 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 96–19725 Filed 8–01–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–030]

Large Power Transformers From France; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review; Large power transformers from France.

SUMMARY: On April 8, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on large power transformers (LPTs) from France. The review covers one manufacturer/exporter and the period June 1, 1994 through May 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department published in the Federal Register an antidumping finding on LPTs from France on June 14, 1972 (37 FR 11772). On June 6, 1995, we published in the Federal Register (60 FR 29821) a notice of opportunity to request an administrative review of the antidumping finding on LPTs from France covering the period June 1, 1994 through May 31, 1995.

In accordance with 19 CFR 353.22(a), Jeumont Schneider Transformateurs (JST) requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on July 14, 1995 (60 FR 36260).

On April 8, 1996, the Department published the preliminary results in the Federal Register (61 FR 15461). The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by the review are shipments of LPTs; that is, all types of transformers rated 10,000 kVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term ''transformers'' includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of transformers, JST, and the period June 1, 1994, through May 31, 1995.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from JST.

Comment 1: JST asserts that the Department should average its SG&A and profit over a three-year period. JST notes that the Department in its preliminary results used JST's actual SG&A expenses for sales of LPTs in France, but ignored the actual profit margin associated with those sales. JST argues that the decision to ignore JST's actual profit was apparently the result of the Department's conclusion that JST's home market sales were not in the normal course of trade. JST notes that the URAA amended Section 773(e) of the Act to instruct the Department to include in its constructed value calculation the actual SG&A and profit realized by a foreign producer.

JST argues that, at the very least, there must be symmetry in the Department's treatment of SG&A and profit, and that the ''ordinary course of trade'' requirement of Section 773(e)(2)(A) of the statute applies to the derivation of amounts for both profit and SG&A expense. JST argues that, where the Department concludes that it cannot use SG&A actually incurred, or profits actually realized, by the producer of exported merchandise on its review period sales in the home market, the statute provides three alternative methodologies for calculating the SG&A and profit components of constructed value. JST contends that, given this flexibility, there is no excuse for using amounts for SG&A and profit that are not reasonable approximations of JST's normal experience.

JST notes that the first statutory alternative is to calculate SG&A and profit incurred by the producer on sales of merchandise of the same general type as the exports in question. JST argues that there is no requirement that these sales be ''in the normal course of trade.'' JST also argues that this alternative would not prevent the Department from applying JST's actual profit realized on its home market sales of LPTs.

JST notes that the second statutory alternative is the average SG&A and profit for other producers of the foreign like product. JST states that this option is not available in this case, as it is the only producer of LPTs subject to review.

JST argues that the third alternative gives the Department the latitude to rely on any other reasonable method, thereby allowing the Department to calculate average amounts for SG&A and profit from data on JST's operations over a representative period. JST argues that average SG&A and profit from 1992–1994 are representative of JST's profit and SG&A experience during the period of review, are reasonable proxies for JST's actual 1994 results, and fully satisfy the requirements of the antidumping statute. JST cites to a Department memorandum from Holly A. Kuga, Director of the Office of Antidumping Compliance, to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, dated March 29, 1996, ''Large Power Transformers from France—Additional Proprietary Discussion of Profit for the Preliminary Results of Review,'' that discusses the profit calculation. JST argues that the Department, in this memorandum, indicated that it had an interest in evaluating JST's SG&A and profit experience in ''a historical context.''

JST argues that, if the Department does not use SG&A and profit for the 1992–1994 period, it should continue to use the profit figure used in the preliminary results, which is the profit margin calculated for JST's parent company, Schneider S.A. JST states that this figure is reasonable insofar as (1) the source is a company that is related to JST, and (2) it is lower than the profits that JST has reported on its home market sales in years in which its domestic sales were strong. However, JST also argues that use of this figure is troubling in two respects. JST states that its operations are a minor factor in the consolidated financials of Schneider S.A. and that JST operates independently of Schneider S.A. On balance, though, JST concludes that the methodology used in the preliminary analysis is acceptable because it produces a result that avoids the sort of gross distortion that would be created by the imputation of a high profit margin to sales during a period of depressed demand.

Department's Position: We agree with JST, in part. Section 773(e)(2)(B) sets forth three alternatives for computing profit without establishing a hierarchy or preference among these alternative methods. We did not have the necessary cost data for methods one (calculating SG&A and profit incurred by the producer on sales of merchandise of the same general type as the exports in question) or two (averaging SG&A and profit for other producers of the foreign like product). The third alternative (section 773(e)(2)(B)(iii)) is any other reasonable method, capped by the amount normally realized on sales in the foreign country of the general category of products. The Statement of Administrative Action (SAA) states that, if Commerce does not have the data to determine amounts for profit under alternatives one and two or a profit cap under alternative three, it may apply alternative three on the basis of ''the facts available.'' Accordingly, although we did not have data to determine the profit cap, for the preliminary determination we used an alternative method pursuant to section 773(e)(2)(B)(iii) on the basis of facts

available. In the preliminary determination, we used a worldwide profit amount calculated for JST's parent company, Schneider S.A. and invited comment on this issue.

Based on additional information now on the record, we have determined that the most appropriate methodology for calculating SG&A and profit in this case is to use the three-year average home market profit submitted by JST. The expenses incurred, and the resulting profit realized coincide with the period during which costs were incurred for the production of the subject merchandise by JST. Furthermore, this methodology relies on data specific to JST's LPT production and sales. Therefore, for these final results we have calculated SG&A and profit using data for the years 1992–1994.

Comment 2: JST argues that the Department improperly calculated net interest expense by applying to JST's manufacturing costs the ratio of interest expense to the cost of manufacture that appears in Schneider S.A.'s 1994 income statement. JST argues that Schneider S.A.'s interest expense was in no way related to JST's production or sales of LPTs.

JST asserts that in the last administrative review of this finding, the same financing cost issue arose. JST argues that the Department should follow its own precedent in this review and rely on JST's actual net interest expense in calculating the constructed value for its review period exports. JST argues that to do otherwise would be to disregard the emphasis placed on a producers' actual costs by the URAA and its accompanying SAA. JST quotes the SAA at 834–835, which says:

> Consistent with existing practice * * * Commerce normally will calculate cost on the basis of the records kept by the exporter or producer of the merchandise, provided such costs are kept in accordance with generally accepted accounting principles * * * and reasonably reflect the costs associated with the production and sale of the merchandise.

JST argues that Schneider S.A. did not fund JST's operations through loans, equity infusions or any other means, and imputing a cost that does not exist simply because one company is related to the other violates the actual cost standard of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 (1994 GATT agreement) and the URAA.

Department's Position: We disagree with JST. It is our longstanding practice to base interest expense on an amount derived from audited consolidated financial statements and to calculate interest as a percentage of cost. For example, see Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 18547 (April 26, 1996), and Certain Cut-To-Length Carbon Steel Plate From Finland: Final Results of Antidumping Duty Administrative Review, 61 FR 2792 (January 29, 1996).

We also disagree with JST that applying Schneider S.A.'s interest expense violates the actual cost standard of the 1994 GATT agreement and the URAA. Schneider S.A.'s ownership interest in JST places the parent in a position to influence JST's borrowing and lending as well as JST's overall capital structure. There is no evidence on the record to indicate that JST's operations are independent of Schneider S.A. to the extent that we should ignore our normal practice of imputing interest. (See memorandum from Elisabeth Urfer, Case Analyst, to the File, ''Large Power Transformers from France—Additional Proprietary Discussion of Net Interest Expense for the Final Results of Review.'') Therefore, for these final results we have continued to apply Schneider S.A.'s interest expense to cost of manufacture ratio to JST's manufacturing costs to calculate JST's interest expense.

Comment 3: JST asserts that the Department miscalculated JST's credit expense on its review-period sale. JST argues that the Department should have used information submitted in JST's supplemental questionnaire response that showed that payment had been received in two installments to JST, rather than based its calculation on the assumption of a single payment-in-full after a certain number of days from shipment that was reported elsewhere in JSTs questionnaire response. JST states that, with its supplemental questionnaire response, it submitted bank advices showing payment that establish payment date and sales price.

Department's Position: We agree with JST and have revised the credit calculation accordingly. The bank advices submitted with JST's supplemental questionnaire response demonstrate that payment was received as JST outlines above.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Jeumont Schneider Transformateurs	06/01/94–05/31/95	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of LPTs from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 24 percent, the rate established in the first notice of final results of administrative review published by the Department (47 FR 10268, March 10, 1982). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 29, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19727 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On July 14, 1995, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings (pipe fittings) from Taiwan covering the period June 1, 1994 through May 31, 1995. We are now terminating that review.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Robert James or John Kugelman, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5222.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1995, Ta Chen Stainless Pipe, Ltd. (Ta Chen), a manufacturer of merchandise subject to this order, requested that the Department conduct an administrative review of the antidumping duty order on pipe fittings from Taiwan. The period of review is June 1, 1994 through May 31, 1995.

On July 14, 1995, the Department published in the Federal Register (60 FR 36260) a notice of initiation of an administrative review of the order with respect to Ta Chen and the period June 1, 1994 through May 31, 1995.

Ta Chen, on November 20, 1995, requested that it be allowed to withdraw its request for a review and that the review be terminated.

The Department's regulations, at 19 CFR 353.22(a)(5) (1994), state that ''the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.'' In light of the fact that no significant work has been done in this review, and in light of the burden upon the parties and the Department in completing this review, we have determined that it is reasonable to allow Ta Chen to withdraw its request for review. See Steel Wire Rope From Japan; Partial Termination of Antidumping Duty Administrative Reviews, 56 FR 41118 (August 19, 1991). Accordingly, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We will issue appraisement instructions directly to the U.S. Customs Service.

This notice is in accordance with § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: July 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–19724 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–32–P

Johns Hopkins University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–097R. Applicant: Johns Hopkins University, Baltimore, MD 21218. Instrument: Stopped-Flow Spectrophotometer, Model SX.17MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: See notice at 60 FR 57222, November 14, 1995. Reasons: The foreign instrument provides: (1) Sensitive fluorescence analysis, (2) sequential mixing capability and (3) minimum sample volume of 50 µl per shot after a volume of 100 µl to prime the first shot. Advice received from: The National Institutes of Health, June 5, 1996.

Docket Number: 96–016. Applicant: University of Iowa Hospitals and Clinics, Iowa City, IA 52242. Instrument: [^{11}C] Methylation Synthesis Module. Manufacturer: Nuclear Interface GmbH, Germany. Intended Use: See notice at 61 FR 25622, May 22, 1996. Reasons: The foreign instrument provides: (1) An integrated preparative chromatography unit, (2) automated solid phase purification and (3) radioactivity detection and monitoring of reactor products and chromatographic effluent. Advice received from: The National Institutes of Health, March 28, 1996.

Docket Number: 96–024. Applicant: The University of Georgia, Athens, GA 30602–2352. Instrument: Mass Spectrometer, Model VG AutoSpec. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: See notice at 61 FR 25622, May 22, 1996. Reasons: The foreign instrument provides: (1) Matrix-assisted laser desorption/ionization and (2) precursor ion resolution to 10 000. Advice received from: The National Institutes of Health, March 29, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent

scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–19730 Filed 8–01–96; 8:45 am]

BILLING CODE 3510–DS–P

Mississippi State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–088R. Applicant: Mississippi State University, Mississippi State, MS 37962. Instrument: Stopped-Flow Spectrometer, Model SX.17MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: See notice at 60 FR 54337, October 23, 1995. Reasons: The foreign instrument provides a fiber optic light guide interface permitting sample illumination within the confines of an inert atmosphere glove box. Advice received from: The National Institutes of Health, April 15, 1996.

Docket Number: 95–114R. Applicant: Research Triangle Institute, Research Triangle Park, NC 27709. Instrument: (2) Mass Spectrometers, Model PlasmaQuad 2. Manufacturer: Fisons Instruments, Inc., United Kingdom. Intended Use: See notice at 60 FR 64157, December 14, 1995. Reasons: The foreign instrument provides a detection limit of less than 1 ppt for lead and detection limits less than 10 ppt for arsenic and selenium. Advice received from: The National Institutes of Health, June 10, 1996.

Docket Number: 96–032. Applicant: University of California, Santa Barbara, Santa Barbara, CA 93106–9510. Instrument: Stopped-Flow Spectrophotometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: See notice at 61 FR 28176, June 4, 1996. Reasons: The foreign instrument provides sequential mixing and complete anaerobic operation. Advice received from: The National Institutes of Health, March 29, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–19731 Filed 8–01–96; 8:45 am]

BILLING CODE 3510–DS–P

Princeton University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–015. Applicant: Princeton University, Princeton, NJ 08544–0033. Instrument: Spectrophotometer/Fluorimeter System. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: See notice at 61 FR 25622, May 22, 1996. Reasons: The foreign instrument provides (1) a diode array detector for simultaneous monitoring of all frequencies and (2) the ability to function at the low temperatures demanded by experimental conditions.

Docket Number: 96–018. Applicant: Texas A&M University, College Station, TX 77843–2128. Instrument: Multi-Mixing Stopped-Flow Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: See notice at 61 FR 25622, May 22, 1996. Reasons: The foreign instrument provides (1) a microvolume automated spectrofluorimeter module with full anaerobic capability and (2) multi-mixing capabilities through the use of multiple injection syringes.

Docket Number: 96–020. Applicant: National Institutes of Health, Phoenix, AZ 85014. Instrument: Mass Spectrometer, Model Delta S. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 25622, May 22, 1996. Reasons: The foreign instrument provides (1) a dual viscous gas flow inlet system with variable volume bellows for both the sample and reference gases and (2) a Friederichsen H_2O–CO_2 equilibrator for automated analysis of $^{18}O/^{16}O$ of H_2O.

Docket Number: 96–022. Applicant: Howard Hughes Medical Institute, Chevy Chase, MD 20815–6789. Instrument: 4 Syringe Stopped-Flow Module, Model SFM–4/S. Manufacturer: BioLogic, France. Intended Use: See notice at 61 FR 25622, May 22, 1996. Reasons: The foreign instrument provides four independently controlled syringes for variable ratio, multi-mixing experiments and low convection mixer design to reduce viscosity artifacts.

Docket Number: 96–028. Applicant: Florida International University, Miami, FL 33199. Instrument: (2) Mass Spectrometers, Model Delta C. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 28176, June 4, 1996. Reasons: The foreign instrument provides an internal precision of 0.006 per mil for 10 bar µl samples of CO^2 and automated analyses of ^{15}N and ^{13}C from the same sample.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–19729 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DS–P

Renewal of the U.S. Automotive Parts Advisory Committee

AGENCY: International Trade Administration, Commerce.

ACTION: Renewal of the U.S. Automotive Parts Advisory Committee.

SUMMARY: Having determined that the committee's work continues to be in the public interest in connection with the performance of duties imposed on the Department by law, the U.S. Automotive Parts Advisory Committee (APAC) was renewed. The renewal of the committee is in accordance with the Federal

Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR Subpart 101–6.10 (1990), Federal Advisory Committee Management Rule.

The APAC was established by the Secretary of Commerce on June 6, 1989, to advise Department of Commerce officials on issues related to sales of U.S.-made auto parts to Japanese markets.

The Committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Authority for the committee is contained in 15 U.S.C. § 4704, as amended by section 510 of Public Law 103–236 (April 30, 1994).

FOR FURTHER INFORMATION CONTACT: Robert Reck, U.S. Department of Commerce, International Trade Administration, Trade Development, Office of Automotive Affairs, (202) 482–1418.

Dated: July 24, 1996.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 96–19624 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DR–P

[C–333–401]

Cotton Shop Towels From Peru: Intent To Terminate Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to terminate the suspended countervailing duty investigation of cotton shop towels from Peru. Domestic interested parties who object to termination of the suspended investigation must submit their comments in writing not later than 30 days from the publication of this notice.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to terminate the suspended countervailing duty investigation of cotton shop towels from Peru, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to terminate the suspended investigation pursuant to this notice, we shall conclude that the suspension agreement is no longer of interest to interested parties and proceed with the termination. However, if a domestic interested party does object to the Department's intent to terminate pursuant to this notice, the Department will not terminate the suspended investigation.

Opportunity To Object

Not later than 30 days from the publication of this notice, domestic interested parties may object to the Department's intent to terminate this suspended investigation. Any submission objecting to the termination must contain the name and case number of the suspension agreement and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary.

[FR Doc. 96–19722 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Charleston, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Amendment.

SUMMARY: On page 29737, issue dated Wednesday, June 12, 1996, solicitation to operate the Charleston Minority Business Development Center is amended to read: Pre-Application Conference: Wednesday, July 24, 1996, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516. The closing date for applications is August 12, 1996.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson at (404) 730–3300.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 18, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–19625 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent Modification to Hardwood Range Expansion and Related Airspace Actions, Hardwood Range, Juneau County, WI

The United States Air Force and the Air National Guard announced their intent to prepare an Environmental Impact Statement (EIS) 20 Jan 95 to analyze the proposed action regarding the Hardwood Range expansion into Wood County Wisconsin and modification and/or expansion of related airspace in the states of Iowa, Minnesota and Wisconsin. These actions collectively are known as the Hardwood EIS.

Falls 1 and 2 Military Operations Areas will be added into the proposed actions for increased utilization.

The Air Force and Air National Guard are planning to conduct a scoping meeting at 7:00 PM on August 19, 1996 at Black River Falls Armory, Black River Falls, WI. The purpose of this meeting is to present information concerning the proposed actions under consideration and solicit public input on issues to be addressed. Questions or clarifications concerning the proposal, or any other information presented, will be answered as they relate to the scope of the effort anticipated.

The Air Force and Air National Guard will accept comments at the address below at any time during the environmental impact analysis process. To ensure the Air Force and the Air National Guard have sufficient time to

consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by October 18, 1996. For further information concerning the preparation of the Hardwood EIS, or to provide written comment, contact: Program Manager, Hardwood EIS, Air National Guard Readiness Center, ANGRC/CEVP, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19684 Filed 8–1–96; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–037 & –038]

Pacific Gas and Electric Company; Notice of Availability of Draft Environmental Assessment

July 29, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared in support of dam safety repairs to be made pursuant to 18 CFR 12.4 at the Upper North Fork Feather River Project. The work will be conducted to improve the seismic stability of the project's Butt Valley and Canyon Dams. The DEA finds that work would not constitute a major federal action significantly affecting the quality of the human environment. The Upper North Fork Feather River Project is located on Butt Creek and the North Fork Feather River in Plumas County, California.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 14 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2105–037 & –038 to all comments. For further information, please contact the project manager, John Mudre, at (202) 219–1208.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19670 Filed 8–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. P–11565–000, et al.]

Hydroelectric Applications [Thermalito Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Original License for Major Project.

b. *Project No.:* 11565–000.

c. *Date filed:* December 1, 1995.

d. *Applicant:* Thermalito Power Corporation.

e. *Name of Project:* Therm II Project.

f. *Location:* At the California Department of Water Resources' Thermalito afterbay dam, in Butte County, California. Township 19 N, Range 1 E, Section 33.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Stan Malinky, 311 D Street, West Sacramento CA 95605, (916) 372–0534.

i. *FERC Contact:* Michael Strzelecki at (202) 219–2827.

j. *Deadline for Interventions and Protests:* September 26, 1996.

k. *Status of Environmental Analysis:* The project is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project would develop the excess capacity of the Feather River Project (FERC No. 2100), and would consist of: (1) A new gated outlet structure installed at the dam; (2) a powerhouse containing three generating units with an installed capacity of 10,900 kW; (3) a 400-foot-long, 200-foot-wide tailrace canal leading to the Feather River; (4) the existing Sutter-Butte canal to be used for releases (5) a 350-foot-long transmission line; and (6) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D8.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Washington, DC, 20426, or by calling 202–208–1371. A copy is also available from the applicant at the address provided in item ''h'' above.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11584–000.

c. *Date filed:* July 1, 1996.

d. *Applicant:* Whitewater Engineering Corporation.

e. *Name of Project:* Power Creek Project.

f. *Location:* On Power Creek, near the city of Cordova, in Alaska. Sections 4, 5, 6, 7, 8, and 9 in T15S, R2W; sections 12, 13, 23, 24, 26, and 27 in T15S, R3W.

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

h. *Applicant Contact:* Thom A. Fischer, President, Whitewater Engineering Corporation, 1050 Larrabee Avenue, Suite 104–707, Bellingham, WA 98225, (360) 733–3008.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* September 26, 1996.

k. *Description of Project:* The proposed project would consist of: (1) A 20-foot-high diversion structure on Power Creek; (2) an 5,700-foot-long water conveyance system consisting of two pipelines and a tunnel; (3) a powerhouse containing three generating units with an installed capacity of 6.0 MW; (4) a tailrace returning the water to Power Creek; (5) a 7.2-mile-long buried transmission line interconnecting with an existing transmission line at the Eyak Substation; (6) about 2.5 miles of access roads; and (7) appurtenant facilities.

There are no federal lands within the project boundary.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application:* Amendment of License.

b. *Project No:* 2233–027.

c. *Date Filed:* July 3, 1996.

d. *Applicant:* Portland General Electric Company, Smurfit Newsprint Corporation, Simpson Paper Company.

e. *Name of Project:* Willamette Falls Project.

f. *Location:* Willamette River, Clackamas County, OR .

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)–825(r).

h. *Applicant Contact:* Richard Reiten, Portland General Electric Company, 121 S.W. Salmon Street, Portland, OR 97204, (503) 464–8005.

i. *FERC Contact:* Hillary Berlin, (202) 219–0038.

j. *Comment Date:* September 6, 1996.

k. *Description of Application:* The proposed amendment is to decommission the six water power units currently licensed for the Simpson facilities, which are uneconomical due to high maintenance costs and restricted water usage. The total installed capacity

would be reduced from 27,080 kW to 16,785 kW.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. *Type of Application:* Joint Application for Transfer of License.

b. *Project No.:* 2851–011.

c. *Date Filed:* June 17, 1996.

d. *Applicants:* James River Paper Company, Inc. and The Fonda Group, Inc.

e. *Name of Project:* Natural Dam Hydroelectric Project.

f. *Location:* On the Oswegatchie River, Village of Gouverneur, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Contacts:*

Mr. Clifford A. Cutchins, IV, Senior Vice President, James River Paper Company, Inc., 120 Tredegar Street, Post Office Box 2218, Richmond, VA 23218, (804) 649–4444.

Mr. Harvey L. Friedman, The Fonda Group, Inc., 115 Stevens Avenue, Valhalla, NY 10593–1252, 1–(800) 723–6876 Ex. 226 or (914) 747–2600.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* September 5, 1996.

k. *Description of the Proposed Action:* The licensee, James River Paper Company, Inc. seeks to transfer the project license to The Fonda Group, Inc.

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

5 a. *Type of Application:* As-Built Exhibits.

b. *Project No.:* 2547–064.

c. *Date Filed:* July 20, 1995, April 17, 1996, and June 19, 1996.

d. *Applicant:* Swanton Village, Vermont.

e. *Name of Project:* Highgate Falls Project.

f. *Location:* On the Missisquoi River in Franklin County, Vermont.

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

h. *Applicant Contact:* Mr. Harold Titemore, Electric Systems Manager, Village of Swanton, 120 First Street, Swanton, VT 05488, (802) 868–4200.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* September 6, 1996.

k. *Description of Filings:* Swanton Village, Vermont, filed as-built exhibits J, K, L, and M with the Commission for the Highgate Falls Project, in accordance with article 30 of the May 24, 1984, Order Issuing License. The exhibits show and describe the constructed project features. The original license authorized the project to have a normal reservoir elevation of 200 feet USGS. A Commission order dated January 7, 1992, amended the license to lower the crest elevation of the project's dam to 190 feet USGS. The licensee's filing revises the project boundary on the as-built exhibit K to reflect operating the project at a reservoir elevation of 190 feet USGS.

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

6 a. *Type of Application:* Amendment of Exemption.

b. *Project No.:* 4908–011.

c. *Date Filed:* November 28, 1995.

d. *Applicant:* Tannery Island Power Company.

e. *Name of Project:* Tannery Island Hydroelectric Project.

f. *Location:* On the Black River in the town of Wilna, Jefferson County, New York.

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

h. *Applicant Contact:* Ms. Mary J. Ruderman, 30 North Main Street, Carthage, NY 13619, (315) 493–1472.

i. *FERC Contact:* Robert Gwynn, (202) 219–2764.

j. *Comment Date:* September 6, 1996.

k. *Description of Filing:* Tannery Island Power proposes to install 1-foot high flashboards on the Big Spicer and Little Spicer Dams. The flashboards will be placed seasonally from April 15, at the earliest, until December 17, at the latest, when they will be removed. The flashboards on Big Spicer dam will contain 5 openings to direct 88 cfs of discharge to specific downstream areas. The flashboards on Little Spicer dam will contain 3 openings to direct 18 cfs of discharge to specific downstream areas.

The dams have an irregular crest elevation and currently need a minimum discharge of 500 cfs to provide adequate water to downstream reaches of the river. The proposed flashboards will provide a more uniform distribution of water to the downstream reaches with a lower minimum discharge of 106 cfs.

l. This paragraph also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, 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.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in 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, NE., Washington, DC 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.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: July 25, 1996 in Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19668 Filed 8–1–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–643–000, et al.]

Southern Natural Gas Company, et al. Natural Gas Certificate Filings

July 25, 1996.

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

1. Southern Natural Gas Company

[Docket No. CP96–643–000]

Take notice that on July 16, 1996, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–643–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new delivery point facilities in Carroll County, Georgia, to accommodate deliveries of natural gas to Southwire Corporation (Southwire), under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern requests authorization to construct and operate facilities consisting of a dual 4-inch meter station and appurtenant facilities, to be located on Southern's 20-inch North Main Loop and 24-inch North Main 2nd Loop. The cost of the facilities is estimated at $260,900. It is stated that Southwire will reimburse Southern for the construction cost. Southern states that it will transport gas for Southwire under its Rate Schedule IT. It is asserted that Southern has the capability to accomplish the deliveries proposed without detriment or disadvantage to its other customers. It is further asserted that the deliveries at the proposed facilities will have no adverse effect on Southern's peak day capacity.

Comment date: September 9, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP96–646–000]

Take notice that on July 19, 1996, ANR Pipeline Company (ANR) filed in Docket No. CP96–646–000 a request pursuant to section 7(b) of the Natural Gas Act (NGA), for an order permitting and approving the abandonment, by

sale, of ANR's fifty percent interest in certain 4-inch metering facilities to Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application on file with the Commission.

The 4-inch metering facilities are located at an interconnection between ANR and Transwestern in Roberts County, Texas. Transwestern operates the facilities and delivers natural gas to ANR at this interconnection. Presently, the 4-inch metering facilities are jointly owned by Transwestern (50%) and ANR (50%).

The 4-inch metering facilities consist of two 4-inch meter runs, flow control and pressure regulation facilities. The sale price of the facilities will be equal to their net book value as contained in the sales agreement entered into by ANR and Transwestern. As of April 30, 1996, the net book value of ANR's interest in the 4-inch metering facilities was $18,841.

Comment date: August 15, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP96–647–000]

Take notice that on July 19, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed an application in Docket No. CP96–647–000 pursuant to 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate various segments of pipeline loop, additional compression and compression replacement equipment, and certain minor appurtenant and above-ground facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Great Lakes proposes to construct and operate (1) Three separate segments (22 miles, 26.7 miles and 22.8 miles) of 36-inch pipeline loop totalling 71.5 miles in Kittson, Clearwater, Beltrami, Hubbard, and Carlton Counties Minnesota and in Douglas County, Wisconsin; (2) install two 7,400 horsepower (HP) unit additions, one at the existing St. Vincent Compressor Station, and one at its existing Farwell Compressor Station, located in Kittson County and Clare County, Michigan, respectively; (3) replace an aerodynamic assembly at the Thief River Falls Compressor Station, located in Marshall County, Minnesota; and (4) construct and operate permanent above-ground facilities in Kittson, Beltrami, and Carlton Counties, Minnesota and Douglas County, Wisconsin, consisting of three loop-end crossover assemblies, the expansion of four existing mainline valve sites and, within the existing boundaries of the St. Vincent Compressor Station, a loopline valve and crossover assembly.

Great Lakes states that the proposed facilities are necessary to permit it to transport an additional 126,000 Mcf per day (Mcfd) of natural gas between a point on the Unites States-Canada international boundary near St. Vincent, Minnesota, and a point on the United States-Canada international boundary near St. Clair, Michigan, while at the same time serving existing firm requirements. Great Lakes states it has executed precedent agreements with five shippers which fully subscribe the proposed expansion. Great Lakes further states that the project facilities will provide system-wide benefits in the form of increased reliability, lower maintenance costs, and by eliminating a periodic capacity bottleneck at the beginning of Great Lakes' system. Great Lakes indicates that it is seeking pre-approval for rolled-in rate treatment, in accordance with the guidelines established by the Commission's Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines (Docket No. PL94–4–000). Great Lakes states that prior to filing the application, it solicited its existing firm customers to determine if any were willing to release capacity on a permanent basis in order to meet the additional market requirements as an alternative to construction of new facilities. No shipper offered to relinquish its capacity entitlement.

Great Lakes proposes to construct its project in two phases so to avoid constructing the majority of its facilities during an environmentally sensitive period. Great Lakes seeks to construct 26.7 miles of pipeline looping in Clearwater, Beltrami, and Hubbard Counties Minnesota between October 1, 1997 and February 15, 1998, and to construct the remaining facilities during the 1988 construction season. Great Lakes proposes to have all facilities in service by November 1, 1998.

Great Lakes estimates that the project will cost $149,300,000 and that rolled-in rate treatment will have less than a 5 percent impact on existing rates.

Comment date: August 15, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP96–649–000]

Take notice that on July 22, 1996, Florida Gas Transmission Company (Applicant), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–649–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new delivery point, under blanket certificate issued in Docket No. CP82–553–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant proposes to construct a new delivery point in Wakulla County, Florida for the City of Tallahassee to accommodate gas deliveries to certain new industrial customers on an interruptible basis. Tallahassee elected to reimburse Applicant for all construction costs relating to the new meter station in lieu of customer ownership; estimated to be $114,000. Applicant proposes to deliver up to 1000 MMBtu of gas per day at 60 psig. Applicant explains that the proposed quantities would be served from current existing certificated volumes.

Applicant holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP89–555–000.[2] Applicant states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the service proposed herein without determent or disadvantage to Applicant's other customers.

Comment date: September 9, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 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.

[1] See, 21 FERC ¶ 62,235 (1982).

[2] See, 51 FERC ¶ 61,309 (1990).

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 filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19669 Filed 8–1–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5545–9]

Acid Rain Program: Notice of Final Opt-in Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final opt-in permits.

SUMMARY: The U.S. Environmental Protection Agency is issuing two final five-year opt-in permits: one for the DuPont-Johnsonville Plant facility (Dupont) in Tennessee and one for the Warrick Power Plant facility (Warrick) in Indiana, in accordance with the Acid Rain Permits and Opt-in regulations (40 CFR parts 72 and 74, respectively).

FOR FURTHER INFORMATION CONTACT: For Dupont: Jenny Jachim, (404) 347–3555, extension 4166, EPA Region 4; for Warrick: Cecilia Mijares, (312) 886–0968, EPA Region 5.

Dated: June 27, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–19709 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–P

[AD–FRL–5546–6]

Notice of Establishment of the Industrial Combustion Coordinated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Establishment of Industrial Combustion Coordinated Rulemaking Advisory Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA hereby gives notice of the establishment of the Industrial Combustion Coordinated Rulemaking Advisory Committee (hereafter referred to as the Coordinating Committee). The EPA has determined that this action is in the public interest and that the Coordinating Committee will support EPA in performing its duties and responsibilities under sections 111, 112, and 129 of the Clean Air Act (the Act).

The Coordinating Committee has been established and members will include a balanced representation of interested persons with professional qualifications and experience to contribute to the functions of the Coordinating Committee. Members will be drawn from: environmental, public health, pollution prevention, and environmental justice groups; State/local regulatory agencies; affected sources (includes a variety of industrial, commercial, and institutional establishments as well as small businesses and government and tribal agencies that own boilers, process heaters, waste incinerators, combustion turbines, and/or IC engines); manufacturers—including small business manufacturers—of combustors, emission controls, emission monitoring/testing equipment, and pollution prevention techniques; fuel producers and suppliers; labor and academic research; and EPA.

Another Federal Register notice will be published to announce the initial meeting dates and the members selected by EPA to be on the Coordinating Committee. The EPA is actively seeking nominations for the Coordinating Committee and the Work Groups. The Federal Register notice announcing the intent to form an Advisory Committee, requesting nominations for candidates, and announcing a public meeting to be held on July 24, 1996 was published on June 21, 1996 (61 FR 31883).

DATES: The first meeting of the Industrial Combustion Coordinated Rulemaking Coordinating Committee will be held in early October. The first Work Group meetings are also expected to be held in October.

INSPECTION OF DOCUMENTS: *Docket.* Minutes of the meetings, as well as other relevant materials, will be available for public inspection at EPA Air Docket No. A–96–17, and is also available on the Technology Transfer Network (see below). The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW., Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Copies of docket items may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4000. A reasonable fee may be charged for copying.

Technology Transfer Network. The TTN is one of the EPA's electronic bulletin boards. Information on the ICCR can be downloaded by choosing the ''ICCR-Industrial Combustion Coordinated Rulemaking Process'' selection from the Technical Information Areas menu. The service is free except for the cost of a phone call. Dial (919) 541–5472 for up to a 14,400 bits-per-second (bps) modem. If more information on the TTN is needed, call the help desk at (919) 541–5384.

ADDRESSES: The location of the upcoming Work Group meetings and Coordinating Committee meeting will be announced in a later Federal Register notice.

FOR FURTHER INFORMATION CONTACT: Fred Porter, Combustion Group, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–5251.

SUPPLEMENTARY INFORMATION: Two copies of the Coordinating Committee charter are filed with appropriate committees of Congress and the Library

of Congress and are available upon request. The purpose of the Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The regulations will cover boilers, process heaters, industrial/commercial and other (non-hazardous) waste incinerators, stationary internal combustion engines, and stationary gas turbines.

The Coordinating Committee will provide a means for considering important regulatory issues and building stakeholder consensus on these issues prior to proposal. The Coordinating Committee will establish Work Groups as necessary to fulfill these objectives. The Coordinating Committee approach will lead to better regulations and is consistent with agency initiatives to use flexible, common-sense approaches, avoid duplication, and involve stakeholders in the regulatory process.

The Coordinating Committee will coordinate information collection and analysis for the various combustion source categories and make recommendations on all aspects of the regulation including, but not limited to, applicability, definitions, emissions limitations, testing, monitoring, recordkeeping, and reporting requirements. The Coordinating Committee shall hold meetings, collect and analyze information, analyze issues, conduct reviews, perform studies, produce reports, and make regulatory recommendations. In developing regulatory recommendations, the Coordinating Committee will strive to reach consensus, where consensus is defined as a recommendation that all parties can accept or support, although it may not be their first choice. If consensus is not reached, the Coordinating Committee shall report majority and minority recommendations to EPA. The EPA retains its full and independent decision-making authority and responsibility. A consensus-based recommendation to EPA will, however, be given great consideration in these decisions.

The Coordinating Committee likely will need several closely-spaced meetings during the initial phases of the Industrial Combustion Coordinated Rulemaking. After that, regular quarterly meetings may be sufficient. The FACA requires that these meetings be open to the public and that there be an opportunity for interested persons to file comments before or after meetings, or to make statements as permitted by the Coordinating Committee's guidelines and to the extent time permits. In accordance with these requirements, the first and subsequent meetings of the Coordinating Committee will be open to the public. Any comments can be sent to the docket at the address listed under ''Inspection of Documents''.

Dated: July 26, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96–19705 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5471–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed July 22, 1996 Through July 26, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960340, FINAL EIS, FRC, ME, Lower Androscoggin River Basin Hydroelectric Project, Gulf Island-Deer Rips Project (FERC No. 2283–005) and Marcal Project (FERC No. 11482–000) Relicensing and Licensing, Androscoggin County, ME, Due: September 03, 1996, Contact: Allan E. Creamer (202) 219–0365.

EIS No. 960341, FINAL EIS, FRC, WA, Nisqually Hydroelectric Project (FERC. No. 1862) Issuing New License (Relicense), Nisqually River, Pierce, Thurston and Lewis Counties, WA, Due: September 03, 1996, Contact: Edward R. Meyer (202) 208–7998.

EIS No. 960342, FINAL EIS, COE, MN, Northwestern Minnesota Basin Flood Control Impoundments and Flood Damage Reduction Project, Construction and Operation, Red River, St. Paul District, MN, Due: September 03, 1996, Contact: Robert J. Whiting (612) 290–5264.

EIS No. 960343, DRAFT EIS, NPS, CA, San Francisco Maritime National Historical Park, General Management Plan, Implementation, San Francisco County, CA, Due: September 27, 1996, Contact: Alan Schmierer (415) 744–3971.

EIS No. 960344, DRAFT EIS, FEM, GA, Albany Flood Recovery Activities, Replacement of Damaged Public Schools, Housing and Businesses, Albany and Dougherty Counties, GA, Due: September 16, 1996, Contact: Todd Davidson (404) 853–4401.

EIS No. 960345, FINAL EIS, COE, LA, Amite River and Tributaries Flood Control Project, Implementation, East Baton Rouge Parish Watershed, Florida Parishes, LA, Due: September 03, 1996, Contact: Bill Wilson (504) 862–2527.

EIS No. 960346, FINAL EIS, AFS, AR, Renewal of the Shortleaf Pine/Bluestem Grass Ecosystem and Recovery of the Red-cockaded Woodpecker, Amendment No. 22 to the Ouachita National Forest Land and Resource Management Plan, Scott and Polk Counties, AR, Due: September 03, 1996, Contact: John Cleeves (501) 321–5251.

EIS No. 960347, FINAL EIS, NPS, CA, Lava Beds National Monument, General Management Plan, Implementation, Siskiyou and Modoc Counties, CA, Due: September 03, 1996, Contact: Dan Olson (415) 744–3968.

EIS No. 960348, FINAL EIS, FHW, CA, River Street Widening in Santa Cruz, Improvements from Water Street to Highway 1, Funding and Right-of-Way Grant, Santa Cruz County, CA, Due: September 03, 1996, Contact: John Schultz (916) 498–5041.

EIS No. 960349, DRAFT EIS, NRC, OH, Shieldalloy Fernoalloy Plant Decommissioning Plan, Approval, Cambridge, Geurnsey County, OH, Due: September 16, 1996, Contact: Mark Thaggard (301) 415–6718.

EIS No. 960350, DRAFT SUPPLEMENT, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvements, Updated Information concerning Subsequent Development of Two Alternatives since the January 1996 DSEIS, I–95/I–495 (Capital Beltway), Telegraph Road to MD–210, Funding, COE Section 10 and 404 Permits and CGD Bridge Permit Issuance, City of Alexandria, Fairfax County, VA; Prince George's County, MD and DC. Due: September 20, 1996, Contact: David C. Gramble (410) 962–2542.

EIS No. 960351, DRAFT EIS, FHW, MO, MO–19, MO–107 and US 54 Improvements and Extension, US 61 near Bowling Green and New London on the East to Mark Twain Lake and the Mexico Bypass on the West, Funding and COE Section 404 Permits Issuance, Pike, Monroe, Ralls and Audrain Counties, MO, Due: September 20, 1996, Contact: Don Neumann (573) 636–7104.

EIS No. 960352, DRAFT EIS, COE, MS, LA, Pearl River in the Vicinity of Walkiah Bluff, Wetland Restoration, Implementation, Picayune, Pearl River County, MS and St. Tammany Parish, LA, Due: September 16, 1996, Contact: Gary Young (601) 631–5960.

Amended Notices

EIS No. 960231, DRAFT EIS, NPS, CA, Santa Rosa Island Resources Management Plan, Improvements of Water Quality and Conservation of Rare Species and their Habitats, Channel Islands National Park, Santa Barbara County, CA, Due: September 09, 1996, Contact: Allen Schmierer (415) 744–3971.

Published FR 05–24–96—Review Period extended.

Dated: July 30, 1996.

William D. Dickerson,

Director NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–19714 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5471–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 15, 1996 Through July 19, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. DA–AFS–L82010–00 Rating LO, Pacific Northwest Region National Forests, Nursery Pest Control Management Plan, Additional Information concerning Changes to a List of Chemical Pesticides and Streamlining the Process for Future Changes Approved for Use at J. Herbert Stone, Bend Pine and Wind River Nurseries and Dorena Tree Improvement Center, WA and OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Final EISs

ERP No. F–AFS–L65208–AK Shamrock Timber Sales, Timber Harvesting and Road Construction, Stikine Area, Kupreanof Island, Tongass National Forest, Implementation, AK.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65250–ID White Sand Planning Area Ecosystem Management Project, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65254–AK 1995 Mendenhall Glacier Recreation Area Management Plan, Implementation, Tongass National Forest, Juneau Ranger District, Chatham Area, AK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K67035–NV Bootstrap/Capstone and Tara Open-Pit Gold Mine Project, Construction and Operation Approval, Plan of Operation, Elk and Eureka Counties, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L65243–OR Lake Abert Area Designation as an Area of Critical Environmental Concerns (ACEC), High Desert Management Framework Amendment Plan, Right-of-Way Grant and Drilling Permit, Valley Falls, Lake County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

ERP No. F–DOE–A09825–00 Disposition of Surplus Weapons-Usable Highly Enriched Uranium (HEU) to Low Enriched Uranium (LEU), Site Selection, Y–12 Plant Oak Ridge, TN; Savannah River Site, Aiken, SC; Babcock & Wilcox Naval Nuclear Fuel Division, Lynchburg, VA and Nuclear Fuel Services Plant, Erwin, TN.

Summary: EPA's previous environmental concerns have been adequately addressed, therefore, EPA had no objections to the project as proposed.

ERP No. F–MMS–L02025–AK Beaufort Sea Planning Area Proposed 1996 Oil and Gas Lease Sale No. 144, Lease Offerings, Alaska Outer Continental Shelf (OCS), AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NRC–A00164–00 Nuclear Power Plants Operating Licenses, NUREG–1437, Renewal, NPDES Permit.

Summary: EPA expressed concerns with the proposed approach to purposes and need, the level of consideration of environmental justice, and a number of radiation issues and provided detailed comments for consideration for the Record of Decision and the final rule.

ERP No. FS–COE–L39045–AK Chignik Small Boat Harbor Development and Construction, Updated Information concerning Selected Alternative Site 2, Anchorage Bay, Alaska Peninsula, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: July 30, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–19715 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5546–5]

Common Sense Initiative Council (CSIC), Automobile Manufacturing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Automobile Manufacturing Sector Subcommittee Meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council will meet on August 20, 1996, in Washington, DC. The meeting is open to the public.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency is holding an open meeting of the Automobile Manufacturing Sector Subcommittee (CSIC–AMS) on Tuesday, August 20, 1996, from 9:00 a.m. EDT to 4:30 p.m. EDT. The meeting will be held at the Omni Shoreham Hotel, (Hampden Room), 2500 Calvert Street, N.W., Washington, DC. During the August 20 meeting, discussions will include how the teams or subcommittee should move individual or a group of projects forward and how to handle sector projects that have implications outside the auto sector.

The CSIC–AMS has formed three project teams—Regulatory Initiatives; Alternative Sector Regulatory System/ Community Technical Assistance; and Life Cycle Management/Supplier

Partnership. An Agenda will be available August 9, 1996.

Seating may be limited, therefore, advance registration is recommended. Any person or organization interested in attending the meeting should contact Ms. Carol Kemker, Designated Federal Official (DFO), no later than August 13, 1996, at (404) 347–3555 extension 4222. Each individual or group wishing to make oral presentations will be allowed a total of three minutes.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee meeting, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meeting, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at brown.katherine@epamail.gov.

FOR FURTHER INFORMATION: For more information about this Automobile Manufacturing Sector Subcommittee Meeting, contact Carol Kemker, DFO on (404) 347–3555 extension 4222, Keith Mason, Alternate DFO at (202) 260–1360, or Julie Lynch, alternate DFO at (202) 260–4000.

Dated: July 29, 1996.

Robert English,

Acting Designated Federal Officer.

[FR Doc. 96–19706 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5546–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, (202) 260–2740.

Please refer to the appropriate EPA ICR Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1504.03; Data Generation for Registration Activities; was approved 07/10/96; OMB No. 2070 − 0107; expires 07/31/99.

EPA ICR No. 1131.05; NSPS for Glass Manufacturing Plants (Subpart CC); was approved 7/22/96; OMB No. 2060–0054; expires 07/31/99.

EPA ICR No. 1081.05; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants; was approved 07/12/96; OMB No. 2060–0043; expires 07/31/99.

EPA ICR No. 0282.08; Emission Defect Information and Voluntary Emissions Recall Reports; was approved 07/12/96; OMB No. 2060–0048; expires 07/31/99.

EPA ICR No. 0095.08; Pre-Certification and Testing Exemptions Reporting and Recordkeeping Requirements; was approved 07/12/96; OMB No. 2060–0007; expires 07/31/99.

EPA ICR No. 1739.02; National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry; was approved 07/19/96; OMB No. 2060–0335; expires 07/31/99.

EPA ICR No. 1656.03; Information Collection Requirements for Registration and Documentation of Risk Management Plans under Section 112(r) of the Clean Air Act, as Amended; was approved 07/18/96; OMB No. 2050–0144; expires 07/31/99.

EPA ICR No. 1769.01; Design for the Environment (DFE) Screen Printing Survey; was approved 06/14/96; OMB No. 2070–0150; expires 06/30/99.

EPA ICR No. 1764.01; National Volatile Organic Compound Emission Standards for Consumer Products; was approved 06/28/96; OMB No. 2060–0348; expires 06/30/99.

EPA ICR No. 1626.05; National Recycling and Emissions Reduction Program; was approved 06/28/96; OMB No. 2060–0256; expires 06/30/99.

Dated: July 26, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–19702 Filed 7–30–96; 5:03 pm]

BILLING CODE 6560–50–M

[FRL 5545–8]

Notice of Proposed Administrative Settlement; Lorentz Barrel and Drum Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA,'' commonly referred to as Superfund), 42 U.S.C. 9622(i) and Section 7003(d) of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, notice is hereby given of a proposed cost recovery administrative settlement concerning the Lorentz Barrel and Drum Superfund Site in San Jose, California (the ''Site''). The United States Environmental Protection Agency (''EPA'') is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA. This proposed settlement is intended to resolve the liabilities under CERCLA and RCRA of 60 *de minimis* parties for all past and future response costs associated with the Lorentz Barrel and Drum Site. The names of the settling parties are listed below in the Supplementary Information section. These 60 parties collectively have agreed to pay $1,838,224.30 to EPA and $865,046.72 to the California Department of Toxic Substances Control (''DTSC'').

EPA is entering into this agreement under the authority of Section 122(g)(4) of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. A *de minimis* party is one that contributed a minimal amount of hazardous substances to a site in comparison to other hazardous substances at a site, and contributed hazardous substances that are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at a site. Under the authority granted by Section 122(g), EPA proposes to settle with 60 potentially responsible parties at the Lorentz Barrel and Drum Superfund Site, each of whom is responsible for no more than one percent of the total hazardous substances sent to the Site, as that total is reflected on the July 29, 1994 waste-in list developed by EPA.

De minimis settling parties will be required to pay their allocated share of

all past response costs and the estimated future response costs at the Lorentz Barrel and Drum Site, including all federal and state response costs, and a premium to cover the risks of remedy failure and cost overruns. One settling *de minimis* party was a party to an earlier settlement with EPA (''prior settlor'') under which the prior settlors conducted clean up work at the Site. EPA has calculated the value of the prior settlors' work and has arrived at an equitable amount which this prior settlor has agreed to pay to enter into this settlement to resolve its liability to EPA and DTSC for the Site.

EPA may withdraw or withhold its consent to this settlement if comments received during the 30 day public comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

DATES: Pursuant to Section 122(i)(1) of CERCLA and Section 7003(d) of RCRA, EPA will receive written comments relating to this proposed settlement for thirty (30) days following the date of publication of this Notice. If EPA receives a request for a public meeting within thirty (30) days following the date of publication of this Notice, pursuant to Section 7003(d) of RCRA, EPA will hold a public meeting.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Docket Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105 and should refer to: Lorentz Barrel and Drum Superfund Site, San Jose, California, U.S. EPA Docket No. 96–01. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above. EPA's response to any comments received will be available for inspection from the Regional Hearing Clerk; at the Dr. Martin Luther King, Jr. Public Library, Reference Desk, 180 W. San Carlos Street, San Jose, CA 95113; and at San Jose State University, Clark Library, Government Publications Desk, One Washington Square, San Jose, CA 95192.

FOR FURTHER INFORMATION CONTACT: Karen Goldberg, Assistant Regional Counsel, (415) 744–1382, U.S. Environmental Protection Agency (RC–3), Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: The proposed *de minimis* settlement resolves EPA and DTSC's claims under Section 107 of CERCLA and Section 7003 of RCRA against the following Respondents: Adhesives Consultants Corp., Alcal Roofing, American Contracting, Amoco, Anacomp, Angray Merchandising Corp., B & W Chemicals, Inc., Bell Industries, Burke Industries Co., Central Solvents & Chemicals, Chem Art Laboratories, Crown Zellerbach Corp., Del Monte Corp., Dopaco Inc., E.F. Houghton & Co., Fuller O'Brien Corporation, General Printing Ink Co., Glasforms Inc., Industrial Labs, Intel, International Paper Co., Jerry Mello, Jhirmack, John Jones, Jones Chemicals Inc., Kaiser Aluminum & Chemical, Kaiser Cement, Lubricating Specialties Co., McKesson Corp., Micro Metallics Corp., NBK Corp., Norda Inc., Owens Illinois Glass Co., Pacific Fiberglass, Personal Products Co., Pyramid Painting Inc., Raytheon Co., Rheem Manufacturing Co., Rim Industries Inc., Rohm & Haas California Inc., Romic Chemical Co., Santa Clara County Transit, Schlage Lock Co., Signetics Corp., Simpson Lee Paper Co., Stucco Stone Prod., Stutts Scientific Service, Tandy Corp., Technical Coating, Thomas J. Lipton Inc., Tresco Paint Co., Tri-Cal Inc., U.S. Cellulose Co. Inc., Unisys, Varian Associates, Velcon Filters Inc., Vic Hubbard Speed & Marine, Viking Container Co., Wrigley Chewing Gum Co., and Zycon Corp.

Dated: July 19, 1996.

Michael Heely,

Acting Director Superfund Division.

[FR Doc. 96–19707 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5546–3]

Proposed General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a proposed general permit.

SUMMARY: This proposed general permit is intended to regulate activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the state of Alaska. The activities covered include sanitary and domestic discharges from exploration, development and construction camps; gravel pit dewatering and the use of this water for the construction of ice structures and road watering; and construction dewatering. This permit will be used to cover dischargers that have been previously unpermitted due to resource constraints. When issued, the proposed permit will establish effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Alaska's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the fact sheet.

DATES: Interested persons may submit comments on the draft general permit to EPA, Region 10 at the address below. Comments must be received in the Operations Office by September 16, 1996.

ADDRESSES: Comments on the proposed general permit should be sent to Cindi Godsey; U.S. EPA, Region 10; Alaska Operations Office, 222 W. 7th Street #19, Anchorage, Alaska, 99513–7588.

FOR FURTHER INFORMATION CONTACT: Copies of the Permit and Fact Sheet are available upon request. Requests may be made to Jeanette Carriveau at (206) 553–1214 or to Cindi Godsey at (907) 269–7692. Requests may also be electronically mailed to: CARRIVEAU.JEANETTE @ EPAMAIL.EPA.GOV or GODSEY.CINDI @EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION:

Request for Coverage

Written request for coverage and authorization to discharge under the general permit shall be provided to EPA, Region 10, as described in Part I.B. of the draft permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: July 25, 1996.

Roger K. Mochnick,

Acting Director, Office of Water.

[FR Doc. 96–19710 Filed 8–1–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency; Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, July 30, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's supervisory activities.

Matters relating to the probable failure of an insured depository institution.

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

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

Dated: July 30, 1996.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–19883 Filed 7–31–96; 2:52 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1125–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–1125–DR), dated July 3, 1996, and related determinations.

EFFECTIVE DATE: July 23, 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 July 3, 1996:

Montgomery and Posey Counties for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

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

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–19690 Filed 8–01–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1127–DR]

North Carolina; 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 North Carolina (FEMA–1127–DR), dated July 18, 1996, and related determinations.

EFFECTIVE DATE: July 18, 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 July 18, 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 North Carolina, resulting from severe storms, high wind, flooding, and related effects of Hurricane Bertha on July 10–13, 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 North Carolina.

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

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation 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 Graham Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Brunswick, Craven, Jones, New Hanover, Onslow, and Pender Counties for Individual Assistance, Public Assistance, and Hazard Mitigation; and

Lenoir County for Individual Assistance.

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

James L. Witt,

Director.

[FR Doc. 96–19692 Filed 8–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1127–DR]

North Carolina; 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 North Carolina, (FEMA–1127–DR), dated July 18, 1996, and related determinations.

EFFECTIVE DATE: July 26, 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 North Carolina, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 18, 1996:

Pamlico County for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

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

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–19693 Filed 8–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1127–DR]

North Carolina; 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 North Carolina, (FEMA–1127–DR), dated July 18, 1996, and related determinations.

EFFECTIVE DATE: July 22, 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 North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 18, 1996:

Beaufort, Carteret, Duplin, Hyde and Pitt Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

Lenoir County for Public Assistance and Hazard Mitigation (already designated for Individual Assistance).

Pamlico County for Public Assistance and Hazard Mitigation.

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–19694 Filed 8–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1122–DR]

Ohio; 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 Ohio (FEMA–1122–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: July 25, 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 the incident period for this disaster is May 2, 1996 through and including June 24, 1996.

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

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–19689 Filed 8–01–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1130–DR]

Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1130–DR), dated July 26, 1996 and related determinations.

EFFECTIVE DATE: July 26, 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 Commonwealth of Pennsylvania, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1996:

Clarion and Jefferson Counties for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

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

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–19695 Filed 8–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1126–DR]

U.S. Virgin Islands; 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 U.S. Virgin Islands, (FEMA–1126–DR), dated July 11, 1996, and related determinations.

EFFECTIVE DATE: July 23, 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 U.S. Virgin Islands, is hereby amended to include assistance under the Public Assistance program limited to Category E for repair of public buildings and equipment, Category F for repair of public utilities, and Category G for parks and recreational facilities in the following areas:

St. Croix, St. John, and St. Thomas for reimbursement for restoration of public buildings, utility systems and parks and recreational facilities. These islands are already designated for Individual Assistance, Hazard Mitigation and reimbursement for debris removal and emergency protective measures under the Public Assistance program.

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

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–19691 Filed 8–01–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interagency Policy Statement Regarding Advertising of NOW Accounts

AGENCIES: Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Department of the Treasury.

ACTION: Withdrawal of statement of policy.

SUMMARY: The OCC, FRB, FDIC, and OTS (the Agencies) are withdrawing their joint statement of policy entitled ''Interagency policy statement regarding advertising of Negotiable Order of Withdrawal (NOW) Accounts'' (the Statement) on the ground that it is obsolete.

EFFECTIVE DATE: The removal of the Statement of Policy is effective August 2, 1996.

FOR FURTHER INFORMATION CONTACT:

OCC: Paul Utterback, National Bank Examiner, (202/874–5461), 250 E Street, S.W., Washington, D.C. 20219.

FRB: J. Ericson Heyke III, Staff Attorney, (202/452–3688), 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Marc J. Goldstrom, Counsel, (202/898–8807), Legal Division, 550–17th St., N.W., Washington, D.C. 20429.
OTS: Richard Blanks, (202/906–7037), Counsel (Banking and Finance), Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: ''NOW accounts'' are, in essence, interest-bearing checking accounts. Federal law expressly authorizes depository institutions to offer such accounts:

* * * [A] depository institution is authorized to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

12 U.S.C. 1832(1).[1]

At first, Congress only allowed such withdrawals to be made in Massachusetts and New Hampshire. Act of August 16, 1973, Public Law 93–100, section 2, 87 Stat. 342. Congress extended this permission to other states over the next several years. Act of February 27, 1976, Public Law 94–222, section 2, 90 Stat. 197 (Connecticut, Rhode Island, Maine, and Vermont); Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95–630, section 1301, 92 Stat. 3641, 3712 (1978) (New York); Act of December 28, 1979, Public Law 96–161, section 106, 93 Stat. 1233, 1235 (New Jersey). Congress finally discarded geographic restrictions entirely, effective December 31, 1980. See Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221, section 303, 94 Stat. 132, 146 (1980).

During these years, the various Agencies had well-established and long-standing rules governing the advertising of interest paid on deposits. See Regulation Q, 12 CFR 217.6 (1980) (issued by the FRB, and applicable to all member banks, including national banks); *id.* § 329.8 (issued by the FDIC, and applicable to insured state nonmember banks); *id.* § 526.6 (issued by the Federal Home Loan Bank Board, and applicable to any member of a Federal Home Loan Bank, except an FDIC-insured savings bank, or an institution in Guam) and § 563.27 (issued by the Federal Savings and Loan Insurance Corporation, and applicable to all institutions insured by that entity).

The Statement says that it is intended to ''remind'' depository institutions that, when they advertise the interest-rates that they pay on NOW accounts, they must comply with these rules. 45 FR 67464 (1980).

This aspect of the Statement has become obsolete. Congress has adopted the Truth-In-Savings Act (TISA). Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, 261–74, 105 Stat. 2236, 2334–43 (Dec. 19, 1991); 12 U.S.C. 4301–13. The TISA prescribes statutory requirements for the advertisement and payment of interest on deposits, and calls for the FRB to issue any necessary regulations. 12 U.S.C. 4308. The FRB has responded by adopting Regulation DD, 12 CFR part 230. See 57 FR 43337 (1992).

The Agencies have acknowledged that Regulation DD has superseded their own advertising rules, and have therefore rescinded them. See id. 43336 (removing the advertising provisions of Regulation Q); 58 FR 4308 (removing all but the most general advertising regulations of the Office of Thrift Supervision); 58 FR 27921 (1993) (repealing the FDIC's advertising regulation).

The Statement also provides advice regarding the advance promotion and advertisement of NOW accounts by depository institutions that received NOW account authority for the first time on December 31, 1980. The Statement is obsolete in this respect as well.

The Agencies' Action

The Agencies hereby withdraw the Statement.

Dated: July 26, 1996.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 96–19555 Filed 8–1–96; 8:45 am]

BILLING CODE 6210–01–P

[1] The authorization only applies to certain accounts, however: namely, those that belong to natural persons, to nonprofit organizations, and to public units. See 12 U.S.C. 1832(2).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Merchants Bancorp, Inc., Hillsboro, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants National Bank, Hillsboro, Ohio.

2. Wesbanco, Inc., Wheeling, West Virginia; to acquire 100 percent of the voting shares of Vandalia National Corporation, Morgantown, West Virginia and thereby indirectly acquire The National Bank of West Virginia, Morgantown, West Virginia.

Board of Governors of the Federal Reserve System, July 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–19641 Filed 8–1–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The company listed in this notice has given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation, St. Paul, Minnesota; and Bremer Financial Corporation, St. Paul Minnesota, to acquire the lease servicing program and related assets of CFS Financial Corp., Minnetonka, Minnesota, pursuant to § 225.25(b)(5) of the Board's Regulation Y. This activity will be conducted by Notificants through a wholly-owned nonbank subsidiary, Bremer Business Finance Corporation, St. Paul, Minnesota.

Board of Governors of the Federal Reserve System, July 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–19642 Filed 8-1-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, August 7, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to the Federal Reserve Board's risk-based capital guidelines to incorporate a measure for market risk in foreign exchange and commodity activities and in the trading of debt and equity instruments (proposed earlier for public comment; Docket No. R–0884).
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–19795 Filed 7–31–96; 10:05 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 7, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–19796 Filed 7–31–96; 10:06 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–19]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Reinstatement—Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC surveillance program is based on the premise that diseases cannot be diagnosed, prevented or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded. This surveillance program is authorized under the provisions of Section 301 of the Public Health Service Act.

Data on disease and preventable conditions are collected in accordance with jointly approved plans by CDC and the Council of State Territorial Health Epidemiologists. Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are reviewed and revised based on variations in the public health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC on variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the MMWR, providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: Influenza virus, respiratory and enterovirus, arboviral encephalitis, rabies, salmonella, campylabacter, shigella, foodborne outbreaks, waterborne outbreaks, and enteric virus. This request is for extension of the data collection for three years with minor revisions. A new form has been added for Enteric Virus Surveillance to monitor national patterns in the epidemiology of rotovirus.

Increased use of electronic submission will reduce the burden during the next three years.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State/Local health department staff	864	28	0.25	6048

Dated: July 29, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–19646 Filed 8–1–96; 8:45 am]

BILLING CODE 4163–18–P

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 this 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:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Ambulatory Surgical Center (ASC) Request for Certification and Survey Report and Supporting Regulation 42 CFR 416; *Form No.:* HCFA–377, HCFA–378; *Use:* The HCFA–377 is the application used an ASC wanting to participate in the Medicare program. The HCFA–378 is the survey form used by State survey agencies to determine ASC compliance with individual conditions of coverage. 42 CFR 416 is the regulation supporting the data collected on the HCFA–377 and HCFA–378; *Frequency:* Annually; *Affected Public:* State, local, or tribal governments, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 1,900; *Total Annual Responses:* 1,900; *Total Annual Hours:* 475.

2. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medigap Complaint Database and Supporting Regulation 42 CFR 403.210 (b); *Form No.:* HCFA–R–156; *Use:* The Medigap database is maintained by the National Association of Insurance Commissioners, which in turn, sends the Medigap-relevant data to HCFA. The information is used to monitor State handling of Medigap related complaints; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1; *Total Annual Responses:* 4; *Total Annual Hours:* 160.

3. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Provider Overpayment Report and Supporting Regulations 42 CFR 405.370, 405.374, 405.376; *Form No.:* HCFA–481; *Use:* This report is completed daily by Medicare intermediaries and submitted to HCFA. It lists provider overpayment information and shows whether or not an intermediary is taking prompt and aggressive action to recover such overpayments, in accordance with applicable laws and regulations; *Frequency:* Daily; *Affected Public:* Federal government, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 61; *Total Annual Responses:* 36,600; *Total Annual Hours:* 3,300.

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Hospital Standard for Potentially HIV Infectious Blood and Blood Products Information Collection Requirements Contained in 42 CFR 482.27 (c)(2), (c)(4), (c)(7) ; *Form No.:* HCFA–R–190; *Use:* Hospitals must establish policies/procedures and document patient notification efforts if they have administered potentially HIV infectious blood and blood products.

Frequency: On occasion; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours Requested:* 16.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed 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: John Burke, Room C2–26–17.

Dated: July 24, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–19629 Filed 8–1–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: The Use of Transgenic Model Systems in Molecular Toxicology (Telephone Conference Call).

Date: July 30, 1996.

Time: 4:00 p.m.

Place: National Institute of Environmental Health Sciences, South Campus, Building 17, Room 1713, Research Triangle Park, NC.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate one grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: July 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–19638 Filed 8–1–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Services; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Services Special Emphasis Panel (SEP) meeting:

Name of SEP: Determination of Genetic Susceptibility to Lung Cancer in Families from Southern Louisiana (Telephone Conference Call).

Date: August 7, 1996.

Time: 1:00 p.m.

Place: National Institute of Environmental Health Science, North Campus, Rm. 1719, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 91.115, Biometry and Risk Estimation; 93.894, Resource and Management Development, National Institutes of Health)

Dated: July 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–19639 Filed 8–1–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: August 7–9, 1996.

Time: 12:00 p.m.

Place: Sheraton Mayfair, Milwaukee, WI.

Contact Person: Dr. Asher Hyatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4160, Bethesda, Maryland 20892, (301) 435–1724.

Name of SEP: Biological and Physiological Sciences.

Date: August 8, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4206, Telephone Conference.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

Name of SEP: Clinical Sciences.

Date: August 13, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

Name of SEP: Biological and Physiological Sciences.

Date: August 16, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4122, Bethesda, Maryland 20892, (301) 435–1779.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: August 19, 1996.

Time: 9:30 a.m.

Place: NIH, Rockledge 2, Room 5200, Telephone Conference.

Contact Person: Dr. Robert Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Behavioral and Neurosciences.
Date: August 20, 1996.
Time: 9:00 a.m.
Place: Embassy Suites Hotel, Washington, DC.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Chemistry and Related Sciences.
Date: August 22, 1996.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 5150, Telephone Conference.
Contact Person: Dr. Zakir Bengali, Scientific Review Administrator, 6701 Rockledge Drive, Room 5150, Bethesda, Maryland 20892, (301) 435–1742.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 22, 1996.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Clinical Sciences.
Date: August 26, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Biological and Physiological Sciences.
Date: August 28, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Microbiological and Immunological Sciences.
Date: October 25, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4200, Telephone Conference.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–19640 Filed 8–1–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

RIN 1094–AA–45

Use of Alternative Dispute Resolution

AGENCY: Office of the Secretary.

ACTION: Notice of final Alternative Dispute Resolution Policy and opportunity for comment.

SUMMARY: The Department of the Interior (Department) has developed this final Alternative Dispute Resolution (ADR) policy (Final ADR Policy) to implement a comprehensive program within each of its bureaus and offices (bureaus). This Final ADR Policy also addresses the Negotiated Rulemaking Act, Public Law No. 101–648. The Department is adopting this Final ADR Policy to apply tested practices and techniques to selected program disputes. The Department, through its bureaus, will implement ADR pilot programs and other program initiatives in an effort to establish a baseline of experience in the practical uses of ADR. The Department will continue to assess the results of the ADR initiatives in conjunction with both external and internal comments received, after publication of a Final ADR Policy in the Federal Register. The Department seeks comments from the public, including, among others, those persons whose activities the Department regulates, on any aspect of this Final ADR Policy and its implementation, and those persons who have engaged in or may in the future engage in ADR processes with the Department. At the end of the 60-day comment period, the Department will consider issues raised by interested persons and may modify the Final ADR Policy based on public comment.

DATES: Comments must be received on or before October 1, 1996.

ADDRESSES: Written comments should be mailed or delivered to James P. Terry, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James P. Terry, Deputy Director, and the Alternate Dispute Resolution Specialist, OHA (703) 235–3810.

SUPPLEMENTARY INFORMATION:

I. Department of the Interior Policy on ADR

The Department's ADR policy, first promulgated June 13, 1994, as an interim ADR policy for a period of 2 years, authorized and encouraged bureaus within the Department to employ consensual methods of dispute resolution as alternatives to litigation. 59 FR 30368. Under the Interim ADR Policy, bureaus were required: (1) To designate a senior official as a Bureau Dispute Resolution Specialist (BDRS); (2) to establish training programs in the use of dispute resolution methods; (3) to adopt a plan on the use of ADR techniques; and (4) to review the standard language in bureau contracts, grants, or other agreements, to determine whether to include a provision on ADR. Bureaus were also required to consult with the Department's Dispute Resolution Council (IDRC) on the implementation of their ADR plans.

Additionally, the Interim ADR Policy required each bureau to adopt a formal policy as to how it intended to implement ADR in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) Enforcement actions; (d) issuing and revoking licenses or permits; (e) Contract administration; (f) Litigation brought by or against the Department; and (g) other Departmental action.

The Secretary promulgated the Interim ADR Policy to reduce the time, cost, inefficiencies, and contentiousness that are too often associated with litigation and other adversarial dispute mechanisms. Moreover, experience at other Federal agencies has demonstrated that ADR can help achieve mutually acceptable solutions to disputes more effectively than either litigation or administrative adjudication. In fact, Vice President Al Gore recommended in September 1993 that Federal agencies ''increase the use of alternative means of dispute resolution.'' *National Performance Review*, Recommendation REG06 (Sept. 7, 1993).

While ADR techniques have proven to be useful in resolving serious conflicts, the day-to-day operations of the Department's bureaus should also provide conflict avoidance methods, wherever possible. Moreover, the Interim ADR Policy, specifically cautioned that:

[A bureau] shall consider not using a dispute resolution proceeding if—

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the [bureau];

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) The [bureau] must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the [bureau's] fulfilling that requirement.

The decision whether to use ADR, however, remains within each bureau's discretion, and participation in ADR processes is by mutual consent of the disputants.

The Interim ADR Policy fostered the use of ADR by ensuring appropriate protection of parties' and neutrals' communication. The ADR policy, however, is not a statute exempting disclosure under the Freedom of Information Act (FOIA). 5 U.S.C. 552. To establish a baseline of understanding, concerned parties should establish confidentiality guidelines consistent with FOIA requirements before entering into negotiations.

Within the limitations set forth in the Interim ADR Policy, and elsewhere, the Department plans to establish, in the Final ADR Policy, those contexts in which the use of ADR facilitates fairer, faster, or more rational resolutions of disputes than present dispute resolution methods provide. Additionally, the Department will continue to review the Final ADR Policy. On the basis of this evaluation, the Department will consider modifying any of its current procedures or rules in the future, as appropriate, to allow for greater use of ADR.

II. Negotiated Rulemaking Act

In enacting the Negotiated Rulemaking Act, Public Law No. 101–648, Congress indicated its concern that traditional notice and comment rulemaking procedures may discourage agreement among the potentially affected parties and the Federal Government. Congress addressed this concern by purposefully designing the Negotiated Rulemaking Act's procedures to facilitate the cooperative development of regulations by interested persons and agencies. Moreover, Vice President Gore's report recently recommended improving agencies' regulatory systems by ''[e]ncourag[ing] agencies to use negotiated rulemaking more frequently in developing new rules.'' *National Performance Review*, Recommendation REG03 (1993).

Negotiated rulemaking (Reg-Neg) does not replace the traditional notice and opportunity for public comment rulemaking. Rather, Reg-Neg supplements the more traditional process by developing consensus around the candidate proposed rule before an agency publishes it in the Federal Register. Combining early consensus-building and information-gathering with an opportunity for broad public consideration, the Reg-Neg process meets the prescription of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and can facilitate more effective regulatory development and regulations. Moreover, on September 30, 1993, President Bill Clinton issued a memorandum in conjunction with the issuance of Exec. Order No. 12866 on regulatory planning and review. The memorandum required each Department to identify to the Office of Information and Regulatory Affairs at least one rulemaking within the upcoming year to be developed through Reg-Neg rulemaking or to explain why negotiated rulemaking would not be feasible, 58 FR 52391 (Oct. 7, 1993).

Decisionmakers should view Reg-Neg as one of a variety of information-gathering and consensus-building or consultative processes used to achieve effective, efficient, rational, and fair agency policy. Although the Negotiated Rulemaking Act does not address less formal decisionmaking processes, including, among others, policy roundtables and public meetings, such nonadversarial processes may help gather information to assist the Department in policy development.

Participation in informal regulatory development processes can require significant commitment of resources on the part of all participants, including Federal agencies. The Department's experience, however, has shown that consensus-building techniques can result in better policy, reduce the high rate of litigation, and lower the costs of program implementation for the Department's bureaus and the regulated community.

III. Final Policy

A. Application of the Final ADR Policy

The Department encourages the effective use of ADR and Reg-Neg to the fullest extent compatible with existing law, and the Department's resources and missions. Based on long experience, the Department recognizes that the use of consensus-building techniques and nonadversarial planning processes can increase the wisdom, efficiency, equity, and long-term stability of Departmental decisions.

The Final ADR Policy is intended to govern both the programmatic side of the Department's broad responsibility, as well as many of the human resources aspects. With regard to human resources, the Final ADR Policy embraces the ADR policy of the Department's Office for Equal Opportunity. The use of ADR is expected to be very useful in matters involving equal employment opportunity. Workplace dispute issues beyond those governed by regulations issued by the Merit Systems Protection Board will also be governed by this policy. Where the use of ADR would impede effective supervisory action in routine matters of employee discipline or performance appraisal, supervisors may elect not to use ADR.

B. Purpose of the Final ADR Policy

The Department has developed this Final ADR Policy in response to the experience gained under the Interim ADR Policy. The Final ADR Policy encourages the Department's bureaus to continue to identify disputes amenable to ADR and to use ADR, whenever practicable. After testing ADR methods in a variety of contexts during the 2-year interim period, the Department, through the IDRC, has assessed the appropriateness of the use of ADR and determined which program areas could most benefit from the institutionalization of ADR processes. Existing bureau ADR efforts should continue as this final policy is implemented.

The Department's Final ADR Policy is also designed to disseminate knowledge about ADR both within the Department and to those whom the Department serves, as well as to introduce new ADR initiatives and to provide guidelines for bureaus to apply in the implementation of ADR pilot programs. These initiatives will produce a baseline of experience that will be useful in successfully implementing the Department's Final ADR Policy. Without the full commitment and cooperation of all bureaus, the Department will lose a valuable opportunity to learn what

works, what does not, and how best to capture potential benefits from ADR use.

C. Implementation of the Final ADR Policy

1. Role of the Department's Dispute Resolution Specialist

Pursuant to the guidance promulgated by the Secretary in the June 13, 1994, Interim ADR Policy, the Director, Office of Hearings and Appeals (OHA), was appointed to serve as the Department's Dispute Resolution Specialist (DRS). This high level, Department official was appointed as the DRS in order: (1) To facilitate intra-Departmental coordination and communication; (2) to ensure consistent, quality training; (3) to establish minimum qualifications for mediators, arbitrators, and certain Departmental employees with ADR responsibilities; and (4) to reduce administrative redundancy. Under the Final ADR Policy, the Director, OHA, will continue these responsibilities. The DRS will maintain an ''open door'' policy, welcoming inquiries from and offering assistance to the bureaus and interested persons. During the period that the Final ADR Policy is being implemented, ongoing input from the public is encouraged. Despite this focal point for ADR activity, the Department's Final ADR Policy encourages decentralized decisionmaking to the greatest extent possible.

2. Role of IDRC

In order to keep the Department's bureaus informed during the implementation of the Final ADR Policy, the DRS shall, within 120 days after publication of the Department final policy, convene the IDRC to address progress by the bureaus in implementing their ADR programs. Composed of the Department's Assistant Secretaries, Solicitor, and the Director of the Office of Regulatory Affairs (ORA), or their respective designees, and chaired by the DRS, the IDRC shall monitor and evaluate the Department's use of ADR and Reg-Neg and assist in intra-Departmental policy and process coordination. The IDRC shall act as an information clearinghouse, recommend personnel training courses in ADR techniques and program design, and act as the liaison between the Department and the Federal Mediation and Conciliation Service.

3. Training in ADR

The Department recognizes, consistent with the philosophy of the National Performance Review, that bureaus can best evaluate and develop specific ADR programs and initiatives to meet bureau needs. Therefore, each bureau head has appointed a BDRS. The BDRSs have been trained in ADR consensus-building techniques, conflict resolution, and program design.

The DRS recommended appropriate BDRS training, with such training completed during the interim policy period. Additionally, the DRS shall provide ADR training opportunities for selected groups of senior managers of the Department, whose job responsibilities include determining or influencing how disputes will be managed. The DRS will also identify opportunities for advanced training in facilitation and mediation for Judges and attorneys within OHA, as appropriate.

4. Implementation of Bureau ADR Plans

The BDRS shall fully implement the bureau's alternate dispute resolution plan (ADRP) in the 12 months following promulgation of the Final ADR Policy. To facilitate the monitoring and evaluation of the bureau's initiative(s), the BDRS should address, in his/her yearly review, among other topics, the: (1) goals; (2) objectives; (3) timetables; (4) implementation strategy; (5) monitoring criteria; and (6) evaluation methodology. It is permissible if two or more bureaus adopt the same objectives and goals.

In selecting appropriate ADR pilot initiatives, the bureaus have focused, for example, on a particular category of dispute (*e.g.*, contract cases), on a variety of disputes involving a particular organizational segment or region of the agency, or on a particular ADR process that would be applied in a variety of disputes across the bureau. In selecting a focus for an ADR pilot initiative, the Department has encouraged bureaus to consider using some of the disputes that are central to the Department's mission. While bureaus have been advised not to avoid identifying personnel and small contract disputes, for example, as candidates for a pilot initiative, they have been encouraged not to focus exclusively on these areas so that the effectiveness of ADR for a bureau can be judged in a programmatic context.

Some offices of the Department, such as the Office of the Solicitor, are assisting bureaus in carrying out their programs rather than conducting programs of their own. For the purposes of this policy, such offices should assist bureaus in implementing ADR in a programmatic context.

Consistent with the many activities and functions of the Department and the Federal Acquisition Regulations' recognition of the usefulness of ADR in Government contracts, each BDRS, or appointed designee, should review categories of all proposed new and renewal contracts, agreements, permits, memoranda of understanding, and other documents, to determine whether to include ADR provisions. Moreover, the Department encourages the use of ADR in contact disputes prior to these disputes reaching the Interior Board of Contract Appeals. To avoid duplication of effort by bureau personnel, the Office of the Solicitor, working with the Department's senior procurement official, will develop standardized ADR-related clauses that bureaus can use in contracts and other documents.

The Department expects, as well, that those bureaus with comparatively more dispute resolution experience will, on a voluntary basis, assist bureaus less familiar with dispute resolution in the development of the ADRP. The Department expects, as well, that inter-bureau initiatives such as ''one stop permitting,'' for example, be coordinated with a BDRS. Each BDRS and others involved with the implementation of the final policy are encouraged to consult with other Federal agencies, and others in the dispute resolution field in the development of their ADR initiatives. The DRS is available to provide the names of contact persons within various Federal agencies who have effectively utilized ADR methods in resolving disputes.

Judges within OHA have been encouraged to utilize, where appropriate, ADR methods, including, among others, the use of settlement judges, minitrials, and the referral of litigants to mediation or arbitration in advance of a judge's consideration of a case on the merits.

D. Monitoring and Evaluation

Each BDRS shall monitor the implementation of his or her bureau's dispute resolution initiatives on an ongoing basis, using the criteria developed in their ADRP. Each BDRS shall submit to the IDRC, through the proper bureau head and Assistant Secretary, every year, an evaluation of the bureau's progress toward meeting the goals, objectives, and timetables on the basis of the methodology outlined in the ADRP. The evaluation should also discuss any unanticipated issues that each bureau may have encountered and how those issues have been or are being resolved.

A BDRS, in conjunction with the IDRC, shall catalogue and evaluate the bureaus' respective initiatives and experiences under their ADRP in its

yearly report to the Secretary. This evaluation, coordinated by the DRS, as chair of the IDRC, will focus on the categories of disputes and types of DR methods that were most helpful in achieving resolution of disputes.

Moreover, because the usefulness of ADR to the Department is dependent on the processes' ability to facilitate rational, fair, efficient, and stable solutions among the Department's bureaus, the regulated community, and the public, evaluation of the final policy should receive the benefit of public comment and participation. A concluding section of the evaluation should explain how dispute resolution is being integrated on a permanent basis into each bureau's program offices. This process of review, evaluation, and modification will allow each bureau to systematically and regularly improve its ADR programs.

E. Negotiated Rulemaking

Pursuant to Exec. Order No. 12866 and the Presidential memorandum on negotiated rulemaking, issued September 30, 1993, the Department will use, where appropriate, Reg-Neg or other consensus-building techniques to develop rules that are fair, technically accurate, and clear. Each bureau will evaluate, prior to drafting or amending any regulation, whether Reg-Neg is appropriate for developing or amending that regulation and will explain, on the regulatory alert form submitted to the ORA, the basis for determining whether or not the regulation will be developed or amended using Reg-Neg.

In explaining whether Reg-Neg should be used for a particular rulemaking, each bureau should address at least the following:

(1) Whether there exists a small and identifiable group of constituents (the ''parties'') with significant interests in the rulemaking, so that all reasonably foreseeable significant interests can be represented by individuals in the negotiation;

(2) Whether the parties believe it to be in their best interest to enter into a negotiated rulemaking;

(3) Whether the parties are willing and able to enter into negotiated rulemaking in good faith;

(4) Whether any single party has, or is perceived to have, the ability to dominate negotiations, thereby making a compromise solution unlikely;

(5) Whether there are clear and identifiable issues that are agreed to be ripe for a negotiated solution;

(6) Whether a negotiated solution would require one or more parties to compromise a fundamental value;

(7) Whether the use of negotiated rulemaking is reasonably likely to result in an agreement or course of action satisfactory to all parties; and

(8) Whether there are legal deadlines or other legal issues that either mitigate against negotiation or provide incentives to reach a negotiated solution.

If a bureau has decided to enter into a negotiated rulemaking, it will prepare a brief report describing the goals, objectives, anticipated parties, and projected timetables of the negotiation. Throughout the negotiation, the bureau will prepare brief periodic reports discussing the progress toward achieving the goals, objectives, and timetables of the negotiation, and highlighting any successes and unanticipated events or issues encountered during the negotiation. These reports shall be submitted to ORA and the IDRC.

At the end of the initial 12 months under the Final ADR Policy, ORA, the DRS, and IDRC shall prepare information to be included in the yearly ADR report to the Secretary evaluating the Department's experiences with negotiated rulemaking. This report will focus upon the types of policies, categories of rulemakings, and methods of negotiation that were most successful in achieving customer satisfaction and the cost-effective implementation of mutually agreeable rulemakings. This report will be based upon evaluations conducted by the Bureaus and submitted to ORA, IDRC, and the DRS for review and assimilation into the report to the Secretary.

IV. Executive Order No. 12866

This final policy was not subject to Office of Management and Budget review under Executive Order No. 12866.

Dated: July 15, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

Appendix I—Glossary of ADR Terms

The following terms are commonly associated with ADR and negotiated rulemaking and contain many recognized forms of ADR. They are provided for the reader's convenience and have been adapted from the ADR Act (now expired), the Negotiated Rulemaking Act, and other sources.

Alternative means of dispute resolution—an inclusive term used to describe a variety of problem-solving processes that are used in lieu of litigation or administrative adjudication to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, or any combination thereof.

Arbitration—a process, quasi-judicial in nature, whereby a dispute is submitted to an impartial and neutral third party who considers the facts and merits of a case and decides the matter. To be revised consistent with 5 U.S.C. 588, *et seq.*

Conciliation—procedures intended to help establish trust and openness between the parties to a dispute.

Dispute—an issue which is material to a decision concerning an administrative or mission-related program of an agency and with which there is disagreement between the agency and a person or persons who would be substantially affected by the decision.

Dispute resolution communication—any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes, or work product of the neutral, parties, or nonparty participants. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not dispute resolution communication.

Dispute resolution proceeding—any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate.

Facilitation—involves the assistance of a third party who is impartial toward the issues under discussion and who works with all participants in a whole group session providing procedural directions on how the group can effectively move through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal.

Fact-finding—involves the use of neutrals acceptable to all parties to determine disputed facts. This can be particularly useful where disagreements about the need for or the meaning of data are impeding resolution of a dispute, or where the disputed facts are highly technical and would be better resolved by experts. Fact-finding usually involves an informal presentation of its case by each party. The neutral(s) then provides an advisory opinion on the disputed facts, which can be used by the parties as a basis for further negotiation.

Litigation—a dispute brought in a court of law to enforce a statute, right, or legally created cause of action that will be decided based upon legal principles or evidence presented.

Mediation—involves the intervention into a dispute of an impartial and neutral third party, who has no decisionmaking authority but who will procedurally assist the parties to reach voluntarily an acceptable settlement of issues in dispute.

Minitrial—a structured settlement process in which the disputants agree on a procedure for presenting their cases in highly abbreviated versions (usually no more than a few hours or a few days) to senior officials for each side with authority to settle the dispute. This process allows those in senior positions to see firsthand the relative strengths and weaknesses of their cases and can serve as a basis for more fruitful negotiations. Often, a neutral presides over the hearing, and may, subsequently, mediate the dispute or help parties evaluate their cases.

Negotiating rulemaking—rulemaking accomplished through the use of a negotiated rulemaking committee.

Negotiated rulemaking committee—an advisory committee established by an agency in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

Negotiation—involves a bargaining relationship between two or more parties who have either perceived or actual conflicts of interest. The participants join voluntarily in a temporary relationship to educate each other about their needs and interest and exchange specific resources or promises that will resolve one or more issues. Almost all of the ADR procedures, in which the parties maintain control over the outcome of the conflict, are variations upon or elaborations of the negotiation process.

Neutral—an individual, who with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. The individual may be a permanent or temporary officer or employee of the Federal Government, or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the dispute, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

Ombudsman—a person designated to address selected categories of disputes by investigation the circumstances that gave rise to the matter; and based upon the investigative findings, recommending corrective action, as appropriate.

Roster—a list of persons qualified to provide services as neutrals that is maintained by the agency.

Appendix II—Examples of ADR Initiatives

All bureaus and offices within the Department have been involved in implementing ADR processes. Some of the more prominent examples of ADR initiatives that reflect the Department's commitment to ADR include:

In 1990, the Department disseminated to each of the Department's bureaus and offices an ADR survey designed to identify program areas that could be amendable to ADR techniques. Among the questions asked were: (1) The categories of disputes in which the organization is typically involved; (2) the number of cases during the prior 2 fiscal years that were docketed, settled, and litigated, and the approximate cost involved; and (3) the organization's experience to date in utilizing ADR techniques.

The Department initially conducted an orientation program on ADR. Included in the orientation program was Senator Charles Grassley, one of the sponsors of the ADR Act, together with representatives of the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS).

The Department then conducted a one day training program on ADR. The training focused on the various methods of ADR and included representatives from the U.S. Army Corps of Engineers, the Environmental Protection Agency, the Department of Health and Human Services, and the Department of Transportation, each of whom shared their experiences in developing successful ADR programs.

The Department's Office for Equal Opportunity (OEO) provided training in basic and advanced mediation skills for OEO and personnel program officials and Equal Employment Opportunity (EEO) counselors. OEO also issued a directive to bureaus and offices providing guidance on the development and implementation of ADR pilot programs consistent with 29 CFR Part 1614. Under this directive each bureau and office is to submit an ADR pilot program plan delineating specific actions to be taken to incorporate ADR techniques into the EEO complaints process.

The Department encourages the use of ADR in the resolution of discrimination complaints and has designated a Departmental EEO/ADR Coordinator and directed each bureau to designate a Bureau EEO/ADR Coordinator.

The Department designated the Bureau of Reclamation (Reclamation) as a pilot bureau in fiscal year 1993 for the purpose of testing the effectiveness of mediation in the resolution of EEO complaints and administrative grievances.The bureau has relied exclusively on contract neutrals to serve as mediators for all disputes referred for ADR. Mediation has also been utilized by Reclamation in other program areas, including resource management and contract administration.

The Department's Office of Hearings and Appeals has implemented ADR as an alternative to administrative litigation. The Board of Indian Appeals and the administrative law judges vested with authority for adjudicating Indian probate cases have encouraged the use of settlement agreements to resolve these matters. Under 43 CFR 4.207, administrative law judges have been authorized to affect compromise settlements in probate actions where the parties concerned agree to compromise and where the judge establishes that all necessary conditions have been met. The Board of Contract Appeals has been effectively implementing ADR processes over the last 3 years in its cases. At the time a case is docketed, the Board issues an order notifying the parties to the dispute of the availability and benefits of ADR. Through actively promoting ADR as a viable alternative, the Board has settled a majority of its cases without the need to conduct a hearing.

The Bureau of Land Management (BLM) has recognized the benefits of ADR techniques, and, in partnership with the Bowie State University's Center for Alternative Dispute Resolution, has provided basic Conflict Management ADR training to Personnelists and EEO practitioners, as well as to key management officials.

The Minerals Management Service (MMS) has a rich history of ADR. MMS examples include (1) a process targeted at settling outstanding and contentious mineral royalty claims which has reduced appeals and litigation and increased royalty collections, and (2) more than a decade of conflict resolution training for offshore minerals management personnel and establishment and conduct of a joint review panel for constituent review of environmental documents.

During the interim period that is just ending, the U.S. Fish and Wildlife Service has recorded particular success in implementing its ADR plan. Out of 41 instances of utilizing ADR, 33 (80 percent) have been successful. The unsuccessful instances resulted in further processing under EEO procedures. Mediation was conducted

by EEO counselors in all instances except for three which were processed through the Federal Mediation and Conciliation Service. The cost and time savings were significant with the avoidance of expenditures in connection with EEO investigations, hearings, transcripts, and staff time.

The program Department-wide thus far has focused on EEO and related personnel matters. Only MMS, among the bureaus, has concentrated on resolving conflicts with outside groups. The interim policy signed by the Secretary in June 1994, upon which the final policy is based, made clear that the program is to be broader based. The IDRC will continue to encourage other bureaus to adopt the MMS model for resolving conflicts with constituents, customers and outside groups.

[FR Doc. 96–19623 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–79–M

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Class III Gaming Compact between the Confederated Tribes and Bands of the Yakama Indian Nation and the State of Washington, which was executed on June 9, 1996.

DATES: This action is effective August 2, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: July 26, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–19679 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–02–M

Indian Gaming, Walker River Paiute Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Slot Route Compact between the Walker River Paiute Tribe and the State of Nevada, which was executed on March 25, 1996.

DATES: This action is effective August 2, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: July 26, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc . 96–19678 Filed 7–M–96; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AZ040–7122–00–5513; AZA 28793, AZA 29640]

Notice of Intent to Prepare an Environmental Impact Statement Analyzing the Impacts of a Proposed Public Land Exchange and an Associated Mining Plan of Operations for the Dos Pobres/San Juan Copper Ore Bodies near Safford, AZ

AGENCY: Bureau of Land Management, Interior.

Cooperating Agency: Army Corps of Engineers, Department of Defense.

SUMMARY: The Bureau of Land Management (BLM), Safford District, in cooperation with the Army Corps of Engineers (COE) is preparing an Environmental Impact Statement (EIS) to analyze impacts of a proposed land exchange and the Mining Plan of Operations (MPO) for the Dos Pobres/San Juan copper ore bodies.

1. Identification of the geographic area involved: The proposed land exchange involve approximately 17,000 acres of public lands currently managed by the Safford District, Bureau of Land Management that are located near the city of Safford, Graham County, Arizona. The MPO addresses the development of the San Juan and Dos Pobres ore bodies and involves approximately 3,900 acres of public lands in the same area. The approximately 5,000 acres of private lands offered for exchange are located in southern Arizona.

2. Analysis of alternatives: The Proposed Action is an exchange of Federal land for private land between the BLM and Phelps Dodge Corporation, Inc. The No Action alternative and alternatives that consider various combinations of selected and offered lands as well as various aspects of the MPO will be analyzed. COE will utilize the analysis presented in the EIS to decide whether or not to issue a Clean Water Act 404 permit to Phelps Dodge, Inc., for operation of the Dos Pobres/San Juan mining operation.

3. General types of issues anticipated: The proposed land exchange and MPO involves issues related to the natural resource values and uses of the public lands in question. These issues are expected to involve impacts on waters of the United States, riparian habitats, threatened and endangered species, drainage and erosion impacts, surface and groundwater quality and quantity, water rights, Gila River impacts, air quality, cultural resources, transportation, access to recreation areas, socioeconomic resources, Indian trust lands and assets, mineral rights, and other issues that may be identified during public scoping.

4. Disciplines to be represented and used to prepare the environmental impact statement: Hydrology, botany, wildlife, recreation, realty, range, economics, geology, and archaeology.

DATES: The kind and extent of public participation: Three public open house meetings have been scheduled to inform the public of this project and to obtain public input on the issues to be analyzed in the EIS. These meetings will be held in Safford, Tucson, and Phoenix at the following times and locations:

September 5, 1996, from 4:00 to 8:00 p.m., BLM District Office, 711 14th Avenue, Safford, Arizona 85546

September 10, 1996, from 4:00 to 8:00 p.m., Tucson Main Public Library, 101 North Stone Avenue, Tucson, Arizona 85701

September 11, 1996, from 4:00 to 8:00 p.m., BLM State Office, 3707 North 7th Street, Phoenix, Arizona 85014.

Public input may be submitted during the public meetings or in writing to the address in the address section. Public comments will be accepted until October 12, 1996.

Complete records of all phases of the NEPA process will be maintained for public review at the Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

ADDRESSES: Written comments concerning the environmental impact statement should be submitted to Margaret Jensen, Gila Resource Area Manager, Bureau of Land Management, Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: Phelps Dodge, Inc., is planning to develop the Dos Pobres and San Juan copper ore bodies that are primarily located on private lands owned by Phelps Dodge, Inc. Phelps Dodge seeks to either acquire additional public lands in the vicinity of these ore bodies through the exchange process or utilize them for mining purposes under the General Mining Law of 1872, as amended. To this purpose, Phelps Dodge has proposed an exchange of land and submitted a MPO for the use of these lands to the BLM.

The 17,000 acres of public lands identified for exchange are adjacent to and surround approximately 20,000 acres of Phelps Dodge's private land. These lands have been selected by Phelps Dodge, Inc., to consolidate its land position, provide buffer areas for environmental compliance purposes, and accommodate development of future mining operations at Dos Pobres/San Juan and Lone Star ore bodies.

In exchange, Phelps Dodge, Inc., is offering approximately 5,000 acres of private lands that it owns for public acquisition. These lands possess resource qualities considered to be of significant value to the public, and have been identified for acquisition by the BLM.

The Dos Pobres/San Juan project would involve open pit mining of leachable copper ore and the construction and operation of a solvent extraction/electrowinning (SX/EW) process facility designed to produce about 200 million pounds of high-quality cathode copper per year when fully operational.

The proposed mining would involve conventional drill, blast, load and haul techniques. During project construction, employment is expected to average nearly 600 workers with peak employment reaching about 1,000 full-time jobs. Direct employment by Phelps Dodge during the life of the project is estimated at 300 to 400 full-time employees.

FOR FURTHER INFORMATION CONTACT: Tom Terry, Project Leader, or Mike McQueen, Planning and Environmental Coordinator, 711 14th Avenue, Safford, Arizona 85546; telephone (520) 428–4040.

Dated: July 16, 1996.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 96–19626 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–32–M

[CO–010–06–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given that the next meeting of the Northwest Colorado Resource Advisory Council will be held on August 16, 1996.

DATES: The meeting is scheduled for Friday, August 16, 1996 in Hayden, Colorado.

ADDRESSES: For further information, contact Lynda Boody, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3000; TDD (970) 244–3011.

SUPPLEMENTARY INFORMATION: The meeting is scheduled to begin at 9:00 a.m.

This meeting will be held at The Nature Conservancy's Carpenter Ranch, 13250 U.S. Hwy. 40 West, Hayden, Colorado 81639.

The agenda for this meeting will focus on general Council business, recently held public meetings on standards and guidelines for grazing, new business, and committee reports.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Public comment will be taken throughout the meeting. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Grand Junction/Craig District Manager.

Summary minutes for the Council meeting will be maintained in the Grand Junction and Craig District Offices and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: July 22, 1996.

Mark Morse,

Grand Junction/Craig District Manager.

[FR Doc. 96–19622 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–70–P

[NV–943–1430:N–61015]

Notice of Realty Action: Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purposes conveyance.

SUMMARY: The following described public land near Moapa Valley, Clark County, Nevada, has been examined and found suitable for conveyance for public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Clark County Department of Public Works proposes to use the land for a solid waste transfer station.

Mount Diablo Meridian, Nevada

T. 15 S., R. 67 E.,
Sec. 16: E½NW¼, W½NE¼.
Acreage: 160 acres.

The entire amount of land described will not be required for the transfer station, likely no more than a total of 10 acres. The exact location will be determined through survey and the excess parcels removed from classification and segregation. The land is not required for any Federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patent, when issued will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to: valid existing rights, if any.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108. Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except from conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal

laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, NV 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a transfer station facility.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: July 23, 1996.

Donette Gordon,

Acting Associate District Manager.

[FR Doc. 96–19616 Filed 8–1–96; 8:45 am]

BILLING CODE 1430–HC–U

[NV–030–1430–01; N–57155]

Cancellation of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of realty action.

The Notice of Realty Action—Noncompetitive Sale of Federal Lands in Douglas County, Nevada—published in the Federal Register, Vol. 58, No. 67, Pg. 18413, on April 9, 1993, is hereby cancelled in its entirety.

The federal lands had been found suitable for direct sale to accommodate private improvements on them, placed there as the result of an erroneous private survey. However, these lands were later determined to have some level of hazardous contamination, the result of past nearby mining and mineral processing. The transfer of the lands, under these conditions, was determined not to be in the interest of either the United States or the sale proponent. A private well and pipeline, on these federal lands, were authorized through the issuance of a right-of-way.

Dated: July 24, 1996.

James M. Phillips,

Assistant District Manager. Non-Renewable Resources.

[FR Doc. 96–19618 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–03–P

[ID–040–4610–00]

Notice of Availability of the Challis Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Labor.

ACTION: Notice of proposed ACEC designations.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976, section 102(2)(C) of the National Environmental Policy Act of 1969, and BLM Planning Regulations (43 CFR part 1600), the Bureau of Land Management (BLM), Upper Columbia—Salmon Clearwater Districts has prepared a Draft Resource Management Plan/Environmental Impact Statement (Draft RMP/EIS) for the Challis Resource Area. The Challis Draft RMP/EIS has been published and is available for review and comment by requesting a copy from the address indicated in the ''Addresses'' section below. In compliance with 43 CFR 1610.7–2(b), this notice of availability of the Challis Draft RMP/EIS also constitutes notice of ACEC designations proposed in the Challis Draft RMP/EIS. More detailed information about the existing and proposed ACECs described in the Challis Draft RMP/EIS is provided in the ''Supplementary Information'' section of this notice.

The Challis Draft RMP/EIS describes and analyzes five alternative ways of managing approximately 792,657 acres of BLM public lands in the Challis Resource Area, located in Custer and Lemhi counties of east-central Idaho. When implemented, the Challis RMP would replace the three Management Framework Plans currently used by the Challis Resource Area. The Challis RMP may also amend the Little Lost-Birch Creek Management Framework Plan (BLM 1981), if Alternatives 2, 4, or 5 are selected and the Donkey Hills Area of Critical Environmental Concern (ACEC) is designated to include 4,714 acres within the Big Butte Resource Area, managed by the Idaho Falls District—BLM in Butte County, Idaho.

DATES: Written comments on the Challis Draft RMP/EIS must be submitted or postmarked no later than November 21, 1996. Meetings will be held to receive public comments on the Challis Draft RMP/EIS. The dates and locations of public meetings will be announced through the local media and a mailing list, as appropriate.

ADDRESSES: Copies of the Challis Draft RMP/EIS may be obtained upon request by contacting the Bureau of Land Management, Salmon Field Office, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5400. Written comments on the Challis Draft RMP/EIS should be sent to Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Salmon Field Office, Route 2, Box 610, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Salmon Field Office, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440. Documents relevant to the Challis Draft RMP/EIS planning process are available at the above address for public viewing during normal office hours.

SUPPLEMENTARY INFORMATION: The Challis Draft RMP/EIS describes and analyzes five alternative land use plans to address the planning issues identified through public involvement and BLM input. Each alternative proposes resource condition objectives, land use allocations, and management actions and direction to guide resource management of the Challis Resource Area on a long term, sustainable basis during the next 15 to 20 years. Alternative 1, the ''no action'' alternative, describes resource management of the Challis Resource Area as of approximately 1991, when the planning process was initiated. The four ''action'' alternatives (Alternatives 2, 3, 4, and 5) differ in how much they emphasize three aspects of resource management: (a) the protection, restoration, and enhancement of natural values (e.g., visual quality), (b) traditional commodity production (e.g., timber harvest, livestock grazing, mineral production), and (c) non-commodity resource uses (e.g., recreation).

Four issues and related management concerns were identified during the scoping process for the Challis Draft RMP:

Issue	Related management concern(s)
Range Management.	Livestock Grazing, Wild Horse and Burro Management, Wildlife Habitat Management, Noxious Weed Infestation, Vegetation Treatment Projects, Upland Watershed, Fire Management.
Water Related Resource Management.	Riparian Areas, Floodplain/Wetland Areas, Water Quality, Minimum Streamflow, Fisheries.
Land Tenure and Access.	Land Tenure.
Special Management Areas.	Wild and Scenic Rivers, Areas of Critical Environmental Concern, Management of Wilderness Study Areas if Released from Wilderness Review.

In order to provide complete disclosure and analysis of resource uses in the Challis Resource Area, the Challis Draft RMP/EIS also discusses the following management concerns identified during the scoping process: Forested Areas; Special Status Species Management; Managing for Biological Diversity; Oil, Gas, Geothermal, Locatable, and Saleable Minerals; Visual Quality Management; Recreation Opportunities and Visitor Use; Off-highway Vehicle Use; Cultural Resource Management; Paleontological Resource Management; Tribal Treaty Rights; Transportation; Hazardous Materials Management; Air Quality.

The four ''action'' alternatives for the Challis RMP propose and analyze the designation of additional Areas of Critical Environmental Concern (ACECs). Under existing management, eight ACECs totaling 14,069 acres are designated in the Challis Resource Area to highlight various values and resources for management and protection, including unique plant communities, petrified trees, fragile soils, and a bighorn sheep population. These existing ACECs include 5,997 acres of Research Natural Areas designated for study of natural, pristine, or unique characteristics. Depending on the alternative, future proposed ACEC designations would include the following: (a) expansion of one existing ACEC by approximately 269 acres; and (b) designation of six to eight additional ACECs totaling from 48,889 acres up to 129,354 acres. The proposed ACECs would highlight values and resources including unique plant communities, an additional bighorn sheep population, elk winter range and calving habitat, cultural resources, anadromous fish habitat, fragile soils, and geological, special status fish, and roadless-primitive resources. The chart below lists the expanded and proposed ACECs by alternative, including any resource use limitations which would occur if the ACECs were formally designated (per 43 CFR 1610.7–2(b)).

ACEC/RNA	Acres proposed for designation; potential resource use limitations if designated				
	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
Thousand Springs ACEC/RNA.	824 acres ACEC 252 acres RNA; fencing to control livestock use in the RNA.	1,093 acres ACEC 252 acres RNA; fencing to control livestock use on all areas of the ACEC.	Same as Alt 2	Same as Alt 2	Same as Alt 2.
Dry Gulch ACEC/RNA.	0 acres	400 acres ACEC/RNA, as an extension of the existing Cronk's Canyon ACEC; fence an undeveloped natural spring; limit motorized vehicle use to the existing road.	Same as Alt 2	Same as Alt 2	Same as Alt 2, except close the ACEC to motorized vehicle use.
Pennal Gulch ACEC	0 acres	4,975 acres ACEC; limit motorized vehicle use to the existing road.	Same as Alt 2	Same as Alt 2	Same as Alt 2, except close the ACEC to motorized vehicle use.
Herd Creek Watershed ACEC.	0 acres	18,155 acre ACEC, which includes 2,064 acres of the existing Lake Creek ACEC/RNA (i.e., new designation of 16,091 acres); limit motorized vehicle use to existing roads and vehicle ways, except close the existing trail above Herd Lake.	Same as Alt 2, except maintain the existing trail above Herd Lake for motorized vehicle use if suitable portions of the Jerry Peak WSA are released from wilderness review.	Same as Alt 2	Same as Alt 2.
Sand Hollow ACEC/RNA.	0 acres	3,905 acres ACEC/RNA; continue to close the Sand Hollow watershed to livestock and wild horse grazing and motorized vehicle use; remove wild horses from the area as necessary.	Same as Alt 2	Same as Alt 2, except, in addition, incorporate the Sand Hollow ACEC/RNA into the Road Creek Watershed ACEC.	Same as Alt 4.

ACEC/RNA	Acres proposed for designation; potential resource use limitations if designated				
	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
Donkey Hills ACEC	0 acres	28,826 acres ACEC, including 4,714 acres in the Big Butte Resource Area; seasonal OHV closure; OHV use limited the remainder of the year to existing roads and vehicle ways; timber harvest stipulations.	13,500 acres ACEC; resource use limitations the same as Alt 2.	33,026 acres ACEC, including 4,714 acres in the Big Butte RA; resource use limitations the same as Alt 2, except, in addition, 5,069 acres would be removed from the commercial timber base.	Same as Alt 4, except the ACEC would be closed to motorized vehicle use.
Birch Creek ACEC	0 acres	9,687 acres ACEC; seasonal OHV closure; OHV use limited the remainder of the year to existing roads and vehicle ways; maintain current livestock water development restrictions.	0 acres	9,687 acres ACEC; closed yearlong to motorized vehicle use; closed to livestock grazing.	Same as Alt 4.
Lone Bird ACEC	0 acres	10,018 acres ACEC; physically close portions of the existing road; close the ACEC to motorized vehicle use, rockhounding, collection of mineral materials, and mineral material sales.	Same as Alt 2, except limit motorized vehicle use to existing roads and vehicle ways.	Same as Alt 2	Same as Alt 2
Road Creek Watershed ACEC.	0 acres	0 acres	0 acres	55,157 acres ACEC, including incorporation of the 3,905-acre proposed Sand Hollow ACEC; restrict motorized vehicle use to four existing roads/ways.	Same as Alt 4.

The Challis Draft RMP/EIS also presents suitability findings for most of the 57 river segments found eligible for further Wild and Scenic Rivers study during the Challis Resource Area's Wild and Scenic Rivers eligibility evaluation conducted in 1992 and 1993. Depending on the alternative, three to nine eligible river segments would have a suitability finding deferred until a coordinated river suitability study with the U.S. Forest Service and the State of Idaho can be completed. In addition, under all five alternatives, one river segment would have an eligibility determination deferred pending further coordinated study. In order to provide a range of alternatives, most eligible river segments were found suitable under at least one alternative and unsuitable under at least one alternative. Suitability findings described in the Challis Draft RMP are as follows: 0 river segments found suitable under Alternative 1; 5 river segments found suitable under Alternative 2; 0 river segments found suitable under Alternative 3; 19 river segments found suitable under Alternative 4; and 54 river segments found suitable under Alternative 5.

Public participation will continue throughout the remainder of the Challis RMP planning process. Following the 90-day public review and comment period for the Challis Draft RMP/EIS which ends November 21, 1996, the BLM will prepare a Proposed RMP/Final EIS. The public will then be invited to review the Proposed RMP/Final EIS.

Dated: July 29, 1996.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 96–19647 Filed 8–1–96; 8:45 am]

BILLING CODE 4310–GG–U

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alex. Brown & Sons, Inc., et al.; Stipulation and Order and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Stipulation and Order (''proposed order'') and a Competitive Impact Statement have been filed in the United States District Court for the Southern District of New York in *United States* v. *Alex, Brown & Sons Inc., et. al*, Civil No. 96–5313 (filed July 17, 1996).

The Complaint alleges that the twenty-four market making firms named in the Complaint and others, through the adherence to and enforcement of a ''quoting convention,'' inflated the ''inside spread'' of certain stocks quoted on The Nasdaq Stock Market, Inc. (''Nasdaq''). (The inside spread is the difference between the best price to buy stock being quoted by any market maker and the best price to sell stock being quoted by any market maker.) As a result, according to the Complaint, investors have been required to pay more to buy and sell such stocks that they would have in a competitive market.

Under the quoting convention, market makers are required to quote prices at which they are willing to buy and sell stocks in even-eighth amounts (25 cents)

rather than odd-eighth amounts (12.5 cents), whenever their individual ''dealer spreads'' are 75 cents or more per share. (A ''dealer spread'' is the difference between the price at which an individual market maker offers to buy a stock and the price at which it offers to sell the same stock, on a per share basis.) A narrower dealer spread increases the financial risk of trading stock and, in some instances, the convention operated to deter a trader from improving his or her quote by an eighth of a point, when the trader would have been willing to do so, absent the convention. The Complaint alleges that the quoting convention constitutes an agreement to fix prices in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

If entered by the Court, the proposed order will prohibit the defendant securities firms from agreeing with each other or with other market makers to adhere to the quoting convention, or to fix, raise, lower or maintain the price of any Nasdaq security. In addition to other prohibitions, the proposed order will also prohibit the defendant firms from harassing or intimidating each other or other market makers for narrowing their dealer spreads or for narrowing the inside spread in any Nasdaq security.

If entered, the proposed order will require each defendant firm to designate an antitrust compliance officer to instruct traders and company officials about the requirements of the proposed order, and to supervise the firm's review of audio tapes of trader conversations that are to be created under the order, in order to detect possible violations of the proposed order.

Public comments on the proposed order are invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to John F. Greaney, Chief, Computers and Finance Section, Antitrust Division, U.S. Department of Justice, 600 E Street, N.W., Room 9500, Washington, D.C. 20530 (telephone: 202/307–6200).

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

United States District Court for the Southern District of New York

United States of America,. Plaintiff, v. Alex. Brown & Sons Inc.; Bear, Stearns & Co. Inc.; CS First Boston Corp.; Dean Witter Reynolds Inc.; Donaldson, Lufkin & Jenrette Securities Corp.; Furman Selz LLC; Goldman, Sachs & Co.; Hambrecht & Quist LLC; Herzog, Heine, Geduld, Inc.; J.P. Morgan Securities, Inc.; Lehman Brothers, Inc.; Mayer & Schweitzer, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley & Co., Inc.; Nash, Weiss & Co.; Olde Discount Corp.; Painewebber Inc.; Piper Jaffray Inc.; Prudential Securities Inc.; Salomon Brothers Inc.; Sherwood Securities Corp.; Smith Barney Inc.; Spear Leeds & Kellogg, LP; and UBS Securities LLC, Defendants; [Civil Action No. 96–5313]

Stipulation and Order

Wheareas, plaintiff, United States of America, having filed its complaint on July 17, 1996, and plaintiff and defendants, by their respective attorneys, having agreed to the entry of this stipulation and order without trial or adjudication of any issue of fact or law herein and without this stipulation and order constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein,

Plaintiff and defendants hereby agree as follows:

I

Jurisdiction and Venue

This Court has jurisdiction over the subject matter of and the parties to this action. Venue is proper in the Southern District of New York.

II

Definitions

As used in this stipulation and order:

A. ''Any'' means one or more.

B. ''Ask'' or ''offer'' means the price quoted on Nasdaq at which a market maker offers to sell a specific quantity of a particular Nasdaq security.

C. ''Bid'' means the price quoted on Nasdaq at which a market maker offers to buy a specific quantity of a particular Nasdaq security.

D. ''Dealer spread'' means the difference between a market maker's bid and ask on Nasdaq for a particular Nasdaq security at any given time.

E. ''Defendant'' means a defendant that has executed this stipulation and order.

F. ''Effective date'' means the date on which plaintiff and defendants have indicated their agreement by executing this stipulation and order.

G. ''Inside spread'' means the difference between the highest bid and the lowest ask on Nasdaq of all market makers for a particular Nasdaq security at any given time.

H. ''Market maker'' means a NASD member firm that qualifies as a market maker under Section 3(a)(38) of the Securities Exchange Act of 1934, as amended.

I. ''NASD'' means the National Association of Securities Dealers, Inc.

J. ''Nasdaq'' means the computerized stock quotation system operated by the Nasdaq Stock Market, Inc. that displays the quotes of market makers in Nasdaq securities.

K. ''Nasdaq security'' means any Nasdaq National Market System stock or any Nasdaq Small Cap Security stock quoted on Nasdaq, or, should these terms be changed or amended, any successor group of stock quoted on Nasdaq.

L. ''Or'' means and/or.

M. ''OTC desk'' means any organizational element of a defendant engaged in market making, or its successor, that accounted for ten percent (10%) or more of such defendant's total market-making volume, measured in shares, in Nasdaq securities in the immediately preceding fiscal year.

N. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm, or other legal entity. ''Other person'' means a person who is not an officer, director, partner, employee, or agent of a defendant.

O. ''Price'' means the price at which a Nasdaq security is bought or sold.

P. ''Quote increment'' means the difference between a market maker's bid or ask on Nasdaq and that market maker's immediately preceding or immediately subsequent bid or ask on Nasdaq for a particular Nasdaq security.

Q. ''Quote'' means a bid or an ask on Nasdaq.

R. ''Quoting convention'' means any practice of quoting Nasdaq securities whereby stocks with a three-quarter (¾) point or greater dealer spread are quoted on Nasdaq in even eighths and are updated in quarter-point (even eighth) quote increments.

S. ''SEC'' means the United States Securities and Exchange Commission.

T. ''Trader hours'' means the number derived by multiplying the number of traders and assistant traders on the OTC desk and any other persons actually engaged in making markets in Nasdaq securities on the OTC desk of a defendant by the number of hours Nasdaq operates per day.

III

Applicability

This stipulation and order applies to each defendant; to each of its executive officers, directors, partners, successors, and assigns, during the respective periods that they serve as such; and to any agents or employees assigned to defendant's OTC desk, including supervisory employees, whose duties or

responsibilities include market making in any Nasdaq security, during the respective periods that they serve as such; and applies to all other persons in active concert or participation with any of them who shall have received actual notice of this stipulation and order by personal service or otherwise.

IV.

Prohibited Conduct

A. Unless permitted to engage in activities by Section IV. B. of this stipulation and order, each defendant shall not, directly or through any trade association, in connection with the activities of its OTC desk in making markets in Nasdaq securities:

(1) Agree with any other market maker to fix, raise, lower, or maintain quotes or prices for any Nasdaq security;

(2) Agree with any other market maker to fix, increase, decrease, or maintain any dealer spread, inside spread, or the size of any quote increment (or any relationship between or among dealer spread, inside spread, or the size of any quote increment (or any relationship between or among dealer spread, inside spread, or the size of any quote increment), for any Nasdaq security;

(3) Agree with any other market maker to adhere to a quoting convention;

(4) Agree with any other market maker to adhere to any understanding or agreement (other than an agreement on one or a series of related trades) requiring a market maker to trade at its quotes on Nasdaq in quantities of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker, whichever is greater;

(5) Engage in any harassment or intimidation of any other market maker, whether in the form of written, electronic, telephonic, or oral communications, for decreasing its dealer spread or the inside spread in any Nasdaq security;

(6) Engage in any harassment or intimidation of any other market maker, whether in the form of written, electronic, telephonic, or oral communications, for refusing to trade at its quoted prices in quantities of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker;

(7) Engage in any harassment or intimidation of any other market maker, whether in the form of written, electronic, telephonic, or oral communications, for displaying a quantity of shares on Nasdaq in excess of the minimum size required by Nasdaq or NASD rules; and

(8) Refuse, or threaten to refuse to trade, (or agree with or encourage any other market maker to refuse to trade) with any market maker at defendant's published Nasdaq quotes in amounts up to the published quotation size because such market maker decreased its dealer spread, decreased the inside spread in any Nasdaq security, or refused to trade at its quoted prices in a quantity of shares greater than either (1) the minimum size required by Nasdaq or NASD rules or (2) the size displayed or otherwise communicated by that market maker.

B. Notwithstanding the provisions of Section IV.A (1)–(8), any defendant shall be entitled to:

(1) Set unilaterally its own bid and ask in any Nasdaq security, the prices at which it is willing to buy or sell any Nasdaq security, and the quantity of shares of any Nasdaq security that it is willing to buy or sell;

(2) Set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any Nasdaq security;

(3) Communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any Nasdaq security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) Communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any Nasdaq security, to any person for the purpose of retaining such person as an agent or subagent for defendant or for a customer of defendant (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) Engage in any conduct or activity authorized or required by the federal securities laws, including but not limited to the rules, regulations, or interpretations of the SEC, the NASD, or any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended;

(6) Engage in any underwriting (or any syndicate for the underwriting) of securities to the extent permitted by the federal securities laws;

(7) Act as Qualified Block Positioners as defined in SEC Rule 3b-8(c), promulgated under the Securities Exchange Act of 1934, as amended, to the extent permitted by the federal securities laws;

(3) Except as provided in Sections IV.A.(5)—(8) of this stipulation and order, take any unilateral action or make any unilateral decision regarding the market makers with which it will trade and the terms on which it will trade; and

(9) Engage in conduct protected under the *Noerr-Pennington* doctrine.

No finding of any violation of this stipulation and other may be made based solely on parallel conduct.

C. In order to ensure compliance with the provisions of Section IV.A. of the stipulation and order, each defendant shall:

(1) Initiate and maintain an antitrust compliance program, which shall include designating, within ninety (90) days of the effective date hereof, an Antitrust Compliance Officer, who shall be responsible for establishing and maintaining an antitrust compliance program designed to provide reasonable assurance of compliance with this stipulation and order and with the federal antitrust laws by the defendant in its market making activities in Nasdaq securities on its OTC desk. The Antitrust Compliance Officer shall personally or through his designee:

(a) Distribute, within thirty (30) days from the effective date hereof or from the date of designation of the Antitrust Compliance Officer, whichever is later, a copy of this stipulation and order to: (i) All members of the board of directors of the defendant (or if there is no board of directors, to such persons as have substantially equivalent responsibilities); and (ii) all employees and all officers of the defendant whose duties or responsibilities include market making in any Nasdaq security on Nasdaq;

(b) Distribute within thirty (30) days of appointment or assignment a copy of this stipulation and order (i) to any person who becomes a member of the board of directors of the defendant (or if there is no board of directors, to such persons as have substantially equivalent responsibilities) and (ii) any employee or officer of the defendant whose duties or responsibilities include market making in any Nasdaq security on Nasdaq;

(c) Brief semi-annually those persons designated in paragraphs (a)(ii) and (b)(ii) of this subsection on the meaning and requirements of the federal antitrust laws and this stipulation and order in connection with defendant's market making activities on its OTC desk in Nasdaq securities, and inform them that the Antitrust Compliance Officer or a designee of the Antitrust Compliance

Officer is available to confer with them regarding compliance with such laws and with this stipulation and order;

(d) Obtain from each person designated in paragraphs a (i) and b (i) of this subsection a one time certification that he or she: (i) Has read and agrees to abide by the terms of this stipulation and order; and (ii) has been advised and understands that a violation of this stipulation and order by such person may result in his or here being found in civil or criminal contempt of court;

(e) Obtain from each person designated in paragraphs (a)(ii) and (b)(ii) of this subsection an annual written certification that he or she: (i) Has read and agrees to abide by the terms of this stipulation and order; and (ii) has been advised and understands that a violation of this stipulation and order by such person may result in his or her being found in civil or criminal contempt of court; and

(f) Maintain a record of persons to whom this stipulation and order has been distributed and from whom the certification required by paragraphs (d) and (e) of this subsection has been obtained.

(2) Within forty-five (45) days of entry of this stipulation and order by the Court, each defendant is required to install a system or systems capable of monitoring and recording any conversation on the telephones on its OTC desk used by such defendant to make markets in Nasdaq securities.

(3) The Antitrust Compliance Officer of each defendant shall devise a methodology for complying with paragraph 2, 3, and 4 of this Section. No tape recorded segment shall be shorter than fifteen (15) minutes. Within thirty (30) days of entry of this stipulation and order by the Court, the methodology proposed to be employed shall be submitted to the Antitrust Division for review and approval.

(4) The Antitrust Compliance Officer, with such trained staff as necessary, shall record (and listen to) not less than three and one-half percent (3.5%) of the total number of trader hours of such defendant; provided, however, that in no case shall the total number of hours required to be recorded (and listened to) exceed seventy (70) hours per week. Persons whose conversations are subject to monitoring as provided by this paragraph (4) shall be told of the existence of the taping system but shall not be informed as to the times when their conversations will or might be monitored or recorded.

(5) Upon discovery of a conversation which the Antitrust Compliance Officer of a defendant believes may violate this stipulation and order, the Antitrust Compliance Officer shall retain a tape of such conversation, and, shall within ten (10) business days, furnish such tape, and any explanation thereof to the Antitrust Division, in standard audio cassette format, or such other format as may be acceptable to the Antitrust Division.

(6) Tapes made pursuant to this stipulation and order shall be retained by each defendant for at least thirty (30) days from the date of recording, and may be recycled thereafter. Tapes made pursuant to this stipulation and order shall not be subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended. Such tapes shall not be admissible in evidence in civil proceedings, except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended.

(7) The Antitrust Division may visit, during regular business hours, any defendant's facilities unannounced, and may, while there, from a location not observable by traders, monitor conversations required to be monitored and recorded pursuant to paragraphs (2) and (4) of this Section in real time in order to ensure compliance with this stipulation and order.

(8) Upon request of the Antitrust Division, a defendant shall immediately identify all tape recordings made pursuant to this stipulation and order that are in its possession or control, shall provide the Antitrust Division with the opportunity to listen to any tape recording made pursuant to this stipulation and order, and shall produce to the Antitrust Division such tapes as the Antitrust Division may request.

(9) The Antitrust Division may receive complaints or referrals concerning asserted possible violations of the stipulation and order and may, based upon such complaints or referrals, or for the purpose of monitoring or enforcing compliance with the stipulation and order, require the Antitrust Compliance Officer (a) to use the system or systems required by Section IV.C.(2) of this stipulation and order to tape the conversations of a particular person or group of persons on its OTC desk for any period of time and (b) not to give notice of such recordation to such person(s). Such requests to tape shall be subject to the time limitations set forth in paragraph (4) of this subsection.

(10) Each Antitrust Compliance Officer shall (in addition to making reports of violations within ten (10) business days) report quarterly to the Antitrust Division concerning activities undertaken to ensure the defendant's compliance with the stipulation and order and, specifically, the requirements of paragraphs (2)–(9) of this Section. Such reports shall detail the precise times when conversations were monitored by the Antitrust Compliance Officer pursuant to the requirements of this stipulation and order and the name of each person employed by the defendant whose conversations were recorded during such times.

V

Certifications

Each defendant shall certify in the form attached hereto:

A. Within ninety (90) days from the effective date of this stipulation and order, that the defendant has designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number;

B. Within forty-five (45) days from the entry of the stipulation and order by the Court, that the defendant has complied with the requirements of Sections IV.C.(1) (a) and (b); and

C. For five (5) years after entry of this stipulation and order by the Court, within thirty (30) days of the anniversary of its entry, each defendant shall certify annually (i) whether defendant has complied with the provisions of Sections IV.A. and IV.C. of this stipulation and order; and (ii) whether defendant has made changes in its organizational structure likely to have a significant effect on its compliance with this stipulation and order.

VI

Plaintiff's Access

A. For the sole purpose of determining or securing compliance with this stipulation and order, and subject to any legally recognized privilege or work product protection, from time to time duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant at its principal office, be permitted:

(1) Access during office hours of such defendant, which may have counsel present, to inspect and copy (or to require defendants to produce copies of)

all records and documents, excluding individual customer records, in the possession or under the control of such defendant, and which relate to compliance with this stipulation and order; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from the defendant, to interview officers, employees, or agents of such defendant, each of whom may have counsel present, regarding compliance with this stipulation and order.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant, such defendant shall prepare and submit such written reports, under oath if requested, relating to defendant's compliance with this stipulation and order as may be requested.

C. No information, tape recordings, or documents obtained by the means provided in Sections IV, V, and VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, or the SEC, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this stipulation and order, or as otherwise required by law.

D. If at the time information, tape recordings, or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure and said defendant marks each page of such material, ''Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) days notice shall be given by plaintiff to such defendant at its Office of General Counsel prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

E. Defendants may claim (which claim plaintiff shall honor to the extent legally permissible) protection from public disclosure, under the Freedom of Information Act, 5 U.S.C. § 552, or any other applicable law or regulation, for any material submitted to the Antitrust Division under this stipulation and order.

VII

Rescission by Plaintiff

The parties agree that the Court may enter this stipulation and order, upon motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not notified the parties and the Court that it wishes to rescind its agreement to entry of the stipulation and order. Plaintiff may rescind its agreement to entry of the stipulation and order at any time before entry of the stipulation and order by the Court by serving notice thereof on the defendants and by filing that notice with the Court. In the event plaintiff rescinds its agreement to entry of the stipulation and order, the stipulation and order shall be of no effect whatever, and the agreement among the parties shall be without prejudice to any party in this or any other proceeding.

VIII

Jurisdiction Retained

Jurisdiction shall be retained by the Court to enable any of the parties to this stipulation and order to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this stipulation and order, for the enforcement or modification of any of its provisions, or for punishment by contempt.

IX

Expiration of Stipulation and Order

This stipulation and order shall expire ten (10) years from its date of entry by the Court, except that (a) Section IV.C.(2)–(10) shall expire five (5) years from the date of entry of this stipulation and order by the Court, except that the Antitrust Division may, after two (2) years, in its sole discretion, notify in writing any defendant that it shall no longer be subject to Section IV.C.(2)–(10); and (b) Section VI.C., D., and E. shall not expire.

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The Court having reviewed the Complaint and other filings by the United States, having found that this Court has jurisdiction over the parties to this stipulation and order, having heard and considered the respective positions of the United States and the defendants [at a hearing on _____, 1996,] and having concluded that entry of this stipulation and order is in the public interest, it is hereby ORDERED:

THAT the parties comply with the terms of this stipulation and order;

THAT the Complaint of the United States is dismissed with prejudice;

THAT the Court retains jurisdiction to enable any of the parties to this stipulation and order to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or implementation of this stipulation and order, for the enforcement or modification of any of its provisions, or for punishment by contempt.

SO ORDERED this ____ day of _____, 1996.

_____
United States District Judge

Certification Form (Attachment to Stipulation and Order)

On behalf of [Name of Defendant], I [Name] hereby certify in accordance with Section V of the Stipulation and Order, dated _____, in [caption of case] that:

(Check All Applicable Certifications):

( ) [Name of Defendant] has designated an Antitrust Compliance Officer, whose name, business address, and telephone numbers are:

Name: _____
Address: _____
_____
Telephone No.: _____

( ) [Name of Defendant], under the supervision of its Antitrust Compliance Officer, has distributed copies of the Stipulation and Order to all persons designated in Sections IV.C.(1) (a) and (b) of the Stipulation and Order.

( ) [Name of Defendant], under the supervision of its Antitrust Compliance Officer, has:

(a) Initiated and maintained an antitrust compliance program, as provided for in Section IV.C.(1) of the Stipulation and Order;

(b) Briefed semi-annually those persons designated in Sections IV.C.(1) (a)(ii) and b(ii) of the Stipulation and Order on the meaning and requirements of the federal antitrust laws and the Stipulation and Order in connection with its market making activities in Nasdaq securities on Nasdaq;

(c) Obtained the certifications identified in Sections IV.C.(1) (d) and (e) of the Stipulation and Order and maintained a record thereof;

(d) Established monitoring and recording system or systems (Section IV.C.(2) of the Stipulation and Order), obtained the approval of the Antitrust Division of the relevant methodology (Section IV.C.(3) of the Stipulation and Order), and recorded (and listened to), in accordance with the approved methodology, not less than the lesser of three and one-half percent (3.5%) of the total number of trader hours of seventy (70) hours per week (Sections IV.C.(2) and (4) of the Stipulation and Order);

(e) Retained and provided to the Antitrust Division any tape called for by Section IV.C.(5) of the Stipulation and Order;

(f) Complied with the requests, if any, of the Antitrust Division pursuant to Sections IV.C.(8) and (9) of the Stipulation and Order; and

(g) Made quarterly reports to the Antitrust Division concerning activities undertaken to ensure compliance with the Stipulation and Order, as provided for by Section IV.C.(10).

Based upon the foregoing, the representations of market makers employed on the OTC desk and their immediate supervisors, and such other procedures as have been established to provide reasonable assurance of compliance with Sections IV.A. and IV.C. of the Stipulation and Order, I have no reasonable cause to believe that, during the year ended ____, 199__, [*Name of Defendant*] has failed to comply with Sections IV.A. and IV.C. of the Stipulation and Order, [except to the extent previously reported to the Antitrust Division in reports, dated ____]. In addition, I am aware of no change in [*Name of Defendant's*] organization structure likely to have a

significant effect on its compliance with this Stipulation and Order, [except for _____].

Antitrust Compliance Officer [*Name of Defendant*]
[Date], 199__
Hays Gorey, Jr. (HG 1946)
United States Department of Justice
Antitrust Division
600 E Street, N.W., Room 9500
Washington, D.C. 20530
(202) 307–6200
Attorney for Plaintiff United States of America

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Stipulation and Order submitted for entry with the consent of defendants in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On July 17, 1996, the United States filed a Complaint alleging that the defendants have engaged in price fixing in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. On the same day, the United States and the defendants filed a Stipulation and Order (''proposed Order'') to resolve the allegations in the Complaint. Entry of the proposed Order is subject to the APPA.

The defendants are all major ''market makers'' in over-the-counter (''OTC'') stocks quoted for public trading on the computerized stock quotation system known as Nasdaq.[1] The United States alleges in its Complaint that the defendants and others adhered to and enforced a ''quoting convention'' that was designed to and did deter price competition among the defendants and other market makers in their trading of Nasdaq stocks with the general public. The United States believes that investors have incurred higher transaction costs for buying and selling Nasdaq stocks than they would have incurred had the defendants not restrained competition through their illegal agreement.

The proposed Order will eliminate the anticompetitive conduct identified in the Compliant and establish procedures that will ensure that such conduct does not recur. Specifically, the proposed Order prevents the defendants from agreeing with other market makes to adhere to the quoting convention, or to fix, raise, lower, or maintain prices or quotes for Nasdaq securities. The proposed Order also requires each defendant to adopt an antitrust compliance program and designate an antitrust compliance officer to ensure the firm's future compliance with the antitrust laws. To this end, the proposed Order requires the compliance officer to (1) randomly monitor and tape record telephone conversations between stock traders and (2) report any violations of the proposed Order within ten business days to the Antitrust Division of the Department of Justice (''the Department'').

The proposed Order also requires that these tape recordings be made available to the Department for its review. The proposed Order gives the Department authority to receive complaints of possible violations, to visit defendants' offices unannounced to monitor trader conversations as they are ongoing, to direct taping of particular suspected violators, and to request copies of tapes as they are made. The Court may punish violations of its proposed Order with civil or criminal contempt, including fines and incarceration for willful flouting of the Court's order. See, *e.g., United States* v. *Schine*, 260 F.2d 552 (2d Cir. 1958), *cert. denied*, 358 U.S. 934 (1959), and 18 U.S.C. § 401.

The United States and the defendants have agreed that the proposed Order may be entered after compliance with the APPA, provided that the United States has not withdrawn its consent to entry of the proposed Order. The proposed Order provides (as is standard in the Department's settlements) that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law. Entry of the proposed Order will terminate this civil action as to the defendants, except that the Court will retain jurisdiction for further proceedings that may be required to enforce or modify the order entered, or to punish violations of any of its provisions.

II

The Department's Investigation

The Complaint and proposed Order are the culmination of a major, two-year investigation by the Department of the trading activities of Nasdaq securities dealers. The Department's investigation began in the summer of 1994, shortly after the public disclosure of an economic study by Professors William Christie of Vanderbilt University and Paul Schultz of Ohio State University (the ''Christie/Schultz study''). The Christies/Schultz study suggested that securities dealers on Nasdaq may have tacitly colluded to avoid odd-eighth price quotations on a substantial number of Nasdaq stocks, including some of the best known and most actively traded issues, such as Microsoft Corp., Amgen, Apple Computers, Inc., Intel Corp., and Cisco Systems, Inc. After the Christie/Schultz study had received wide-spread publicity, and shortly before the Department opened its investigation, several class action lawsuits alleging antitrust violations were filed against the defendants and other Nasdaq market makers.[2]

During the course of its investigation, the Department has reviewed thousands of pages of documents that were produced by the defendants and other market participants in response to over 350 Civil Investigative Demands (''CIDs'') issued by the Department. The Department has reviewed hundreds of responses to interrogatories that were submitted by the defendants (and others). The Department has taken over 225 depositions of individuals with knowledge of the trading practices of Nasdaq market makers, including current and former officers and employees of the defendants and other Nasdaq market makers, as well as officials and committee members of the National Association of Securities Dealers, Inc. ''NASD''), the organization responsible for oversight of the Nasdaq market.

The Department conducted numerous telephone and in-person interviews of current and former Nasdaq stock traders, Nasdaq investors, and others with relevant knowledge of the industry, and listened to approximately 4500 hours of audio tapes of telephone calls between stock traders employed by the defendants and other Nasdaq market makers. These audio tapes had been recorded by certain of the defendants (and other market makers) in the ordinary course of their business and were produced to the Department in response to its CIDs.

The Department has reviewed and analyzed substantial quantities of market data produced in computer—readable format by the NASD. These data include data showing all market maker quote changes on Nasdaq during a twenty-month period between December 1993 and July 1995, and for selected months thereafter, including March 1996. The Department also reviewed eighteen months of data on trades in Nasdaq stocks. Finally, the

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[1] The term ''Nasdaq'' was originally an acronym for the ''National Association of Securities Dealers Automated Quotation System.'' The automated quotation system is now operated by The Nasdaq Stock Market, Inc.

[2] All of the private cases have been consolidated and assigned to Judge Robert W. Sweet in the Southern District of New York, M.D.L. 1023.

Department reviewed numerous transcripts of depositions taken by the Securities and Exchange Commission (''SEC'') in a concurrent inquiry into the operations and activities of the NASD and the Nasdaq market since the fall of 1994.

Based on the evidence uncovered during this substantial investigative effort, the Department concluded that the defendants and others had been engaged for a number of years in anticompetitive conduct in violation of the Sherman Act, as is now alleged in the Complaint. The next section of this Statement will summarize the evidence that the United States believes supports the specific allegations in its Complaint.

III

Summary of Evidence in Support of Complaint

A. The Nasdaq Market

Nasdaq is a computerized public market in which investors buy and sell OTC stocks. It is the second largest securities market in the United States. Nasdaq is a ''dealer market.'' In a dealer market, a number of securities dealers ''make markets'' in the same stock. To ''make a market,'' securities dealers—or market makers as they are known—quote a price at which they are willing to buy a particular stock, and simultaneously quote another higher price at which they are willing to sell that same stock. The market makers on the Nasdaq ''dealer market'' are supposed to provide the investing public with ''immediacy'' or ''liquidity'' in competition with each other.[3] Thus, in principle, the orders of the investing public are supposed to be able to find the best available prices to buy or sell from many different market makers, who are supposed to be using their competing prices to attract those orders. To the extent that these market makers do not compete in this fashion, the investing public is disadvantaged.[4]

1. Dealer Quotes and the Dealer Spread

Nasdaq market makers publicize the prices at which they are willing to buy or sell a stock by entering those ''quotes'' for display on the Nasdaq computerized quotation system. The price at which a market maker is willing to buy a security is called its ''bid'' or ''bid price.'' The price at which a market maker is willing to sell a security is called its ''ask'' or ''ask price'' (or its ''offer'' or ''offer price''). Each market maker must simultaneously quote both a bid and an offer price. The difference between an individual market maker's bid price and its offer price in a specific security is known as its ''dealer spread.'' Thus, for example, if a market maker's bid price in a stock (the price it is willing to pay to buy stock from a customer or another market maker) is $20 and its offer price (the price at which it is willing to sell stock to a customer or another market maker) is $20¾, the market maker has a dealer spread in that stock of ¾ point (75 cents per share).

2. Inside Quotes and the Inside Spread

In the case of each Nasdaq stock, there are at least two market makers. On average, there are between ten and twelve market makers in each Nasdaq NMS stock, although the number of market makers in specific stocks varies widely. The Nasdaq computer screen collects and displays the bid and offer prices of all the market makers in each stock. The highest bid and the lowest offer from among the quotes of all the market makers in a stock are called the ''inside bid'' and the ''inside ask,'' or the ''inside quotes.'' The difference between the inside bid and the inside ask in a stock is called the ''inside spread.'' Thus, for example, it there are three market makers in a stock displaying the following bid and ask prices—

	Bid	Ask
Market Maker No. 1:	19½	20¼
Market Maker No. 2:	19¾	20½
Market Maker No. 3:	20	20¾

—the inside spread in the stock would be ¼ (25 cents), based upon the difference between Market Maker No. 3's high bid of 20 and Market Maker No. 1's low offer of 20¼.

As a general rule, market makers at any given point in time have a greater interest in buying than in selling a security, or vice versa. Market makers may reflect that interest in the quotes they post on Nasdaq. Market makers with a greater buying interest may, and often do, display a higher bid; market makers with a greater selling interest may, and often do, display a lower offer. It is extremely unusual to see a single market maker on both sides of the inside spread.[5]

3. The Importance of the Inside Spread

Market makers trade as principals with other market makers and also fill customer orders. Customer orders can be from retail brokers who route orders from investors seeking to buy (or sell) a small quantity of Nasdaq stock—referred to as ''retail customers''—or from a large institutional investor such as a mutual or pension fund seeking to buy (or sell) many thousands of shares of Nasdaq stock. If a customer does not limit or specify the price it will pay to buy (or accept to sell) a stock, which is the case of most orders received from retail customers, the order is called a ''market order.''

In executing a market order on behalf of a retail customer, market makers historically bought from the customer at the inside bid, and sold to the customer at the inside ask. This execution by the market maker satisfied the retail broker's obligation of ''best execution'' for the retail customers. For retail customers, the inside Nasdaq quote is the price at which most retail transactions with market makers in fact occurred.

Market makers' compensation is in large part derived from the spread—the difference between the price at which the market makers can buy and, in turn, sell the stock in question. Thus, when the inside spread is wider, the market maker receives more compensation, and the retail customer pays a higher price, for the market maker's services.

The width of the inside spread also affects institutional trades. While large institutional customers may be able to negotiate prices that are better than the inside spread, the inside spread influences many of the negotiations between the market maker and its institutional customers.

Market makers thus have a significant interest in each others' price quotes because those quotes can either set each others' actual transaction prices or

[3] Various other forms of public stock markets have arisen in the United States and elsewhere to provide the service of bringing together investor orders to buy and sell. The most commonly recognized form of organized stock market in the United States is the so-called ''auction market,'' such as the New York Stock Exchange or the American Stock Exchange. The auction market systems provide ''immediacy'' to the investing public by bringing all of the buy and sell orders for the stocks together on the ''floor'' of the exchange for execution. For each stock so traded on an exchange, the exchange designates a ''specialist.'' The job of the specialist is to match the public's buy and sell orders, and to the extent that there is an imbalance in those orders, the specialist is supposed to use his own capital to ensure that the market clears in an ''orderly'' fashion. The exchange specialist is by design a monopolist, and his role is heavily required.

[4] Not all market makers make markets in the same stocks. There are currently over 4000 stocks in the Nasdaq National Market System (''NMS''), and almost 2000 stocks in the Nasdaq Small Cap Market. The defendants trade man of the larger Nasdaq issues in common with one another.

[5] The inside spread in a stock is not always constant. Instead, as market makers display different bid and ask quotes, it may vary—possibly, for example, beginning at ⅛, widening to ¼, then to ⅜, narrowing to ¼ again and then back to ⅛.

significantly affect those prices. This creates an incentive for market makers to discourage bid and ask price competition that may have the effect of narrowing the inside spread. The evidence obtained during the Division's investigation shows that the market makers have discouraged competition, to great effect, through the adoption and enforcement of the quoting convention, as is discussed below.

B. The Quoting Convention

The Department's investigation uncovered the existence of a long-standing, essentially market-wide commitment among market makers to adhere to a two-part ''quoting convention'' that dictates the price increments a market maker can use to adjust or ''update'' bid and ask price quotes on the Nasdaq system. Under the first part of the quoting convention, if a market maker's dealer spread in a stock is ¾ point (75 cents) or wider, the market maker is required to quote its bid and ask prices in even-eighth increments (*e.g.*, ¼ (25 cents), ½ (50 cents), ¾ (75 cents) or 4/4 ($1).[6] This ensures that the inside spread in those stocks is maintained at ¼ point (25 cents), or greater.[7]

Under the second part of the quoting convention, market makers can quote bid and ask prices on Nasdaq in odd-eighth increments, *e.g.*, ⅛ (12.5 cents), ⅜ (37.5 cents), ⅝ (62.5 cents) or ⅞ (87.5 cents), only if they have a dealer spread of less than ¾ point. This requirement has deterred market makers from quoting bid and ask prices in odd-eighth increments because a narrower dealer spread is likely to create a greater economic risk to the market maker in trading that stock. When the difference between a market maker's bid and ask quotes is ½ rather than ¾, a market maker may be called upon to buy (or sell) more stock than the trader wants, or buy stock when the market maker wants to sell (or vice versa).

The fact that the quoting convention has existed for at least three decades in the OTC and Nasdaq markets was well-known throughout the industry, and fully described to the Department by a number of traders at prominent firms during the Department's investigation. These traders testified that they were taught to follow the convention, that they in fact followed it, and that they understood and expected traders at other firms to follow it as well. The following deposition excerpts are examples of the testimony on this subject obtained by the Department and the SEC during their investigations, from a variety of deponents. As one trader testified:

Q. If—if the firm spread in a particular stock is three-quarter-point or greater, the—when—when the firm moves its quote, it will move in increments of at least a quarter; is that right?

A. That's correct; in quarters, plural. So either one—you either move it up a quarter or up a half. You would not move it up three-eighths or five-eighths or anything.

Q. Right. And that—that's one convention.

A. That's correct.

Q. And another convention is that if the stock—if the firm spread in a stock is one half or less, the—the increment of movement of quotes would be in increments of an eighth.

A. That's correct.

Q. * * * generally speaking, these conventions have been understood and followed by market makers in the Nasdaq market; is that right?

A. Yes, to my knowledge.

Another trader described the convention as an ''historical relationship'' between dealer spreads and the size of quote increments:

Q. Let's come back to that in a little while. Is there a relationship between the width of the spread and the increment by which quotes are made?

A. Yes, there is a historical relationship. The width of the spread of a dealer and how quotes are made.

Q. What's the historical relationship that you're talking about?

A. That dealer spreads of a half a point historically trade in ⅛ of a point increment, and dealer spreads of ¾ of a point and higher historically have traded for ¼ of a point increment.

Another trader confirmed the operation of the quoting convention and its lengthy duration:

Q. And in terms of dealer spreads that were three-quarters, when the dealer spread was three-quarters, market makers moved in quarter point increments for a large number of years. Is that correct?

A. Traditionally, if your spread was three-quarters of a point or more, uh, you moved your market in quarter point increments.

Q. And that was because it was unprofessional to move in eighths without closing the dealer spread to a half; is that correct?

A. Yes, ma'am.

[A] And if the stock trades with a * * * you think you'll have to trade with a three-quarter point spread. Then you should be moving your quotation in quarter point increments. And it's one of those things I can't tell you why. It's something that I think all of us have been doing for a gazillion, G-A-Z-A-L-L-I-O-N years, certainly for 30 years, and it has everything to do with the professional appearance of that, that marketplace.

The evidence adduced by the Department does not disclose the origin of the quoting convention. No deponent was found who could testify as to how or precisely when the quoting convention began, although numerous witnesses testified that the Nasdaq market had operated under this ''tradition,'' or ''practice,'' or ''convention'' for many years. There is no evidence that the quoting convention was the result of an express agreement reached among all of the market makers in a smoke-filled room. Nevertheless, there is substantial evidence that this quoting convention—however it arose—distilled or hardened over time into the very type of ''agreement'' condemned by the Sherman Act—a ''conscious commitment to a common scheme designed to achieve an unlawful objective,'' which has restrained price competition among the defendants and others in the Nasdaq market. *See Monsanto Co.* v. *Spray-Rite Serv. Corp.* 465 U.S. 752, 764 (1984).

Additional evidence of agreement to adhere to the quoting convention, alleged in the complaint and summarized briefly below, includes: (1) market data demonstrating that defendants' price quoting behavior was remarkably and unnaturally parallel, and in conformance with the quoting convention; (2) evidence showing that the quoting convention was vigorously enforced through industry-wide peer pressure, and intimidating telephone calls to, and refusals to deal with, market makers who did not quote bid and ask prices in conformance with the convention; (3) evidence that it was not in the economic self-interest of market makers to rigidly adhere to the quoting convention to the degree they did, absent the understanding that all other market makers would comply; (4) market data showing that market makers began to change their price quoting practices when confronted by the adverse publicity from the Christie/Schultz study and the increasing

[6] All Nasdaq stocks may be quoted in ⅛ point increments.

[7] That the use of only even-eighths will result in a minimum inside spread of no less than ¼ point can be shown simply. If market makers always move in quarter-point increments, and all initiate their bid and ask quotes on even-eighths, all odd-eighth quotes will have been eliminated from the number set. The set of numbers remaining—whole numbers, ¼, ½, and ¾—would be the only numbers on which market maker quotes could fall. Hence, the difference between those even numbers would also be an even number, meaning the inside spread could not narrow to less than ¼ point.

pressures from the government investigations; and (5) market data showing that market makers used an electronic trading system known as Instinet on which to quote and trade, at odd-eighth prices, the same Nasdaq stocks that they quoted only in even-eighths on the Nasdaq system.

The evidence addressed in each of these points is of the type that courts have found sufficient to establish an agreement in violation of Section 1 of the Sherman Act, as is discussed briefly below.

C. Defendants' Adherence to the Convention is Confirmed by Market Data

Until confronted by the adverse publicity from the Christie/Schultz study and the increasing pressure from government investigations, the defendants routinely, and with rare exceptions, adhered to the quoting convention. As a result, their price quoting behavior was remarkably and unnaturally parallel. Despite the hundreds of thousands of bid and ask prices that were quoted by the defendants (and other market makers) on the Nasdaq system, very few odd-eighth prices were entered in stocks in which defendants' dealer spreads were ¾ point or wider. When defendants entered odd-eighth quotes in these stocks, those quotes were largely mistaken entries—usually of short duration, and promptly corrected.

The market data analyzed by the Department during its investigation show this adherence to the quoting convention. The Department based its analysis on the NASD's Market Maker Price Movement Reports (''MMPMRs''), which contain detailed information regarding the price quotes by market makers for all Nasdaq stocks, and the NASD's Equity Audit Trail Report, showing all trades by all market makers in all stocks. The Department received from the NASD monthly MMPMR data for the period December 1993 through July 1995, plus September and December 1995 and March 1996. To create a manageable subset of these data, the Department used the Equity Audit Trail to calculate the volume, in dollar terms, for all Nasdaq stocks for the eighteen months from February 1994 through July 1995. From these calculations, the Department selected the 250 stocks with the largest dollar volume of transactions for these eighteen months. Twenty-six stocks were excluded from this sample,[8] resulting in the final data set of 224 of the top-dollar volume Nasdaq stocks during the defined time period.

An analysis of quotes in the 224 stock sample shows the dramatic extent to which the defendants avoided odd-eighth quotes in Nasdaq stocks. As shown in Exhibit A, in early 1994, fully 65–70% of the sample, had virtually no odd-eighth bid and ask price quotes.[9] Exhibit B illustrates that the defendants achieved this unexpected result by systematically avoiding odd-eighth quotes in stocks with dealer spreads of ¾ point or more. The remaining 30–35% of stocks in the sample generally had dealer spreads less than ¾ and were quoted in both even- and odd-eighths. Thus, the sample reflects almost uniform adherence to the convention.

By way of further illustration, Exhibit C demonstrates the systematic avoidance of odd-eighth quotes in ten of the largest volume stocks on Nasdaq. The fact that there are virtually no odd-eighth bid and ask prices quoted in some of the most heavily traded stocks on Nasdaq is remarkable, particularly when one considers that each market maker is likely updating its price quotes in these stocks numerous times each day. This unnatural price parallelism provides some—but not conclusive—evidence of an antitrust agreement in violation of Section 1 of the Sherman Act. See *e.g., Theatre Enters., Inc.* v. *Paramount Film Distrib. Corp.*, 346 U.S. 537, 540 (1954), and *Apex Oil Co.* v. *DiMauro*, 822 F.2d 246, 258 (2d Cir. 1987).

D. The Evidence Shows That Defendants Enforced the Quoting Convention Through Peer Pressure, Intimidation, and Refusals to Deal

The Department's investigation has uncovered substantial evidence that Nasdaq market makers have enforced the quoting convention by reminding, pressuring, harassing, and intimidating each other into conformity.[10] The quoting convention protocol was elevated to the status of a ''professional'' or ''ethical'' rule. The industry even coined a derisive term—''Chinese market''—as a shorthand to describe a market in which a trader has entered a quote inconsistent with the established patterns. And the evidence indicates that market makers have attempted to punish economically those market makers who deviate from the agreed-upon pricing norms. Under *Ambook Enterprises* v. *Time, Inc.*, 612 F.2d 604 (2d Cir. 1979), *cert. dism'd*, 448 U.S. 914 (1980), *United States* v. *Foley*, 598 F.2d 1323 (4th Cir. 1979) *cert. denied*, 444 U.S. 1043 (1980); *In re Nasdaq Market Makers Antitrust Litigation*, 894 F. Supp. 703 (S.D.N.Y. 1995); and *united States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 161 (1948), the trier of fact may draw an inference of an antitrust agreement, where coercion is proved in addition to unnatural uniformity of pricing.

1. Violating the Quoting Convention Was Considered to Be ''Unprofessional'' or ''Unethical''

The Nasdaq market is highly interdependent, making it easy to enforce compliance with ''professional'' quoting standards. Market makers rely on each other to provide order flow, information, and cooperation to help them trade positions profitably. They actively work to develop and maintain friendly relationships with traders from other firms. Traders do not want other market makers to perceive them as being uncooperative, ''unethical,'' or ''unprofessional'' because that very perception may result in their loss of access to the trader networks that provide order flow, information, and cooperative trading opportunities. Retaliatory actions—even simply putting offenders ''last in line'' when buying or selling stock—serve to deter vigorous competition and punish market makers who violate the unwritten ''ethical'' and ''professional'' requirements of the Nasdaq market.

Over the years, it has become well-known throughout the industry that violating the convention—in the parlance of the traders, ''breaking the spread''—is considered to be ''unprofessional'' or ''unethical'' trading behavior. Market makers who deviate from the convention are derisively said to be creating a ''Chinese market.'' Numerous witnesses testified to this fact. One trader defined a ''Chinese market'' as follows:

Q. Let me understand what you mean by a Chinese market. What's the definition you're giving to the term—

A. That's when you have a ¾ point spread and you move in ⅛th of a point increments.

Another trader testified that market makers were trained not to put in quotes

[8] The twenty-six excluded stocks were all priced at less than $10, and, as a result, could be quoted in ''sixteenths'' (1/16 point increments) on Nasdaq.

[9] The Department's findings, although covering a different time period and a different sample of stocks, were consistent with the Christie/Schultz study, which found virtually no odd-eighth price quotes in approximately 70% of the stocks in their sample.

[10] The structure of the Nasdaq market facilities detection of deviations from the well-understood quoting convention. All Nasdaq price quotes by all market makers are entered on the Nasdaq computer system and are immediately known to those interested. Thus, deviations are obvious, and can be responded to immediately.

that created Chinese markets, because they were deemed ''unprofessional'':

[Q] And through the period December '93 through December of '94, do you observe the market makers entered very-relatively few odd-eighths. And by that, I mean with perhaps one or two exceptions, under 10 percent of their quotes were odd eighths in McCormick.

A. Yes, ma'am.

Q. And again, is that, in your professional opinion, because those market makers had three-quarter point dealer spreads and did not want to enter what were termed ''unprofessional markets''?

A. Yes, ma'am.

Q. How is it that all of the market makers knew that entering an odd eighth quote could be unprofessional?

* * * * *

A. Young traders were trained over the years not to put in unprofessional markets, ''Chinese markets.'' * * * * * * * * *

This was part of the—of the traditional and ethical on-the-job training that all of us got, and it ecompasses not only that you don't put in unprofessional-looking ''Chinese markets,'' it * * * grew out of a self-imposed industry standard of ethics and conduct. So that's my answer as to why everybody seems to be doing this, because most of the people were trained the same way.

Another trader acknowledged that the term Chinese market referred to what the industry considered ''unethical'' trading practices:

Q. Have you ever heard that people using the term—strike that. Would somebody making a Chinese market cause another market maker to be angered?

A. I believe that's possible.

Q. Under what circumstances?

A. I think that in—like I said before, in coming up, I think Chinese markets, as they're called, were looked down upon so are considered unethical. so by making a Chinese market, You're making yourself unethical and, therefore, I guess upsetting other market makers.

That it was deemed unethical to ''make a Chinese market'' was even publicized in a newsletter published by the Security Traders Association of New York (''STANY''), the largest regional affiliate of the Security Traders Association (''STA''), the principal national trade association for securities trading professionals. STANY'S quarterly newsletter for the third quarter of 1989 reported on the presentations at an ''Ethics Conference'' held in April 1989. The article misreported that a speaker had said that ''making a Chinese market'' was ''clearly ethical.'' To correct the incorrect report, STANY published an ''update,'' at the top of which was printed, in large type, the following ''Editor's Note'':

In the recently issued STANY NEWSLETTER, we are certain you will realize that * * * was grossly misquoted when a portion of his speech was extracted for publication. A corrected copy is featured below.

As * * * and you are all aware, it is clearly UNETHICAL to make a Chinese Market or to run ahead of an order. (emphasis and Caps in original of word ''unethical'')

The evidence shows that peer pressure was used by market makers to ensure that so-called ''professional'' and ''ethical'' pricing standards were maintained. Trader testimony also demonstrates that ''peer pressure'' was effective in keeping spreads wide.

2. Phone Calls Were Used To Obtain Compliance

Much of the business of Nasdaq traders is done on the telephone. Thus, it is not surprising that phone calls were employed market-wide to secure compliance with the quoting convention. At times, all that was needed to correct a Nasdaq trader's nonconforming spread or quote was a simple ''friendly'' inquiry, as illustrated by the following evidence. As one trader testified:

Q. Did you ever see other firms, when you were watching trading on the NASDAQ screen, make Chinese markets?

A. Uh-hum. Yes.

Q. What was your reaction when you would see that?

A. Didn't like it.

Q. What would you do?

A. I'd call them up and say, would you please close your spread? If you're going to bid that price, close your spread.

Q. Meaning what?

A. If you're going to bid that—you know, that eighth, close your spread to a half a point.

In response to the Department's interrogatories, another firm stated:

[A trader] recalled that once, when she first started trading (probably a year or two ago) she intended to update her market in Chiron CP (CHIR) by moving from the offer to the bid after her offer had been taken by another trader, but she mistakenly moved up ⅛ instead of ¼. Subsequently, a [trader from another firm] called and asked why she was quoting in ⅛s. [The trader] checked her quotes, realized she had not fully updated her market, and moved up an additional ⅛.

On other occasions, traders resorted to more intimidating telephone calls to exact compliance with the quoting convention. Some of the more dramatic examples of these were captured on the audio tapes that were produced by the defendants, as the following example illustrates:

Trader 1: Who trades CMCAF in your place without yelling it out?

Trader 2: * * * Sammy

Trader 1: Sammy who?

Trader 2: It may be the foreign department * * *

Trader 1: What?

Trader 2: The foreign didn't realize they had to trade it.

Trader 1: Well, he's trading it in an eighth and he's embarrassing * * *

Trader 2: * * * foreign department

Trader 1: He's trading it in eighths and he's embarrassing your firm.

Trader 2: I understand.

Trader 1: You know. I would tell him to straighten up his [expletive deleted] act and stop being a moron.

The record of the investigation is replete with proof that market makers used the telephone to secure compliance with their understandings about ''proper'' quoting protocols.[11] Indeed, a NASD employee responsible for interacting with the market making community recognized that telephone calls, which he described on one occasion as ''price fixing calls,'' were frequently used to enforce compliance with the quoting convention.

3. Refusals to Trade Were Used to Punish Maverick Market Makers

Firms that repeatedly enter quotations in violation of the quoting convention were subject to other types of discipline, with a more direct economic impact on their businesses. The most effective such discipline was refusal to deal.

A refusal to deal in the context of the Nasdaq market has far reaching consequences for a market maker. Market makers are competitors to attract order flow, but they also frequently trade with one another. When a market maker does not want to fill a retail or institutional order from its own account, it must be able to find other market makers willing to fill those orders; otherwise, its retail and institutional clients will soon look elsewhere for trading services. Similarly, a market maker must be able to go to other market makers to lay off risk from long or short

[11] However, evidence of enforcement activity varies significantly from firm to firm.

positions.[12] Consequently, the mere threat that other firms will not trade with them was often sufficient to discourage market makers from violating the convention.

Maverick market makers that improved the best quote often would not get an execution, even though other orders were being filled at the maverick's quoted price. This refusal to trade is referred to in the industry as ''trading around.'' The same maverick firm would also frequently notice orders being filled at inferior prices to the prices they had quoted on Nasdaq when their quotes were inconsistent with the quoting convention. This practice is known as being ''traded through.'' The effect of being ''traded through'' or ''traded around'' taught traders that there was no benefit to improving the market by an odd-eighth in a stock with a ¾ point or wider dealer spread because their orders would not be filled, or would be filled only when the market reversed directions.

Maverick firms were also subject to ''backing away'' and being made ''last call'' by other firms. ''Backing away'' involves the failure of one market maker to honor its posted quote to another market maker, as required by SEC and NASD rules. Firms that violated the quoting convention were more subject to ''backing away'' by other firms. Being made ''last call'' involves only trading with the maverick market maker when the market begins to turn against the maverick, or when a firm has no other alternative but to trade with the maverick. Mavericks also observed that they were made ''last call.''

4. Market Makers Fully Understood the Significance of the Quoting Convention and Its Enforcement in Maintaining Wide Spreads on Nasdaq

The effect of the quoting convention in maintaining wide spreads on Nasdaq was known even to employees and members of the industry's self-regulatory organization, the NASD; moreover, the NASD recognized the causal connection between widening spreads on Nasdaq and ''peer pressure'' applied to keep spreads wide.

The Department discovered during its investigation that, in the spring of 1990, the NASD's Trading Committee [13] began to address ''the problem of spreads.'' The issue became a matter of concern because the New York Stock Exchange (''NYSE'') had begun to use the fact of wide spreads on Nasdaq to attract issuers to the NYSE. In a meeting on June 27, 1990, Trading Committee members discussed the widely understood effect of the quoting convention and the notion of ''Chinese markets'' as contributing to wider spreads. According to notes of the meeting, a member of the committee—representing a small market making firm—indicated that market makers got calls from big firms when they ''broke spreads'' or made ''Chinese markets.'' In his view, the problem was the ''arrogance of mandate'' exercised by the larger firms.

In his testimony before the Department, this senior Trading Committee member confirmed that traders from competing firms discussed the quoting convention and Chinese markets at this meeting. In addition, he testified:

A. I think the establishment of this acceptance of spreads [sic]. And I think it went way back. My opinion and what I was trying to get across, and maybe didn't do, was that this was a historical thing. This is something that had evolved from trading in the '50s and the '60s and the '70s and so forth. And that everyone accepted this protocol, that a spread is a spread is a spread. And it's not your place to change it.

The spread is a result of almost a God given natural phenomenon. That it is not some up-stark [sic] traders place to change that. That was the accepted protocol for years and years and years, to my knowledge.

And so I was trying to get across that that's where we have been. And to try to break that protocol and change it would have gotten a call from some old—somebody that had been around for a long time saying, hey, don't break the spread. That shouldn't be anymore.

My lesson, that I was trying to bring, is that can't—we can't be doing that in the 90's. No one can be, no matter how arrogant they may think of themselves, no matter who it is, whether it is the biggest money firm on Wall Street or the person with the biggest money commitment. No matter who they are, they should not be allowed to intimidate you. If you want to break a spread that is your prerogative.

Q. And is it your best interpretation of this problem with arrogance and mandate, the fact that there was certain arrogance in the industry about spreads and that if you try and alter spreads, you get telephone calls. Is that the general gist of that?

A. I think that the word arrogance would have to do with a trader's—either his impression of himself or his firm, that he was big enough to influence someone not to narrow spreads. But that is the only way I can conceptualize how to use the word arrogance, which was used.

Subsequent to this meeting, the Quality of Markets Subcommittee of the Trading Committee was formed to examine two issues, one of which was the ''spreads problem.'' The Quality of Markets Subcommittee was composed exclusively of representatives of leading market-making firms; however, certain NASD staff attended these meetings as well. At one such meeting, on March 24, 1992, a NASD staff member took notes. These notes indicate that the participants at the March 24 meeting discussed the quoting convention, Chinese markets, and the fact that market makers who tightened spreads were subjected to ''intimidation'' from others. This meeting apparently led to the NASD's hiring of an industry consultant to help explain ''Why does the 'Chinese market' syndrome has [sic] such impact on NASDAQ while listed markets seem to continuously quote in combinations of ⅛'s, ¼'s.''

On June 30, 1992, having completed his research into the ''spreads problem,'' an NASD employee wrote a memorandum entitled simply ''Spreads,'' and sent it to the NASD senior management group. The memorandum stated, in pertinent part:

Spreads increased absolutely from the 1st Quarter of 1989 to May 1992 from .226 to .369. The % increase was 63%. Our method of calculating spreads i.e. volume weighted, actually portrays the situation better than it actually is. A stock by stock comparison would be worse.

3. Unlike auction markets, dealers do not change prices one side at a time and there is a stigmatism [sic] associated with making so called ''Chinese'' markets * * * [n]o one attempts to do just a ''little'' better with their published quote change * * *

* * * I understand that when attempts are made by individual dealers to [narrow spreads], peer pressure is brought to bear to reverse any narrowing of spreads. I have no hard evidence of this and the information is only anecdotal and this was not described as happening in every case. However, enough people have said it for me to believe it to be true.

Spreads became a more troubling topic for the NASD, as well as the

[12] A ''short'' position occurs when a trader sells stock that he or she does not own. A ''long'' position occurs when a trader owns stock that is not pledged for sale to a customer or another market maker.

[13] The Trading Committee, which consisted largely of market makers, was one of the most powerful of the NASD's ''self-regulatory'' committees. It was the principal committee responsible for recommending changes to the NASD Board of Governors in the trading rules governing Nasdaq.

market-making community in general, following the publication in August 1993 of a *Forbes* magazine article entitled ''Fun and Games on Nasdaq.'' The article alleged, among other things, that market makers who narrowed spreads were harassed:

[N]ovice traders learn quickly that if they want to keep their jobs on an OTC desk, they will do well not to beat the price of fellow market makers. Breaking the spread, as it is called, just isn't done. One veteran who tried on occasion to narrow an OTC spread told Forbes, ''I used to get phone calls from people. They'd scream, 'Don't break the spread. You're ruining it for everybody else.' ''

Asked to give his input about these charges, a NASD employee detailed, point by point, the merits of the claims. With respect to the allegations of harassment, he wrote: ''I believe this to be true.''

E. Adherence to the Convention Was Often Inconsistent With the Market Makers' Economic Self-Interest

Under the law, if the behavior dictated by a hypothesized antitrust conspiracy is economically ''irrational,'' or makes no sense, or is contrary to independent self-interest unless the conspiracy posited actually exists, a court may find an agreement in violation of the antitrust laws. In other words, actions against economic self-interest are a ''plus factor'' which would support a judgment in favor of the United States in the case filed:

''Plus factors'' identified by courts, which, in combination with parallel pricing, may support an inference of conspiracy, include a common motive to conspire, actions which were against their own individual business interest absent an illicit agreement, and evidence of coercion.

In re Nasdaq Market-Makers Antitrust Litigation, 894 F.Supp. at 713. *See also Modern Home Ins.* v. *Hartford Acc. & Indem. Co.,* 513 F.2d 102, 111 (2d Cir. 1975), *Beech Cinema Inc.* v. *Twentieth Century-Fox Film Corp.,* 622 F.2d 1106 (2d Cir. 1980), and *Ambook Enterprises* v. *Time Inc., supra.*

The terms of the quoting convention contain a self-enforcing mechanism designed to foster, support, and maintain wide inside spreads. As noted, under the quoting convention, market makers who wish to quote an even-eighth stock in odd-eighth increments (thereby creating a powerful tendency toward a narrower, ⅛ inside spread) must first narrow their dealer spreads. Narrowing one's dealer spread imposes a ''penalty'' or cost on the use of odd-eighth increments because a narrower dealer spread can increase the financial risk to the market maker in trading that stock, as was recognized by one trader in deposition testimony:

Q. What would be the advantage to a market-maker to have a greater dealer spread in a stock?

A. Less apt to be hit or taken, therefore putting in an unwanted position.

Q. That would be in response to a market move they had not anticipated?

A. That is correct.

Q. Is there sort of a monitoring cost of the stock that is reduced if you have a wider dealer spread?

A. I guess you could say that. It would be easier to stay out of the way.

Q. You can characterize it as either a greater risk of being hit when you don't want to be hit or a greater burden of avoiding that result?

A. Having a tighter spread?

Q. Right.

A. Correct.

Another trader also succinctly explained the risk imposed by a narrower dealer spread:

[A] ''What are the ramifications [of a narrower dealer spread]? Yes, I may have been able to buy stock at an eighth. But on the other hand * * * if you shrink your dealer spread you are subject to more risk in terms of being SOES'ed and everything else, there was a penalty for me to increase my price [by an eighth] and decrease my spread.''

Because of this increased risk, it is often against a market maker's economic self-interest to narrow its dealer spread simply to quote in an odd-eighth increment. The requirement that a market maker reduce its dealer spread when quoting in eighths had the effect of discouraging use of odd-eighth increments; thus the quoting convention kept spreads wider for longer than they would have been in competitive market.

There were and are numerous instances in which one would have expected to see odd-eighth quotes in order to, for example, seek to transact at a more favorable price than would be generated by a quarter-point increase in a bid price or a quarter point decrease in the ask price. Yet adherence to the quoting convention kept market makers from acting in their economic self-interest by entering odd-eighth quotes in such circumstances. Traders acknowledged as much in their deposition testimony, as noted by the following examples:

[Q] * * * This is what's giving me trouble. If you can buy something at an eighth by only going up an eighth, why bother to go up a quarter? I guess that's what confusing me.

A. Well, that, I think, speaks to the professional appearance concept and the tradition, if you will, concept, that even if I'm not dealing for a client, I may be short the stock. I am going to move that market at a quarter-point increment; even though I would much rather buy it at an eighth, I am not going to put a bad market or an unprofessional-looking market in the screen.

Another trader testified:

Q. In the absence of the convention, would there have been circumstances that [you] wanted to quote in odd eighth?

A. Yes, probably.

Market makers understood they were giving up the opportunity to quote stocks in odd-eighths in exchange for increased profits for the market-making community as a whole, provided all market makers adhered to the convention. This trade-off was acknowledged in a tape-recorded telephone conversation in which one trade's assistant noted: ''[A]t the same time * * * you always wanted to wish you could always to offer it at ⅞ths,'' and the other trader's assistant replied, ''True,'' ''but you'd give that wish up in a second to keep the spread * * * keep that P&L nice and lofty.''

F. Market Makers Began To Change Their Price Quoting Behavior When Confronted with Charges of Collusion and the Government Investigations

Under established law, evidence of a significant change in behavior of alleged conspirators is admissible to provide the existence of a conspiracy. *See United States* v. *Koppers Co.*, 652 F.2d 290 (2d Cir. 1981); *Ohio Valley Elec. Corp.* v. *General Elec. Co.*, 244 F.Supp. 914 (S.D.N.Y. 1965). The fact that market makers for years used the quoting convention to maintain wide inside spreads is further evidenced by the change in their price quoting behavior once their anticompetitive conduct began to come to light.

On May 24, 1994, the NASD, STA, and STANY convened a meeting at the headquarters of Bear Stearns & Co. in New York that was attended by over 100 market maker representatives. The principal item on the agenda for that meeting was the issue of wide spreads on Nasdaq. Three days later, after public disclosure of the Christie/Schultz study by the Los Angeles Times and the Wall Street Journal, dealer spreads of a number of major Nasdaq stocks began to narrow. Within one week, the prevailing dealer spreads of four of the most prominent Nasdaq stocks—Microsoft, Apple, Amgen, and Cisco—had narrowed from ¾ to ½ point, and market makers accordingly began

entering odd-eighth quotes in those stocks.[14]

Other events occurred throughout the remainder of 1994 that effected changes in the market makers' quoting and pricing behavior. These included the filing of several class-action lawsuits immediately after disclosure of the Christie/Schultz study; the opening of the Department's investigation in the summer of 1994; the Los Angeles Times six-part series in October 1994 concerning allegations of collusion on Nasdaq; and the public announcement of the SEC's inquiry in November.

The Department's analysis of market data, as discussed below, shows that these events have caused changes in the Nasdaq market: the percentage of stocks that previously avoided odd-eighth quotes has fallen dramatically; average dealer spreads and inside spreads have decreased; and the percentage of stocks that have been quoted in violation of the convention—*i.e.*, using an odd-eighth price with a dealer spread of ¾ point or greater—has risen substantially. These changes indicate that there was no satisfactory economic reason for the extent of the wide spreads that had prevailed so persistently in the previous years.

1. The Decline in the Avoidance of Odd-Eight Price Quotes

Attached as Exhibit A is a chart that demonstrates graphically the extent to which market makers have begun to use odd-eight price quotes in stocks where such quotes were previously avoided. This chart is based on the Department's data set previously discussed—224 of the top-dollar volume Nasdaq stocks. As the chart demonstrates, prior to disclosure of the Christie/Schultz study, nearly 70% of the stocks from the sample avoided odd-eight price quotes at least 99% of the time; in March of 1996, only approximately 15% of the sample avoided odd-eights to this extreme degree.

2. The Decline in the Average Inside Spread

The striking decline in the avoidance of odd-eights and dealer spreads runs almost exactly parallel to a decline in the average inside spread in Nasdaq stocks. The Department examined the average quoted inside spread by month for the 224 stocks in its sample. See Exhibit E. The peak month was December 1993, when the average inside spread reached 44 cents (although April 1994 was nearly as high). Subsequently, from May 1994 through March 1996, the average inside spread continued to fall steadily. By March 1996, it had fallen to 32 cents, a decline of almost 28% in approximately two years.

The Department has also calculated the average percentage value of the inside spread as a proportion of a stock's price for the same stocks in the same period. See Exhibit F. This analysis reveals an even sharper decline, with this value declining from as high as 1.6% to less than 1% in September of 1995, increasing slightly to 1.04% in march 1996.[15]

3. The Decline in Adherence to the Quoting Convention

The Department has also examined whether market makers, in fact, adhered to, and whether they have continued to adhere to, the quoting convention that prohibits the use of odd-eights when the dealer spread is ¾ point or greater.

The Department determined the percentage of the 224 stocks that violated the quoting convention at least 1% of the time in each month. See Exhibit G. In December 1993, only 5% of the 224 stocks traded had violations of the convention by the 1% standard. By June 1994, following the Christie/Schultz disclosure, this proportion jumped to 10%. The proportion of stocks that violate the quoting convention has continued to increase until March 1996, when fully 45% of all stocks from the sample violated the convention at least 1% of the time. These results are even more dramatic when it is recognized that use of dealer spreads of ¾ point or more has fallen significantly during the same period, thereby reducing the number of situations in which market makers could violate the convention by quoting odd-eights.

J. The Market Makers' Pricing Behavior Was Different in a Comparable Market

Evidence of a conspiracy may be inferred from the difference in competitive performance between two comparable markets. Professor Areeda describes this type of evidence, and its value, in his treatise:

If two markets are identical in every respect (other than the possibility of conspiracy), then substantially less competitive performance or behavior in one of them must be attributable to a conspiracy. The logic is unassailable * * *.

Even without exact identity in every respect, conditions preventing tacit price coordination in one market should have the same effect in a substantially similar market. Accordingly, if a given set of rivals maintains relatively competitive prices in one of those markets but not in the other, then an extra factor—such as an explicit agreement—must explain the significantly less competitive prices in the other market.

Areeda, *Antitrust Law*, ¶ 1421, 132 (1986) (emphasis added). See also, Petruzzi's IGA Supermarkets v. Darling-Delaware Co., Inc., 998 F.2d 1224 (3d Cir. 1993).

Although the quoting convention prevented market makers from quoting even-eight stocks in odd-eights on Nasdaq, it did not constrain them from entering odd-eight quotes for the same stocks on Instinet. Instinet is an electronic market that permits broker dealers and institutions to enter orders anonymously to buy and sell and execute against those orders. In many ways, it is comparable to the Nasdaq market. The same stocks are traded by the same market makers at the same time. The size of the trades and quotes on the two systems are very similar as well.

Quotes on Instinet, however, are quite different. They are much more likely to be at an odd-eighth, and are usually inside the inside spread on Nasdaq. The Department examined the ten largest trading volume stocks for which odd-eighth quotes rarely appeared on the Nasdaq screen during the first 20 days of May, 1994. See Exhibit C. On Instinet, however, the defendants used odd-eighth prices routinely, some 40% to 50% of the time. See Exhibit H.

The substantial use of Instinet to quote and transact at odd-eighths relates to the fact that (1) it is anonymous, which allowed market makers to quote

[14] Attached as Exhibit D are charts that show the dramatic changes in the quoting on these major stocks, going from virtually no odd-eighth quotes to a substantial number almost overnight.

[15] In the twelve months since public disclosure of the Christie/Schultz study, the average inside spread for Nasdaq National Market System stocks fell 15.6 percent from 34.6 cents to 29.2 cents. (These data were obtained from the NASD's internal, monthly, ''Stat Book,'' for December, 1994 and May, 1995, obtained by the Department in discovery in this investigation.) For the Department's sample of 224 stocks, the average inside spread fell 27.3 percent from 44 cents to 32 cents. Not all investors pay the quoted spreads, but many—especially small, retail investors—do.

Institutional investors also are affected by the quoted inside spread on Nasdaq. The effect of the quoting convention on institutional customers is demonstrated by the change in effective spreads of transactions by firms that specialize in institutional trading. The Department calculated the decline in effective spreads for Apple Computers, Inc., from May to June 1994, for eight such firms. The average effective spread fell from 18.8 cents to 11.4 cents when the inside spread on Apple dropped from ¼ to ⅛ in those months. The term ''effective spread,'' as used here, measures spread costs based on the difference between actual transaction prices and the mid-point of the inside spread. The effective spread in a security is an accepted measure in financial economics to determine the spreads actually paid by customers.

and transact at odd-eighths without provoking a reaction from other market makers, and (2) quotes entered on Instinet have historically been viewed as not affecting their best execution obligation. A quote on Instinet, then, would not require other marker makers to transact at that price for other trades. In addition, Instinet is unavailable to retail customers,[16] which allowed market markers to transact with other market makers and institutions at better prices than those on the Nasdaq screen at which retail customer trades were executed.

IV

Explanation of the Proposed Order

Prohibited conduct. The proposed Order will deter the recurrence of conduct discovered by the Department in its investigation that violates Section 1 of the Sherman Act and that is plainly anticompetitive. Specifically, the proposed Order bars each of the defendants, unless otherwise specifically permitted, in connection with its market making activities in OTC stocks, from agreeing with any other market maker:

(1) To fix, raise, lower, or maintain quotes or prices for any Nasdaq security;

(2) To fix, increase, decrease, or maintain any dealer spread, inside spread, or the size of any quote increment (or any relationship between or among dealer spreads, inside spreads, or the size of any quote increment), for any Nasdaq security;

(3) To adhere to a quoting convention whereby Nasdaq securities with a three-quarter (¾) point or greater dealer spread are quoted on Nasdaq in even-eighths and are updated in quarter-point (even-eighth) quote increments; and

(4) To adhere to any understanding or agreement (other than an agreement on one or a series of related trades) requiring a market maker to trade at its quotes on Nasdaq in quantities of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market; [17]

In addition, the proposed Order bars each of the defendants from engaging in any harassment or intimidation of any other market maker because such market maker:

(1) decreased its dealer spread or the inside spread in any Nasdaq security;

(2) refused to trade at its quoted prices in quantities of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker; or

(3) displayed a quantity of shares on Nasdaq greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker.

Finally, paragraph (8) Section IV of the proposed Order bars the defendants from refusing, or threatening to refuse to trade (or agreeing with or encouraging any other market maker to refuse to trade) with any market maker at defendant's published Nasdaq quotes in amounts up to the published quotation size because such market maker decreased its dealer spread, decreased the inside spread in any Nasdaq security, or refused to trade at its quoted prices in a quantity of shares greater than either the Nasdaq minimum or the size actually displayed or otherwise communicated by that market maker.

Required Conduct. The proposed Order contains numerous provisions designed to ensure compliance with its terms and with the federal antitrust laws. Significantly, it requires that each defendant initiate and maintain an antitrust compliance program. Under the compliance program, an Antitrust Compliance Officer, to be appointed by each defendant, is required to distribute copies of the proposed Order to certain personnel, including members of the defendant's board of directors and its Nasdaq traders; to brief traders semi-annually on the meaning and requirements of both the federal antitrust laws and the proposed Order; and to obtain from specified persons, including traders, certifications that they have read and agree to abide by the terms of the proposed Order, and that they have been advised and understand that a violation of the proposed Order by them may result in their being found in civil or criminal contempt of court.

The proposed Order also requires each defendant to undertake a significant program of monitoring and recording trader conversations so as to discourage conduct violative of the proposed Order and the federal antitrust laws generally. Under the proposed Order, each defendant will install taping systems capable of monitoring and recording any conversation on the telephones on its OTC desk that are used in market making. Not less than 3.5% of all trader conversations will be monitored and recorded, unless such percentage would exceed 70 hours per week. Thus, 70 hours per week is the maximum amount of taping required of any defendant. Between 35–40,000 hours of tape will be required to be recorded annually to meet these requirements of the proposed Order. The methodology proposed to be employed by each defendant to conduct this monitoring and recording is subject to Department approval. If the Antitrust Compliance Officer discovers a conversation he/she believes may violate the proposed Order, he/she is required to retain a recording of the conversation, and, within ten business days, to furnish the tape, along with any explanation of the conversation the defendant may care to offer, to the Department. The Department estimates that defendants will have to employ approximately thirty (30) persons full time to fulfill the monitoring requirement of the proposed Order.

Tapes made pursuant to the proposed Order are required to be retained by each defendant for at least 30 days from the date of recording. The tapes made pursuant to the proposed Order are not subject to civil process except for process issued by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization. The proposed Order directs that such tapes not be admissible in evidence in civil proceedings, except in actions, proceedings, investigations, or examinations commenced by the Antitrust Division, the SEC, the NASD, or any other self-regulatory organization. The tapes will be subject to process and use in criminal proceedings under the terms of the proposed Order.

Section IV.C.(6) of the proposed Order, regarding permissible uses of tape recordings made pursuant to the proposed Order, does not affect the ability of a grand jury to obtain such tapes. Nor does the provision affect the susceptibility of such tapes to criminal process or their admissibility in evidence in criminal proceedings.

The proposed Order grants the Department the right to visit any defendant's place of business unannounced and to monitor trader conversations as they are occurring. Upon request of the Department, a defendant must identify all tape recordings made pursuant to the proposed Order that are in its possession or control, provide the Department with the opportunity to listen to any tape recording made pursuant to the proposed Order, and produce to the Department such tapes as the Department may request. The Department may receive complaints or referrals concerning asserted possible violations of the proposed Order and

[16] Instinet is available to brokers, market makers, and institutional investors.

[17] The reference to agreements ''other than an agreement on one or a series of related trades'' is intended to make clear that a market maker is not prohibited from agreeing to buy or sell a specific quantity of stock, and that agreeing to buy or sell a quantity of shares greater than the amount initially specified in a series of related trades also does not violate the proposed Order.

may, based upon such complaints or referrals, or for the purpose of monitoring or enforcing compliance with the proposed Order, require the Antitrust Compliance Officer to tape the conversations of particular traders, up to the limits previously specified.

Additional Relief. Each Antitrust Compliance Officer is required by the proposed Order to report quarterly to the Antitrust Division concerning activities undertaken to ensure the defendant's compliance with the proposed Order. Such reports must detail the precise times when conversations were monitored by the Antitrust Compliance Officer pursuant to the requirements of the proposed Order and the name of each person employed by the defendant whose conversations were recorded during such times. The proposed Order also requires that each defendant certify the designation of an Antitrust Compliance Officer and that the defendant has complied with certain specified requirements of the proposed Order.

The proposed Order gives the Department certain ''visitation'' rights, including the right to demand copies of documents, excluding individual customer records, which relate to compliance with the proposed Order; and to interview officers, employees, or agents of each defendant regarding compliance with the proposed Order. In addition, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, a defendant may be required to prepare and submit written reports, under oath, relating to defendant's compliance with the proposed Order.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Order will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Order has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in this case.

VI

Procedures Available for Modification of the Proposed Order

As provided by the APPA, any person believing that the proposed Order should be modified may submit written comments to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 600 E Street, N.W., Room 9300, Washington, D.C. 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department, which remains free to rescind its agreement to entry of the proposed Order at any time prior to actual entry by the Court. The proposed Order provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Order.

VII

Other Anticompetitive Conduct Remedied by the Proposed Order

In addition to the quoting convention, the Department's investigation uncovered four types of other unlawful conduct involving market makers which are not alleged in the Complaint, but are fully remedied by the prohibitions in the proposed Order. First, the investigation uncovered numerous examples of what are often referred to as ''moves on request.'' A ''move on request'' occurs when trader A calls trader B and asks him to change the price he is quoting for the purpose of affecting the market in that stock.[18] When B complies, his move will generate a misimpression that there is an additional buying or selling interest in the stock, from which A will possibly profit. Trader B benefits because A will return the favor when B wants to influence the market in a stock.

Second, the investigation uncovered instances of market maker agreements on dealer spreads. Such agreements were intended to widen or preserve the width of the inside spread and to reduce the risk of unwanted executions. The purpose and effect of these types of agreements is to increase trader profits or reduce participants' risk of loss from their trading activities.[19]

Third, the Department also investigated an apparent ''size'' convention that may limit competition among Nasdaq market makers by deterring them from improving the inside spread in a stock (with a new bid or ask quote) on Nasdaq, unless they are prepared to trade in quantities greater than their posted quote, typically 1,000 shares. With every posted bid and ask quote, a trader must also quote a number of shares that he or she is willing to trade at that price. Many traders admitted that this ''good for size'' requirement was honored by most market makers, and admitted that they would complain to other market makers who cut spreads, only to then engage in the NASD minimum size trade.

Fourth, the Department also discovered evidence that some maverick firms that tried to attract larger orders by displaying greater size than the NASD minimum received the same sort of enforcement threats against this behavior that they had received when they narrowed the inside spread.

Together, these latter two practices adversely affected smaller market makers. Such firms could not take large positions in a stock and then ''advertise'' their willingness to trade in that size by posting a public quote for a larger than minimum sized transaction. Nor could they compete on price unless they were ''implicitly'' willing to be ''good for size'' at any improved price.

The Department has elected not to pursue a civil case that includes instances of any of the above-described conduct against the defendants for the reason that the proposed Order affords the Department and the public all the relief that could be obtained if the Department charged them as violations and prevailed at trial. Further, while unlawful and harmful to consumers, the total impact on the amount of commerce affected by these alleged violations is a fraction of that affected by the quoting convention.

VIII

Alternatives to the Proposed Order

As an alternative to the proposed Order, the Department considered litigation on the merits. The Department rejected that alternative for two reasons. First, the Department is satisfied that the various compliance procedures to which defendants have agreed will ensure that the anticompetitive practices alleged in the Complaint are unlikely to recur and if they do recur will be punishable by civil or criminal contempt, as appropriate. Second, a trial would involve substantial cost both to the United States and to the defendants, and is not warranted since the proposed Order provides all the relief the

[18] Not all of the firms named in the Complaint engaged in such conduct, and no inference of participation in this conduct should be drawn from the fact that a firm has been charged as a defendant herein.

[19] A limited number of market-making firms were discovered to have engaged in this conduct. There is no evidence that the majority of firms engaged in this conduct.

Government would likely obtain following a successful trial.

IX

Alternative Forms of Relief Considered

In addition to the relief obtained in the Order, the Department considered, as a condition of settlement, a term in the proposed Order requiring the defendants to tape record and preserve for up to six months all of the conversations of their traders engaged in market making in Nasdaq stocks. At the time consideration was given to such a requirement, the proposed relief did not contain a term requiring that each defendant appoint an Antitrust Compliance Officer to record and listen to trader conversations.

Ultimately, instead of requiring defendants to tape and preserve all trader conversations, without any oversight or compliance efforts by defendants, the Department determined that the identical remedial purpose could be served more efficiently by requiring defendants to monitor and record a relatively small percentage of such conversations, without informing traders when their conversations would be recorded, and also by requiring that such conversations as are recorded actually be reviewed promptly for violations. Thus, traders at the twenty-four defendant firms (and those who trade with them in the industry) will know that some portion of their calls are being taped, but will have no way of knowing which ones.

Further, under the proposed Order, the Department is given the right to receive complaints of possible violations and to direct future taping of possible violators without informing traders that this particular taping is ongoing. This feature of the proposed Order is of vital importance, for it allows ongoing monitoring, if believed necessary, of traders about whom complaints have been made. The Department believes that these requirements to monitor and record, and to direct the monitoring and recording, of trader conversations will provide substantial opportunities for detection of violations of the proposed Order as well as substantial incentives for the defendant firms and individual traders to comply with the terms of the proposed Order, and the antitrust laws.

The Department has calculated that, given the number of defendants and the number of traders employed by these defendants, the number of hours of trader conversations actually to be monitored and recorded per year pursuant to the proposed Order is likely to range between 35,000 and 40,000 hours.[20] Further, while the absolute number of hours of trader conversations required to be monitored and recorded at any individual firm (in relation to the number of traders and the number of hours the market is operating) may be few, traders who might be inclined to violate the proposed Order, in addition to being subject to prosecution for criminal or civil contempt (and under the antitrust laws), must also be concerned that their conversations are being monitored and recorded by another of the twenty-four firms subject to the proposed Order.

To the best of the Department's knowledge, these provisions are unprecedented in any court order resolving an antitrust complaint filed by the United States. There is some precedent in the securities field for directing taping as a remedial measure. In two SEC cases involving firms alleged to have engaged in serious and repeated violations of the securities laws, the firms were required to tape their brokers. *S.E.C.* v. *Stratton Oakmont Inc.*, 878 F. Supp. 250 (D.D.C. 1995) (taping required by independent consultant); *In the Matter of A.R. Baron & Co., Inc.*, SEC News Digest 96–101, File No. 3–9010 (May 30, 1996). There is also precedent for taping in the National Futures Association's imposition of taping for certain telemarketing activities. National Futures Association Manual ¶ 9021 (Interpretive Notice, ''Compliance Rule 2–9; Supervision of Telemarketing Activity'' (Jan. 19, 1993)). Perhaps most importantly, the taping provision finds precedent in the industry's own practice of taping to resolve disputes.

The Department's investigation depended heavily on the conversations discovered on tapes produced pursuant to process. Fourteen firms making markets on Nasdaq, including some of the largest, regularly taped all of their traders, all of the time. The Department believes that the tapes made pursuant to the proposed Order will both serve an important deterrent effect to ensure compliance with the proposed Order, as well as provide the best means of detecting, proving, and punishing violations of the proposed Order, should they occur.

Second, the Department considered requiring, as a condition of settlement, the appointment of a special master to monitor compliance with the terms of the proposed Order. Under this possible form of relief, the defendants would have been required to fund the activities of the special master. The special master and his staff would have undertaken the responsibilities that, under the proposed Order, will be assumed by the Department. These responsibilities include, for example, approving the taping systems the defendants will be required to install, receiving the reports required to be submitted by the defendants, receiving complaints and directing the monitoring of the conversations of particular traders.

Ultimately, because of difficulties in determining how the costs of funding the special master would be shared equitably among the defendants, and because of the concern of many of the defendants that a special master would become yet a fourth agency (in addition to the SEC, the NASD and the Antitrust Division) with jurisdiction to monitor their activities, the Department determined that it would not require the appointment of a special master and that it could fulfill the responsibilities to monitor imposed by the proposed Order.

To implement its responsibilities under this portion of the proposed Order, the Department has assigned an attorney in its New York Field Office, Geoffrey Swaebe, Jr., to provide initial oversight of the implementation of Sections IV.C.(2)–(10), V, and VI of the proposed Order. Mr. Swaebe's address is Antitrust Division, New York Field Office, 26 Federal Plaza #3630, New York, NY 10278–0140. Mr. Swaebe's telephone number is (212) 264–0652. The general number for the New York Field Office is (212) 264–0390.

The Department has also established a new telephone ''hotline'' for traders, retail brokers, or members of the public to report violations of the proposed Order or the federal antitrust laws generally, in the securities or any other industry. Anyone with information concerning such possible violations may call the toll-free hotline, 1–888–7DOJATR (1–888–736–5287).

Third, the Department considered but ultimately did not require as a condition of settlement, that the defendants implement certain quoting rules recently proposed by the SEC to improve the handling and execution of customer orders (File No. S7–30–95). The Department considered having the defendants implement two of these proposed rules immediately. These two proposed rules, which are still under consideration by the SEC, include a ''Limit Order'' proposal requiring specialists and OTC market makers to display customer limit orders priced better than the specialist's or OTC market maker's quote; and an

[20] The Department has calculated that, if the proposed Order is entered by the Court, the defendants will be required to engage approximately thirty (30) full-time employees to monitor compliance with the requirements of the proposed Order for up to five years.

''Electronic Communications Networks'' proposal that would require exchange specialists and OTC market makers to quote to the public any better prices that they privately quote through certain electronic communications networks, such as Instinet.

The Department submitted formal comments to the SEC strongly supporting the adoption of the Limit Order proposal and supporting the Electronic Communications Networks proposal on January 26, 1996. In those comments, we noted that, ''[i]n effect the Limit Order proposal will allow customer limit order to compete more effectively with market makers' quotes, injecting additional competition into the Nasdaq market.'' We identified the ''primary beneficiaries of this added competition * * * [as] the investing public, in the form of narrower bid/ask spreads and thus a reduced cost of trading.'' As to the Electronic Communications Networks proposal, we stated that it ''may reduce the possibility of collusion and may also serve some of the Commission's other goals, such as promoting transparency and reducing market fragmentation.''

The Department did not negotiate to include either the Limit Order the Electronic Communications Networks proposals are part of the relief because of the complexity involved in requiring less than all industry participations to implement the rules, because of fairness concerns, and because of the pendency of the rules before the SEC.

X

Legal Standard Governing the Court's Public Interest Determination

In accordance with the APPA, this Court must determine whether entry of the proposed Order ''is in the public interest.'' 15 U.S.C. 16(e). In undertaking this assessment, the D.C. Circuit recently explained, ''the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995) (emphasis in original) (internal quotations omitted).[21]

The Court's role in passing on a proposed order is limited because a stipulation and order embodies a settlement, see *United States* v. *Armour & Co.*, 402 U.S. 673 681 (1971), one reflecting both the Department's predictive judgment concerning the efficacy of the proposed relief and the Departments exercise of prosecutorial discretion.[22] For a court to engage in ''an unrestricted evaluation of what relief would be serve the public'' might threaten these benefits of ''antitrust enforcement by consent decree,'' *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981), and thereby frustrate Congress's intent to ''retain the consent judgment as a substantial antitrust enforcement tool,'' S. Rep. No. 298, 93d Cong., 1st Sess. & (1973); H.R. Rep. No. 1463, 93 Cong., 2d Sess. 6 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538–39.

The Tunney Act authorizes a court to consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

Id. In applying these criteria, appropriate concern for preservation of a stipulation and order as an effective enforcement tool requires the Court to focus its inquiry narrowly. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983) (explaining that the ''public interests'' standard should be ''based on more than a broad and undefined criteria''), *cert. denied*, 465 U.S. 1101 (1984). A Tunney Act court properly may consider whether a proposed order is ambiguous or contains inadequate compliance mechanisms, for these shortcomings may hinder the decree's successful implementation. See *Microsoft*, 56 F.3d at 1461–62. The Court may also ask if the proposed order potentially works ''unexpected harm'' to third parties, *id.* at 1459, or impairs important public policies other than competition policy, see *United States* v. *BNS Inc.*, 858 F.2d 456, 462–62 (9th Cir. 1988). The Court, however, may not reject the proposed order merely because it fails to secure for a third party benefits it seeks. See *Microsoft*, 56 F.3d at 1461 n.9.

The Court may also ask whether the relief embodied in the proposed decree is ''so inconsonant with the allegations charged as to fall outside of the reaches of the public interest.'' *Id.* at 1461. The Department's allegations cabin this inquiry; the Court may not look beyond the Complaint ''to evaluate claims that the government did *not* make and to inquire as to why they were not made.'' *Id.* (emphasis in original). And, in evaluating the proposed order as a remedy for the particular violations alleged, the Court must afford the Department even greater deference than when the Court considers an uncontested decree modification—a context in which a court may reject the proposal only if ''it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.''' *Id.* at 1460 (quoting *United States* v. *Western Elec. Co.*, 993 F.2d 1572 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993)).

Finally, the Court properly may make its public interest determination on the basis of the Competitive Impact Statement and Response to Comment filed pursuant to the APPA. The APPA authorizes the use of additional procedures, see 15 U.S.C. § 16(f), but their employment is discretionary. If the Department's filings adequately ventilate the issues before the Court, additional proceedings may deter settlements, and thus improperly impair the consent judgment as a frequently used and congressionally approved antitrust enforcement tool. See H.R. Rep. No. 1463, *supra*, at 8, *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538–39.; S. Rep. No. 298, *supra*, at 6–7.

XI

Determinative Materials/Documents

No materials or documents of the type described in Section 2(b) of the APPA, 15 U.S.C. 16(b), were considered in formulating the proposed Order.

Dated: July 17, 1996.

Respectfully submitted,

Hays Gorey, Jr.,

Attorney, U.S. Department of Justice, Antitrust Division, 600 E Street, N.W., Suite 9500, Washington, D.C. 20530, Tel: 202/307–6200, Fax: 202/16–8544.

Charts appended to the Competitive Impact Statement have not been reprinted here, however they may be inspected in Room 3229, Department of Justice, Washington, D.C. and at the Office of the Clerk of the

[21] *Accord United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975).

[22] As the Ninth Circuit explained, ''[t]he balance of the competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *Bechtel*, 648 F.2d at 666.

United States District Court for the Southern District of New York.

Certificate of Service

On July 17, 1996, I caused a copy of the Government's Competitive Impact Statement to be served by first-class mail upon:

ALEX. BROWN & SONS INCORPORATED
Lewis Noonberg, Piper & Marbury, 1200 19th Street, N.W., Washington, D.C. 20036–2430
BEAR, STEARNS & CO. INC.
Robert Heller, Kramer, Levin, Naftalis & Frankel, 919 Third Avenue, New York, New York 10022
CS FIRST BOSTON CORPORATION
Richard A. Cirillo, Roger & Wells, 200 Park Ave., 53rd Floor, New York, New York 10166
Stuart Gerson, Epstein Becker & Green, 1227 25th Street, NW., #750, Washington, DC 20037
DEAN WITTER REYNOLDS INC.
Francis M. Holozubiec, Kirkland & Ellis, Citicorp Center, 153 East 53rd Street, New York, New York 10022–4675
DONALDSON, LUFKIN & JENRETTE, SECURITIES CORPORATION; J.P. MORGAN SECURITIES, INC.; MORGAN STANLEY & CO., INCORPORATED
Robert F. Wise, Jr., Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017
FURMAN SELZ LLC
James Calder, Rosenman & Colin LLP, 575 Madison Avenue, New York, New York 10022
GOLDMAN, SACHS & CO.
John L. Warden, Sullivan & Cromwell, 125 Broad Street, New York, New York 10004
HAMBRECHT & QUIST LLC
Charles Koob, Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, New York 10017–3954
HERZOG, HEINE, GEDULD, INCORPORATED
James T. Halverson, Shearman & Sterling, 153 East 53rd Street, New York, New York 10022–4676
LEHMAN BROTHERS, INC.
Jeffrey Q. Smith, Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, New York 10038
MAYER & SCHWEITZER, INC.
Catherine Ludden, Morgan, Lewis & Bockius, 101 Park Avenue, New York, New York 10178
MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED
Otto G. Obermaier, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153
NASH, WEISS & CO.
Paul B. Uhlenhop, Lawrence, Kamin, Saunders & Uhlenhop, 208 South La Salle Street, #1750, Chicago, Illinois 60604
OLDE DISCOUNT CORPORATION
Norman J. Barry, Jr., Donahue Brown Matthewson & Smyth, 20 N. Clark Street, Suite 900, Chicago, Illinois 60602
PAINEWEBBER INCORPORATED
A. Douglas Melamed, Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420
PIPER JAFFRAY INC.
Neil S. Cartusciello, Shanley & Fisher, One World Trade Center, 89th Floor, New York, New York 10048
PRUDENTIAL SECURITIES INCORPORATED
William P. Frank, Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022
SALOMON BROTHERS INC.
Robert H. Mundheim, Salomon Brothers Inc., Seven World Trade Center, New York, New York 10048
SHERWOOD SECURITIES CORP.
Brian J. McMahon, Crummy, Del Deo, Dolan, Griffinger & Vecchione, P.C., One Riverfront Plaza, Newark, New Jersey 07102
SMITH BARNEY INC.
Charles A. Gilman, Cahill Gordon & Reindel, 80 Pine Street, New York, New York 10005
SPEAR, LEEDS & KELLOGG (TROSTER SINGER)
Howard Shiffman, Dickstein, Shapiro & Morin, L.L.P., 2102 L Street, N.W., Washington, D.C. 10037
UBS SECURITIES LLC
Philip L. Graham, Jr., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004

John D. Worland, Jr.

[FR Doc. 96–19597 Filed 8–1–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 6, 1996, Ansys, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of benzoylecgonine (9180) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture benzoylecgonine to produce standards and controls for in-vitro diagnostic drug testing systems.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1996.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19688 Filed 8–1–96; 8:45 am]

BILLING CODE 4410–09–M

Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission was present at a meeting of said Commission which started at approximately ten-thirty a.m. on Thursday, July 11, 1996 at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide ten appeals from National Commissioners' decision pursuant to 28 C.F.R. 2.27. For Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting maybe closed by vote of the Commissioners present were submitted to the Commissioners prior the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Jasper Clay, Jr., John R. Simpson, and Michael J. Gaines.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

July 22, 1996.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 96–19783 Filed 7–30–96; 5:30 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 29, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through 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.

Agency: Bureau of Labor Statistics.

Title: Manual for Developing Local Area Unemployment Statistics.

OMB Number: 1220–0017.

Agency Number: BLS 3040, LAUS–2, LAUS–3.

Frequency: Monthly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 51.

Estimated Time Per Respondent: 1.62 hours for LAUS–2, .11 hours for LAUS–3.

Total Burden Hours: 120,755.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Local area unemployment statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic conditions, and as an allocator for existing job training and economic assistance program funding.

Agency: Bureau of Labor Statistics.

Title: Mass Layoff Statistics Program.

OMB Number 1220–0090.

Frequency: On occasion; Monthly; Quarterly.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Collection instrument	Respondents	Estimated time per respondent	Total burden
Employer Contact Burden	15,600	30 minutes (one-time)	7,800 hours.
State Burden	832	78.25 (annually)	65,520.
Response Analysis Survey (RAS)	500	30 minutes (one-time)	250 hours.

Total Burden House: 73,570.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Section 462(E) of the Job Training Partnership Act states that the Secretary of Labor must develop and maintain data on permanent mass layoffs and plant closings and publish a report annually.

Agency: Bureau of Labor Statistics.

Title: Compensation 2000, Phase I.

OMB Number: 122–0new.

Agency Number: COMP2000.

Frequency: Annually, with some quarterly testing.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 34,282.

Estimated Time Per Respondent: 76.75 minutes.

Total Burden Hours: 43,858.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This collection is Phase I of the new COMP2000 program which will integrate three separate BLS programs, the Occupational Compensation Survey Program, Employment Cost Index, and Employee Benefits Survey. Data produced from this survey will be critical in determining pay increases for Federal workers, in determining monetary policy, and are widely used by compensation administrators and researchers outside the Federal sector.

Agency: Bureau of Labor Statistics.

Title: State Unemployment Insurance (UI) Wage Records Quality Project.

OMB Number: 122–0new.

Agency Number: BLS–3025.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 159.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This information collection has been developed to determine current State Unemployment Insurance (UI) procedures involving wage records and to verify the accuracy of State UI wage recordkeeping. It has been established, in conjunction with State agencies, to ensure basic quality and standardization of maintenance of State wage record files for the development of a national wage record database as a labor market information tool.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–19658 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–24–M

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submission #9601

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office (U.S. NAO) gives notice that Submission #9601 was accepted for review on July 29, 1996. The submission was filed with the NAO on June 13, 1996, by Human Rights Watch/Americas, the International Labor Rights Fund, and the Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers), and concerns the representation of employees of the Ministry of the Environment, Natural Resources, and Fishing by the Single Trade Union of Workers of the Fishing Ministry (SUTSP) in Mexico City, Mexico. Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO. The objective of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's compliance with the objectives set forth in Articles 3 and 5 of the NAALC.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 13, 1996, the Human Rights Watch/Americas, the International Labor Rights Fund, and the Asociacion Nacional de Abogados Democraticos (National Association of Democratic Lawyers), filed a submission raising allegations concerning the right to organize and freedom of association for federal workers in Mexico.

Artile 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the NAO. ''Labor law'' is defined in Article 49 of the NAALC to include freedom of association.

The procedural guidelines for the NAO, published in the Federal Register on April 7, 1994, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

Submission #9601 relates to labor law matters in Mexico. A review would also appear to further the objectives of the NAALC, as set out in Article 1, which include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1 of the NAALC, among them freedom of association; promoting compliance with and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, this submission has been accepted for review of the allegations raised therein. The NAO's decision is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission.

The objective of the review will be to gather information to assist the NAO to better understand and publicly report on the issues concerning the right to organize and freedom of association raised in the submission, including the Government of Mexico's compliance with the obligations agreed to under Articles 3 and 5 of the NAALC. The review will be completed and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the NAO.

Signed at Washington, D.C. on July 29, 1996.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 96–19657 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,266 & TA–W–32,267; Owens-Illinois, Inc., Owens Brockway Glass Containers, Plant #18 & Plant #19, Brockway, PA

TA–W–32,399; Kerr Manufacturing Co., Massena, NY

TA–W–32,405; Scrock Cabinet Co., Quaker Maid Kitchens Div., Leesport, PA

TA–W–32,400; Sunbeam Corp., Sunbeam Outdoor Product, Linton, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,443; Simpson Paper Co., Pomona, CA

TA–W–32,380; Mullen Lumber, Inc., Molalla, OR

TA–W–32,318; Jaunty Textile, A Div. of Advanced Textie Composites, Inc, Scranton, PA

TA–W–32,469; Wallace & Tiernan, Inc., Bellville, NJ

TA–W–32,395; Cambridge Industries (Formerly Known as GenCorp), Commercial Truck Group, Ionia, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,436 & A; Elcam, Inc., St. Marys, PA and Clearfield, PA

TA–W–32,447; BSW International, Inc., Tulsa, OK

TA–W–32,375; Host Apparel, New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,334; Ashland Exploration, Inc., Brenton, WV

U.S. imports of natural gas declined relative to domestic shipments and

consumption in 1995 compared to 1994 and in the first quarter of 1996 compared to the same period in 1995.

TA–W–32,335; Allergan, Phoenix, AZ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,363; Alcan Aluminum Co., Slcan Foil Products Div., LaGrange, GA: May 1, 1995.

TA–W–32,372; Eagle Picher Plastics Div., Huntington, IN: May 15, 1995.

TA–W–32,398; H and E Apparel, Inc., Princeton, KY: May 16, 1995. TA–W–32,377; James Hardie Irrigation, El Paso Manufacturing, El Paso, TX: May 9, 1995.

TA–W–32,483 & A; Wundies, Inc., Wellsboro, PA & Williamport, PA: June 10, 1995.

TA–W–32,451; Cleveland Mills, Kings Mountain, NC: May 23, 1995.

TA–W–32,412; Bari Fashions, Inc., Hoboken, NJ: May 21, 1995.

TA–W–32,384; Roadmaster Corp., Delavan, WI: May 7, 1995.

TA–W–32,401; SMK Manufacturing, Inc., Placentia, CA: May 16, 1995.

TA–W–32,374; General Electric Superabrasives, Worthington, OH: May 17, 1995.

TA–W–32,487; Savannah Manufacturing Corp., Savannah, TN: June 7, 1995.

TA–W–32,424; Screen Pac, Roseto, PA: May 30, 1995.

TA–W–32,343; Osawatomie, Inc., dba ESW (Formerly Engineered Well Services, Inc), Dickinson, ND: April 6, 1995.

TA–W–32,461 & A; Oxford of Burgan, Oxford Industries, Inc., Burgan, NC, Oxford Industries, Inc., Atlanta, GA: June 17, 1995.

TA–W–32,479; Taylor Clothing, Taylor, PA: June 12, 1995.

TA–W–32,459; Warner's A Div. of Warnaco, Inc., Dothal, AL: June 4, 1995.

TA–W–32,408; Heritage Sportswear, Marion, SC: May 15, 1995.

TA–W–32,308; Hanover II Div. STI, Inc., Pawtucket, RI: April 16, 1995.

TA–W–32,419; Pioneer Balloon Co., Willard Operations, Willard, OH: May 2, 1995.

TA–W–32,382 and A; Bay Springs Apparel, Nazareth/Century Mills, Inc., Bay Springs, MS and Monroe, NC: May 15, 1995.

TA–W–32,342; B.A.S.F. Corp., Detroit, MI: April 30, 1995.

TA–W–32,321; Equitable Resources Energy Co., Western Region, Billings, MT: April 30, 1995.

TA–W–32,296; Isenburg Enterprises, Inc., Salt Lake City, UT: April 19, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01038; Sunbeam Corp., Sunbeam Outdoor Products, Linton, IN

NAFTA–TAA–00984 & A; Owens-Illinois, Inc., Owens Brockway Glass Containers, Plant #18 and Plant #19, Brockway, PA

NAFTA–TAA–01055; Sunbeam, Sunbeam Household Products—Cookeville, Cookeville, TN

NAFTA–TAA–01075; Varsity Manufacturing, Susquehanna, PA

NAFTA–TAA–01053; Aquila, Inc., Superior, WI

NAFTA–TAA–01052; Carolina Dress Corp., Hayesville, NC

NAFTA–TAA–01026; Roadmaster Corp., Delavan, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01094; BP Exploration & Oil Inc., Paulsboro Terminal Div., Paulsboro, NJ

NAFTA–TAA–01058 & A; Elcam, Inc., St. Marys, PA and Clearfield, PA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01071; Sara Lee Knit Products, Eatonton Sewing Div., Eatonton, GA: June 4, 1995.

NAFTA–TAA–01065 & A; Oxford of Burgaw, Oxford Dress Div. of Oxford Industries, Inc., Burgaw, NC & Corp. Headquarters, Atlanta, GA: June 5, 1995.

NAFTA–TAA–01044: Pictsweet Mushroom Farm, Salem OR: May 30, 1995. NAFTA–TAA–01047; Medley Company Cedar, Inc., Santa, ID: May 23, 1995.

NAFTA–TAA–01082; Magnetek, Lighting Products Group, Blytheville, AR: June 4, 1995.

NAFTA–TAA–01062; Pine River Lumber Co., Limited, Maple Lumber Div., Kenton, MI: May 9, 1995.

NAFTA–TAA–01080; Mabex Universal Corp., San Diego Pe Foam Converting & Warehousing Facility, San Diego, CA: May 20, 1995.

I hereby certify that the aforementioned determinations were issued during the month of July 1996. Copies of these determinations

are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 17, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 96–19652 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,125]

AT&T Corporation; NCR Corporation; Viroqua, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 10, 1996, one of the petitioners requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice was signed on May 13, 1996 and published in the Federal Register on May 24, 1996 (61 FR 26218).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that AT&T Corporation, NCR Corporation lost business to foreign produced electronic business forms and systems substitutes. The request also claims that the Department's customer survey focussed on current customers rather than customers who have switched to imported electronic business form substitutes.

Findings of the investigation showed that workers of AT&T Corporation, NCR Corporation located in Viroqua, Wisconsin produced business forms and labels. THe Department's denial of TAA for workers of the subject firm was based on the fact that the ''contributed importantly'' test of the Group Eligibility requirement of the Trade Act was not met. The Department conducted a survey of major declining customers of AT&T Corporation, NCR Corporation. None of the survey respondents reported import purchases of business forms or labels during the time period relevant to the investigation.

Technological unemployment as the result of rapid development of electronic business forms would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 16th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19653 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,227]

Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 16, 1996, applicable to all workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, New York, New York. The notice was published in the Federal Register on June 6, 1996 (FR 61 28900).

At the request of former employees, the Department reviewed the certification for workers of the subject firm. The workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, New York, New York produced ladies' apparel. The Union representative for the affected workers provided evidence that an attempt was made to file a TAA petition on behalf of the workers of the subject firm at an earlier date. Accordingly, the Department is amending the certification to change the impact date form March 27, 1995 to January 31, 1995, the date separations began.

The intent of the Department's certification is to include all workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation adversely affected by imports of apparel.

The amended notice applicable to TA–W–32,227, is hereby issued as follows:

All workers of Ralph Lauren Womenswear, Incorporated, Bidermann Industries Corporation, New York, New York who became totally or partially separated from employment on or after January 31, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 96–19650 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 387]

Shepard's/McGraw-Hill Companies Colorado Springs, Colorado; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 28, 1996 in response to a worker petition which was filed on May 10, 1996 on behalf of workers at Shepard's/McGraw-Hill Companies, Colorado Springs, Colorado.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 18th day of July, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19651 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,782]

Synergy Services, Inc., El Paso, TX; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition number TA–W–31,782 which was published in the Federal Register on February 14, 1996 (61 FR 5808) in FR Document 96–3248.

This revises the subject firm location on the twenty-second line in the appendix table on page 5808. On the twenty-second line in the third column, the location should read El Paso, Texas.

Signed in Washington, D.C., this 11th day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19655 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00920]

AT&T Corporation; NCR Corporation; Viroqua, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 10, 1996, one of the petitioners requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for NAFTA-Transitional Adjustment Assistance. The denial notice was signed on May 13, 1996 and published in the Federal Register on May 24, 1996 (61 FR 26219).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the option of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that AT&T Corporation, NCR Corporation lost business to foreign produced electronic business forms and systems substitutes. The request also claims that the Department's customer survey focused on current customers rather than customers who have switched to imported electronic business form substitutes.

Findings of the investigation showed that workers of AT&T Corporation, NCR Corporation located in Viroqua, Wisconsin produced business forms and labels. The Department's denial of NAFTA–TAA for workers of the subject firm was based on the fact that there was no shift of production from the Viroqua, Wisconsin production facility to Mexico or Canada, nor did AT&T Corporation, NCR Corporation import from Mexico or Canada any articles competitive with business forms and labels. The Department also conducted a survey of major declining customers of AT&T Corporation, NCR Corporation. None of the survey respondents reported import purchases of business forms or labels from Mexico or Canada during the time period relevant to the investigation.

Technological unemployment as the result of rapid development of electronic business forms would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 16th day of July 1996.

Russell T. Kile,

Acting Program Manager, Policy and Re-employment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19656 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

THE DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–00902]

Kinney Shoe Corporation Beaver Springs, PA; Notice of Revised Determination on Reconsideration

On May 24, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance (NAFTA–TAA) applicable to all workers of Kinney Shoe Corporation located in Beaver Springs, Pennsylvania. The notice was published in the Federal Register on May 24, 1996 (FR 61 26219).

By letter of June 7, 1996, a petitioner requested administrative reconsideration of the Department's findings.

The employees of the Kinney Shoe plant in Beaver Springs were engaged in the production of men's, women's and children's footwear. Sales and employment at the subject firm declined during the time period relevant to the investigation.

New findings on reconsideration show that the footwear produced by Kinney Shoe Corporation is mass marketed. Therefore, the articles manufactured by the subject firm have been impacted importantly by the high penetration of nonrubber footwear imports in this market. In 1994 and 1995, the ratio of U.S. imports of general nonrubber footwear from Mexico to domestic production was more than 500%.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles from Mexico like or directly competitive with shoes contributed importantly to the declines in sales or production and to the total or partial separation of workers of Kinney Shoe Corporation, Beaver Springs, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Kinney Shoe Corporation, Beaver Springs, Pennsylvania who became totally or partially separated from employment on or after March 14, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–19654 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the

payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and States:

Volume IV

Indiana
IN960060 (August 2, 1996)
IN960061 (August 2, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office documents entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ960002 (March 15, 1996)
NJ960003 (March 15, 1996)
NJ960004 (March 15, 1996)
New York
NY960003 (March 15, 1996)
NY960013 (March 15, 1996)

Volume II

District of Columbia
DC960001 (March 15, 1996)
DC960003 (March 15, 1996)
West Virginia
WV960006 (March 15, 1996)

Volume III

Alabama
AL960017 (March 15, 1996)
AL960034 (March 15, 1996)
AL960042 (March 15, 1996)
AL960044 (March 15, 1996)
Florida
FL960009 (March 15, 1996)
FL960013 (March 15, 1996)
FL960016 (March 15, 1996)
FL960034 (March 15, 1996)
FL960099 (March 15, 1996)
FL960100 (March 15, 1996)
FL960101 (March 15, 1996)
Kentucky
KY960027 (March 15, 1996)
North Carolina
NC 960001 (March 15, 1996)
NC 960003 (March 15, 1996)

Volume IV

Illinois
IL960001 (March 15, 1996)
IL960002 (March 15, 1996)
IL960003 (March 15, 1996)
IL960004 (March 15, 1996)
IL960005 (March 15, 1996)
IL960006 (March 15, 1996)
IL960007 (March 15, 1996)
IL960008 (March 15, 1996)
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IL960017 (March 15, 1996)
IL960018 (March 15, 1996)
IL960023 (March 15, 1996)
IL960026 (March 15, 1996)
IL960038 (March 15, 1996)
IL960045 (March 15, 1996)
IL960046 (March 15, 1996)
IL960049 (March 15, 1996)
IL960051 (March 15, 1996)
IL960066 (March 15, 1996)
Indiana
IN960001 (May 17, 1996)
IN960002 (March 15, 1996)
IN960004 (March 15, 1996)
IN960005 (March 15, 1996)
IN960018 (March 15, 1996)
Wisconsin
WI960001 (March 15, 1996)
WI960010 (March 15, 1996)

Volume V

Kansas
KS960004 (March 15, 1996)
KS960006 (March 15, 1996)
KS960007 (March 15, 1996)
KS960008 (March 15, 1996)
KS960012 (March 15, 1996)
KS960013 (March 15, 1996)
KS960017 (March 15, 1996)
KS960018 (March 15, 1996)
KS960019 (March 15, 1996)
KS960020 (March 15, 1996)
KS960021 (March 15, 1996)
KS960022 (March 15, 1996)
KS960023 (March 15, 1996)
KS960026 (March 15, 1996)
KS960029 (March 15, 1996)
KS960061 (March 15, 1996)
Oklahoma
OK960013 (March 15, 1996)
OK960014 (March 15, 1996)
Texas
TX960007 (March 15, 1996)
TX960034 (March 15, 1996)
TX960037 (March 15, 1996)
TX960060 (March 15, 1996)

Volume VI

Hawaii
HI960001 (March 15, 1996)
Montana
MT960001 (March 15, 1996)
North Dakota
ND960015 (March 15, 1996)
ND960016 (March 15, 1996)
ND960017 (March 15, 1996)
ND960018 (March 15, 1996)
ND960019 (March 15, 1996)
ND960020 (March 15, 1996)
ND960027 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960005 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 26th day of July 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–19415 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Report on Employment, Payroll, and Hours (BLS–790).''

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 1, 1996.

BLS is particularly interested in comments which help the agency to:

- 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics has been charged by Congress (29 U.S.C. 1) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked, by area and by industry. The Current Employment Statistics (CES) program produces monthly estimates, hours, and earnings of U.S. nonagricultural establishment payrolls. Information for these estimates is derived from a sample of 391,800 establishments, who each month report their employment, payroll, and hours on forms identified as BLS–790. The estimates produced from the data are fundamental inputs in economic decision processes at all levels of private enterprise, government, and organized labor. The estimates are vital to the calculation of the Gross Domestic Product, the Federal Reserve Board's Index of Industrial Production and the Composite Index of Leading Economic Indicators among others.

The earnings data provide a proxy measure of the cost of labor for the industry detail not available from the Bureau's Employment Cost Index program. The early availability of employment and hours data provide early signals of economic change.

II. Current Actions

BLS has improved methods of collecting the CES. A portion of the CES sample is now collected (about 210,000 establishments) using two automated methods—Computer Assisted Telephone Interviewing (CATI) and Touchtone Data Entry (TDE). These methods have improved the timelines of data collection as well as reduced costs.

Forms have been developed that make it easier for respondents to report data by facsimile transmission (''fax''). These forms lessen reporting burden on large multi-unit reporters by allowing them to report information for several of their establishments on one form each month.

Electronic Data Interchange (EDI) is also used for some very large multi-unit reporters and research into the use of the World Web for data collection has begun.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Report on Employment, Payroll, and Hours (BLS–790).

OMB Number: 1220–0011.

Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations.

Form	Number of respondents	Frequency of response	Annual responses	Minutes required to complete report	Annual burden hours
BLS 790 BM	400	12	4,800	15	1,200
BLS 790–G, G–S, J–FD	36,400	12	436,800	5	36,400
BLS 790–CU	[1]0	1	45,000	2	1,500

Form	Number of respondents	Frequency of response	Annual responses	Minutes required to complete report	Annual burden hours
BLS 790–Multi	[2] 30,000	12	360,000	7	42,000
All other BLS–790	[3] 325,000	12	3,900,000	7	455,000
Total	391,800	.....	4,746,600	.....	536,100

[1] A subset of current reporters (45,000) receive this ''one-time'' supplemental form.
[2] Assumes 3,000 multi-unit firms report by fax for approximately 30,000 establishments.
[3] All other BLS–790 forms collect the same information and differ only by industry definitions.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 29th day of July, 1996.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96–19716 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–24–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96–63; Application No. D–10218]

Class Exemption to Permit the Restoration of Delinquent Participant Contributions to Plans

AGENCY: Pension and Welfare Benefits Administration (PWBA), Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The class exemption provides exemptive relief for certain transactions involving the failure to transmit participant contributions to pension plans where such delinquent amounts are voluntarily restored to such plans with lost earnings. This exemption is being granted as part of the Department's Pension Payback Program (the Program), which is targeted at persons who failed to transfer participant contributions to pension plans, including section 401(k) plans, within the time frames mandated by the Department's participant contribution regulation, and thus violated title I or ERISA. The exemption affects plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8971, (this is not a toll-free number.); or William Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 219–9141. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 7, 1996, the Department of Labor (the Department) published a notice in the Federal Register (61 FR 9199) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code.

The Department proposed the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990.[1]

The notice gave interested persons an opportunity to submit written comments or requests for a hearing on the proposed class exemption to the Department. The Department received one written comment and a number of telephone inquiries regarding the proposed class exemption and the Program. There were no requests for a public hearing. Upon consideration of the comments received, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the comment are discussed below.

Paperwork Reduction Act Analysis

Pursuant to the Paperwork Reduction Act of 1995 (PRA 95), 44 U.S.C. 3507, and 5 CFR Part 1320, the collection of information in this class exemption was published for public comment on March 7, 1996 (61 FR 9199). No comments were received from the public regarding the collection of information. OMB has approved this collection, with the control number 1210–0097, which expires on January 31, 1997. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Discussion of the Comments

Section I(b) of the proposed exemption contained the requirement that the total of all outstanding delinquent participant contributions on March 7, 1996, excluding earnings, does not exceed the aggregate amount of participant contributions that were paid to, or withheld by, the employer for contribution to the plan for calendar year 1995. Pursuant to this condition, an employer who had repaid all delinquent contributions prior to March 7, 1996 would not meet this condition of the exemption and thus would be ineligible for the relief provided under the final class exemption to extend relief to employers who voluntarily restored delinquent participant contributions prior to March 7, 1996 but on or after November 28, 1995, the date the Secretary of Labor announced the Department's ''public awareness campaign'' on 401(k) plans. The commenter stated that the campaign was widely reported in the press and led many employers to review their current payroll practices and to voluntarily correct any errors they uncovered by restoring delinquent amounts plus interest. The commenter further stated that equity would seem to demand that the Pension Payback Program, and the attendant relief from any civil and criminal penalties and any excise taxes that may result from a finding that the transactions were prohibited should be made available to those employers who responded to the Secretary's call for increased scrutiny of 401(k) plans and moved swiftly to resolve a questionable situation. According to the commenter, companies

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, 5 U.S.C. App. 1 [1995]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

that took precisely the action the Secretary hoped to encourage with his press conference and awareness campaign should not be denied the relief available through the Program merely because they responded quickly, before the March 7, 1996 announcement of the Program and proposed class exemption.

The Department notes that the purpose of the Program is to benefit workers by encouraging persons to restore delinquent participant contributions to pension plans. The Department agrees with the commenter's views that those persons who voluntarily restore delinquent participant contributions following the Secretary's announcement of the Department's ''public awareness campaign'' and who met the other conditions of the exemption should be entitled to the relief provided in the exemption. Accordingly, the Department has modified the final exemption as requested by the commenter.

Section I(a) of the proposed exemption provided that:

(a) All delinquent participant contributions are restored to the pension plan plus the greater of:

(1) The amount that otherwise would have been earned on the participant contributions from the date on which such contributions were paid to, or withheld by, the employer until such money is fully restored to the plan, had such contributions been invested in accordance with applicable plan provisions, or

(2) The amount the participant would have earned on the participant contributions during such period using an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code from the date on which such contributions were paid to, or withheld by, the employer until such money is fully restored to the plan.

In the preamble to the proposed exemption, (61 FR 9199, 9202) the Department noted that this condition requires that the earnings be calculated on an account by account basis in order to mirror the earnings the participants would have otherwise accrued.

A number of telephone callers objected to this requirement. According to the callers, it would be administratively burdensome and costly to specifically determine what each participant would have earned on his or her account balance during the pertinent period. Two of the callers requested that the Department confirm that the condition requiring an account by account calculation would be satisfied if an earnings factor equal to the highest rate of return generated by any of the investment options offered under the plan during the applicable period was applied to each of the affected accounts. In the Department's view, the alternative suggested by the callers would satisfy the requirements of section I(a), while reducing overall burdens and costs, since each participant would receive, at a minimum, the amount that otherwise would have accrued on his or her account.

Several telephone callers expressed confusion regarding eligibility for exemptive relief under the proposal if the earnings on delinquent contributions had been repaid prior to the effective date of the Program. The Department has modified section I(b) of the final exemption to clarify that exemptive relief is available for the restoration of earnings on or after November 28, 1995, which are attributable to delinquent contributions that have been restored to a plan prior to the effective date of the Program.

Finally, the Department has determined on its own motion to modify the requirement in section I(a) (1) and (2) of the proposed exemption which provides that earnings on delinquent participant contributions shall be calculated from the date that such contributions were paid to or withheld by the employer. This condition as proposed imposes a more stringent requirement on the calculation of earnings than required by the participant contribution regulation.[2] The Department has reconsidered this requirement and determined not to require employers to restore more earnings under the Program than otherwise would have been required if the participant contributions had been transmitted in a timely manner. Accordingly, section I(a) (1) and (2) of the final exemption has been modified to require that earnings on delinquent contributions be calculated as of the earliest date on which the participant contributions could have been reasonably segregated from the employer's general assets as required by the participant contribution regulation.[3]

Discussion of the Exemption

1. Scope

The exemption provides conditional relief from the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1) and 406(b)(2) of ERISA and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, for transactions that result from a person's failure to transmit participant contributions to pension plans within the time frames required by the participant contribution regulation, provided that such delinquent contributions are restored to the plans together with lost earnings.

The Department notes that the exemption only provides relief for those transactions involving delinquent participant contributions and earnings that are restored to pension plans no later than September 7, 1996. The payments to the plan must relate to amounts paid by participants to, or withheld by, an employer for contribution to a plan no later than April 5, 1996.[4]

2. Conditions

The exemption contains conditions, as discussed below, which the Department views as necessary to ensure that any transaction covered by the exemption are in the interests of plan participants and beneficiaries and to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA.

Under the exemption, all delinquent participant contributions must be restored to the pension plan plus earnings from the earliest date on which such contributions could have been reasonably segregated from the employer's general assets until such money is restored to the plan. The earnings are calculated at the greater of: (1) The amount that would have been earned on the participant contributions during such period if applicable plan provisions had been followed, or (2) the amount that would have been earned on the participant contributions during

[2] The final participant contribution regulation, which was promulgated in 1988, provides that the assets of a plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his or her wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event more than 90 days from the date on which such amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or 90 days from the date on which such amounts would otherwise have been payable to the participant in cash (in case of amounts withheld by an employer from a participant's wages). 29 CFR 2510.3–102.

The Department notes that a notice of proposed rulemaking was published in the Federal Register on December 20, 1995 (60 FR 66036) which would revise the 1988 regulation by changing the maximum period during which participant contributions to an employee benefit plan may be treated as other than ''plan assets''.

[3] The Department notes that corresponding changes have also been made to the respective provisions of the Pension Payback Program.

[4] The Department notes that this date corresponds to the date contained in the Program.

such period using an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code during such period.[5] In the Department's view, this condition requires that the earnings be calculated on an account by account basis in order to mirror the earnings the participants would have otherwise accrued. As previously noted, this requirement would not preclude a calculation which used an earnings factor equal to the highest rate of return generated by any of the investment options offered under the plan during the applicable period for each of the affected accounts.

Second, the exemption requires that the total of all outstanding delinquent participant contributions on March 7, 1996, excluding earnings, does not exceed the aggregate amount of participant contributions that were received or withheld by an employer from the employees' wages for the calendar year 1995. For those delinquent participant contributions restored to plans on or after November 28, 1995, but before March 7, 1996, the total of all outstanding delinquent participant contributions, excluding earnings, on November 28, 1995 does not exceed the aggregate amount of participant contributions that were received or withheld by an employer from the employees' wages for the twelve calendar months immediately preceding November 1995. Provided that the preceding limitation is met, the exemption also would permit the restoration on or after November 28, 1995 of any earnings that are attributable to participant contributions that have been restored to the plan prior to the effective date of the Program.

Third, the exemption requires that the person meet the requirements set forth in paragraphs (2) through (6) of the Program. Those requirements include, among other things, that: (1) the person notify the Department in writing of its intention to participate in the Program and provide written evidence demonstrating that participant contributions and earnings have been restored to the plan; (2) the person notify affected participants (and send a copy to the Department) that prior delinquent contributions and lost earnings have been restored to their accounts pursuant to participation in the Program; (3) at the time of notification to the Department of the person's determination to participate in the Program, neither the Department nor any other Federal agency has informed such person of its intention to investigate or examine the plan or otherwise make inquiry with respect to the status of participant contributions under the plan; and (4) the person must certify in writing, under oath, that it is in compliance with the requirements of the Program and, to its knowledge, not the subject of any criminal investigation or prosecution involving any offense against the United States; has not been convicted of any criminal offense involving employee benefit plans or any other offense involving financial misconduct, nor entered into a consent decree with the Department or have been found by a court of competent jurisdiction to have violated any fiduciary responsibility provision of ERISA.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. Nevertheless, the Department notes that those persons who comply with the conditions of the Pension Payback Program will avoid potential ERISA civil actions initiated by the Department resulting from their failure to timely remit participant contributions to pension plans.

(2) The exemption, does not extend to transactions prohibited under section 406(b)(3) of ERISA or section 4975(c)(1)(F) of the Code.

(3) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(4) The exemption is supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The class exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

I. The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of ERISA and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to transactions that result from a person's failure to transmit participant contributions to a pension plan within the time frames required by the plan asset—participant contribution regulation (29 CFR 2510.3–102), provided that the following conditions are met:

(a) All delinquent participant contributions are restored to the pension plan plus the greater of:

(1) The amount that otherwise would have been earned on the participant contributions from the earliest date on which such contributions could have been reasonably segregated from the employer's general assets (as required by the plan asset-participant contribution regulation) until such money is fully restored to the plan, had such contributions been invested in accordance with applicable plan provisions, or

(2) The amount the participant would have earned on the participant contributions during such period using an interest rate equal to the underpayment rate defined in section 6621(a)(2) of the Code from the earliest date on which such contributions could have been reasonably segregated from the employer's general assets until such money is fully restored to the plan.

(b) For amounts restored on or after March 7, 1996, the total of all outstanding delinquent participant contributions on March 7, 1996, excluding earnings, does not exceed the aggregate amount of participant contributions that were paid to, or

[5] The underpayment rate defined in section 6621(a)(2) is based on the Federal short-term rate determined quarterly by the Secretary of the Treasury and is designed to reflect market rates of interest rather than serve as a penalty. Courts have applied rates determined under section 6621 in awarding prejudgment interest in cases under title I of ERISA. *Martin* v. *Harline,* No. 87–NC–115J (D. Utah Mar. 31, 1992) 15 Emp. Ben. Cases (BNA) 1138, 1153; *Whitfield* v. *Cohen,* 686 F. Supp. 188, 193 (E.D.N.Y. 1988); *Whitfield* v. *Tomasso,* 682 F. Supp. 1287, 1306 (E.D.N.Y. 1988).

withheld by, the employer for contribution to the plan for calendar year 1995. For those delinquent participant contributions restored to plans on or after November 28, 1995, but prior to March 7, 1996, the total of all outstanding participant contributions on November 28, 1995, excluding earnings, does not exceed the aggregate amount of participant contributions that were paid to, or withheld by, the employer for contribution to the plan for the prior twelve calendar months immediately preceding November 1995. Provided that the preceding limitation is met, the exemption shall apply without limit to the restoration on or after November 28, 1995 of any earnings that are attributable to delinquent participant contributions that have been restored to the plan prior to the effective date of the Program.

(c) The conditions set forth in paragraphs (2) through (6) of the Program are met.

II. Definitions.

For purposes of this exemption:

(a) The term ''plan'' means an employee pension benefit plan described in section 3(2) of ERISA.

(b) The term ''person'' means a person as that term is defined in section 3(9) of ERISA.

(c) The term ''Program'' means the Pension Payback Program published by the Department on March 7, 1996 (46 FR 9203).

III. Effective Date: The exemption provides retroactive and prospective relief for those transactions involving participant contributions and earnings that are restored to pension plans on or after November 28, 1995 but no later than September 7, 1996. Such restorative payments must relate to amounts paid to, or withheld by, an employer for contribution to a plan no later than April 6, 1996.

Signed at Washington, D.C. this 30th day of July, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–19718 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Pension Payback Program (Amended)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of adoption of amended voluntary compliance program for restoration of delinquent participant contributions.

SUMMARY: This document announces certain amendments to a voluntary compliance program adopted by the Department on March 7, 1996. The program allows certain persons to avoid potential Employee Retirement Income Security Act (ERISA) civil actions initiated by the Department of Labor, the assessment of civil penalties under section 502(1) of ERISA and Federal criminal prosecutions arising from their failure to timely remit participant contributions and the failure to disclose such non-remittance. The program also includes relief from certain prohibited transaction liability. The amendments allow additional persons to take advantage of the program and clarify certain requirements. These amendments primarily conform the terms of the program to a prohibited transaction class exemption that the Department is also publishing today.

DATES: As amended by this notice, the program applies to certain delinquent contributions, and lost earnings on delinquent participant contributions, that are restored to pension plans on or after November 28, 1995, but no later than September 7, 1996. Restorative payments must relate to amounts paid by participants or withheld by an employer from participants' wages for contribution to a pension plan on or before April 6, 1996. Written notification of intention to participate in the program must be received by the Department no later than September 7, 1996.

ADDRESSES: Notification of intention to participate in the program must be sent in writing to: Pension Payback Program, Pension and Welfare Benefits Administration, U.S. Department of Labor, P.O. Box 77235, Washington, DC 20013–7235.

FOR FURTHER INFORMATION CONTACT: Jeffrey Monhart, Pension Investigator, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–4377. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 7, 1996, the Department published in the Federal Register a notice of adoption of a voluntary compliance program for restoration of delinquent participant contributions. 61 FR 9203. The program, which is referred to as the Pension Payback Program, is designed to encourage employers to restore delinquent participant contributions to employee pension benefit plans as defined in section 3(2) of ERISA. Under the program, employers who are eligible to participate and who comply with its conditions, may avoid potential civil actions under ERISA brought by the Department, and Federal criminal prosecutions arising from their failure to timely remit participant contributions and from the failure to disclose such non-remittance.

As a part of the program, the Department also published in the Federal Register on March 7, a proposed class exemption from the prohibited transaction provisions of ERISA. 61 FR 9199. In the notice of adoption, the Department stated that employers who participate in the program could rely on the proposed exemption notwithstanding any subsequent modifications made in issuing the final exemption. Pending promulgation by the Department of the final class exemption, the Department stated that it would not pursue enforcement against employers who comply with the conditions of the program and the proposed class exemption with respect to any prohibited transaction liability which may have arisen as a result of a delay in forwarding participant contributions. Similarly, the Internal Revenue Service advised the Department that it would not seek to impose the sanctions under sections 4975 (a) and (b) of the Internal Revenue Code with respect to any prohibited transaction that meets the requirements of the proposed class exemption.

Today, the Department is publishing in the Federal Register the final class exemption setting forth the conditions for retroactive relief from ERISA's prohibited transaction provisions for eligible persons who comply with the conditions of the program. As a result of comments responding to the proposed exemption, the final exemption contains changes that, among other things, increase the number of persons who may take advantage of the program. A description of the changes and a discussion of the reasons for them appear in the supplementary information to the final class exemption published today.

This document amends and supersedes the notice of adoption of the program issued on March 7, 1996, so that the terms of the program as a whole will remain consistent with the terms of the final class exemption. The principal amendment is that the program now applies to persons who restore or have restored delinquent participant contributions and earnings at any time on or after November 28, 1995, until September 7, 1996. The restored amounts must still relate to delinquent

participant contributions that were received or withheld by the employer no later than April 6, 1996.

As a result of this change, it is necessary to amend the condition in the program that the maximum amount of outstanding delinquent participant contributions on March 7, 1996, excluding earnings, must not exceed the aggregate amount of participant contributions that were received or withheld for the 1995 calendar year. This condition remains unchanged for restorations that occur on or after March 7, 1996. Under the amended program, for restorations that occurred on or after November 28, 1995 and prior to March 7, 1995, the total outstanding delinquent participant contributions on November 28, 1995, excluding earnings, must not have exceeded the aggregate participant contributions received or withheld from the employees' wages for the twelve calendar months immediately preceding November 1995.

This document reflects an amendment of the program provisions for calculation of the earnings or interest that must be restored in addition to delinquent participant contributions. Under the amendment, the earnings or interest must be calculated from the earliest date on which such contributions reasonably could have been segregated from the employer's general assets. Under the program as originally announced, earnings or interest were required to be calculated from the date on which the participant contribution was received or withheld by the employer.

This document also contains a number of minor amendments intended to eliminate certain repetitive provisions of the program when it was originally issued and clarify the language and structure of its provisions. The amendments contained in this document are effective as of March 7, 1996, the date on which the Department first published the Program in the Federal Register.

Except as provided in the class exemption, the Program does not afford relief from civil actions that may be filed by persons other than the Departments of Labor and Justice, and the Internal Revenue Service. Persons who have complied with the exemption's conditions will not be subject to the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1) and 406(b)(2) of ERISA and the sanctions resulting from the application of section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, for transactions that result from such persons's failure to transmit participant contributions to pension plans in accordance with the time frames described in the participant contribution regulation at 29 CFR 2510.3–102. The Program does not apply to criminal prosecutions brought by State government, although the Department has determined not to affirmatively refer information to the States for criminal prosecution concerning persons who voluntarily restore participant contributions in accordance with the terms of the program.

Notice of Adoption of Amended Voluntary Compliance Program for Restoration of Delinquent Participant Contribution

Amended Pension Payback Program

The Department of Labor (the Department) today announced adoption of the Amended Pension Payback Program (the Program) which is designed to benefit workers by encouraging employers to restore delinquent participant contributions plus lost earnings to pension plans. The Program, which supersedes a program announced on March 7, 1996 (61 FR 9199), is targeted at ''persons'', as that term is defined at section 3(9) of the Employee Retirement Income Security Act (ERISA), who failed to transfer participant contributions to pension plans defined under section 3(2) of ERISA including section 401(k) plans, in accordance with the time frames described by the Department's regulations, and thus Violated Title I of ERISA.

The Program is available to certain persons who voluntarily restore, or have restored, delinquent participant contributions to pension plans in accordance with the terms of the Program. Those who comply with the terms of the Program will avoid potential ERISA civil actions initiated by the Department, the assessment of civil penalties under section 502(1) of ERISA and Federal criminal prosecutions arising from their failure to timely remit such contributions and non-disclosure of the non-remittance. The Department of Justice has indicated its support for the Program. The Department of Labor will not pursue enforcement against persons who comply with the conditions of the Program with respect to any prohibited transaction liability which may have arisen as a result of the person's delay in forwarding the participant contributions and who comply with the class exemption setting forth the conditions for retroactive exemptive relief published by the Department today in the Federal Register. The Department has further determined not to affirmatively refer information to the states for criminal prosecution concerning those persons who voluntarily restore participant contributions in accordance with the Program. The Department has also granted a class exemption (published today in the Federal Register) under section 408(a) of ERISA with respect to prohibited transactions which may have arisen as a result of a delay in remitting participant contributions.

The Program only applies to certain delinquent participant contributions plus earnings that are restored to pension plans on or after November 28, 1995, but no later than September 7, 1996. Such restorative payments must relate to amounts paid by participants or withheld by an employer from participants' wages for contribution to a plan on or before April 6, 1996. The Program also applies to the restoration, on or after November 28, 1995, but no later than September 7, 1996, of any earnings attributable to delinquent participant contributions that were restored to the plan prior to November 28, 1995, without limit as to the amount of such earnings.

The Program is available only if the following conditions are met:

(1) All delinquent participant contributions, are restored to the employee benefit plan plus the greater of (a) or (b) below.

(a) The amount that otherwise would have been earned on the participant contributions from the earliest date on which such contributions reasonably could have been segregated from the employer's general assets by the employer until the date such money is fully restored to the plan had such contributions been invested during such period in accordance with applicable plan provisions, or

(b) Interest at a rate equal to the underpayment rate defined in section 6621(a)(2) of the Internal Revenue Code from the earliest date on which such contributions reasonably could have been segregated from the employer's general assets by the employer until the date such money is fully restored to the plan,

In determining the amount described in (a) above for a participant directed defined contribution plan, the person seeking relief under the Program may apply the highest rate of return earned by any of the investment alternatives available under the plan during the applicable period.

(2) The total outstanding delinquent contributions do not exceed the following limits:

(a) For amounts restored on or after March 7, 1996, the delinquent contributions outstanding on March 7, 1996, excluding earnings, may not exceed the aggregate amount of participant contributions that were received or withheld from the employees' wages for calendar year 1995.

(b) For amounts restored on or after November 28, 1995, but before March 7, 1996, the total of all outstanding delinquent participant contributions, excluding earnings, on November 28, 1995, cannot exceed the aggregate amount of participant contributions that were received or withheld from the employees' wages for the twelve calendar months immediately preceding November 1995.

(3) The Department is notified in writing no later than September 7, 1996 of the person's decision to participate in the Program and provided with: (a) Copies of cancelled checks or other written evidence demonstrating that all participant contributions and earnings have been restored to the employee benefit plan; (b) the certification described in paragraph (7) below; and (c) evidence of such bond as may be required under section 412 of ERISA.

(4) The person informs the affected participants within 90 days following the notification of the Department described in paragraph (3) above, that prior delinquent contributions and lost earnings have been restored to their accounts pursuant to the person's participation in the Program and, thereafter, provides a copy of such notification to the Department. If a statement of account or other scheduled communication between the plan or its sponsor and the participants is scheduled to occur within this time period, such statement may include the notification required by this paragraph.

(5) The person has complied with all conditions set forth in the class exemption issued by the Department today.

(6) At the time that the Department is notified of the person's determination to participate in the Program, neither the Department nor any other Federal agency has informed such person of an intention to investigate or examine the plan or otherwise made inquiry with respect to the status of participant contributions under the plan.

(7) Each person who applies for relief under the program shall certify in writing, under oath and pain of perjury, that it is in compliance with all terms and conditions of the Program and, to its knowledge, neither it nor any person acting under its supervision or control with respect to the operation of an ERISA covered employee benefit plan:

(a) Is the subject of any criminal investigation or prosecution involving any offense against the United States;*

(b) Has been convicted of a criminal offense involving employee benefit plans at any time or any other offense involving financial misconduct which was punishable by imprisonment exceeding one year for which sentence was imposed during the preceding thirteen years or which resulted in actual imprisonment ending within the last thirteen years, nor has such person entered into a consent decree with the Department or been found by a court of competent jurisdiction to have violated any fiduciary responsibility provisions of ERISA during such period; or

(c) Has sought to assist or conceal the non-remittance of participant contributions by means of bribery, graft payments to persons with responsibility for ensuring remittance of plan contributions or with the knowing assistance of persons engaged in ongoing criminal activity.

Signed at Washington, DC this 30th day of July, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–19717 Filed 8–1–96; 8:45 am]

BILLING CODE 4510–29–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–5 CARP DSTRA]

Digital Performance Right in Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Precontroversy discovery schedule and request for notices of intent to participate.

SUMMARY: The Copyright Office of the Library of Congress is announcing the precontroversy discovery schedule, including the date of initiation of arbitration, for the Copyright Arbitration Royalty Panel (CARP) proceeding to set the rates and terms for the 17 U.S.C. 114 compulsory license for nonexempt digital subscription transmissions. The Office is also requesting interested parties to file comments on the rate petition by August 30, 1996. Parties who wish to participate in the CARP proceeding must file their Notices of Intent to Participate by August 30, 1996.

DATES: Comments on the rate petition, and Notices of Intent to Participate are due on or before August 30, 1996.

ADDRESSES: If sent by mail, an original and five copies of the comments, and an original and five copies of the Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of the comments, and an original and five copies of the Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E., Washington D.C. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya Sandros, CARP Specialist, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On November 1, 1995, the President signed into law the ''Digital Performance Right in Sound Recordings Act of 1995'' (''Digital Performance Act''). Pubic Law No. 104–39. The Digital Performance Act creates an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. See 17 U.S.C. 106(6).

Among the limitations on the performance of a sound recording publicly by means of a digital audio transmission is the creation of a new compulsory license for nonexempt subscription transmissions. The Digital Performance Act defines a ''subscription transmission'' as one that ''is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.'' 17 U.S.C. 114(j)(8). All nonexempt subscription transmissions are eligible for section 114 compulsory licensing provided they are not made by an ''interactive service,'' which is defined in part as ''one that enables a

*For purposes of this paragraph, an ''offense'' includes criminal activity for which the Department of Justice may seek civil injunctive relief under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1964(b)). A ''subject'' is any individual or entity whose conduct is within the scope of any ongoing inquiry being conducted by a federal investigator(s) who is authorized to investigate criminal offenses against the United States.

member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient.'' See 17 U.S.C. 114(j)(4).

The terms and rates of the section 114 statutory license are determined by voluntary negotiation among the affected parties and, where necessary, compulsory arbitration conducted under chapter 8 of the Copyright Act. On December 1, 1995, the Copyright Office published a notice in the Federal Register initiating the voluntary negotiation period from December 1, 1995, to June 1, 1996. 60 FR 61655 (December 1, 1995). The Office encouraged parties that negotiated voluntary license agreements to submit two copies of the agreement to the Office within 30 days of its execution. No agreements were filed during this period.

Because an industry-wide agreement has not been reached, copyright owners and entities performing sound recordings not subject to a voluntary agreement shall be bound by the terms and rates set by a CARP. The Office directed parties not subject to a voluntary agreement to file their petitions for a CARP proceeding by August 1, 1996. See 60 FR 61656 (1995). On June 4, 1996, the Office received a petition from the Recording Industry Association of America (''RIAA'') requesting the ''Librarian of Congress to commence proceedings to determine a schedule of terms and rates for a statutory license for the public performance of sound recordings via those audio digital subscription transmission services currently in operation.''

Pursuant to the RIAA's petition and the rules and regulations of 37 CFR part 251, the Librarian of Congress, upon the recommendation of the Register of Copyrights, is announcing the precontroversy discovery schedule for the proceeding to set terms and rates for the section 114 license, including the date on which the proceeding before the CARP will be initiated.

Notices of Intent To Participate

Any party wishing to appear before the CARP, and to present evidence, in this proceeding must file a Notice of Intent to Participate by August 30, 1996. Failure to file a timely Notice of Intent to Participate will preclude a party from participating in this proceeding.

Comments on RIAA Petition

Section 251.45(a) of the rules states that ''the Librarian of Congress shall, after receiving a petition for rate adjustment filed under 251.62, * * * publish in the Federal Register a notice requesting interested parties to comment on the petition for rate adjustment.'' 37 CFR 241.45(a). Any party wishing to comment on the RIAA's petition should do so by August 30, 1996.

Precontroversy Discovery Schedule

The Library of Congress is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the establishment of rates and terms for the section 114 compulsory license. In addition, the Library is announcing the date on which arbitration proceedings will be initiated before a CARP, thereby commencing the 180-day arbitration period. Once a CARP has been convened, the scheduling of the arbitration period is within the discretion of the CARP and will be announced at that time.

A. Commencement of the Proceeding

A rate adjustment proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of § 251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

Both of these phases to a rate adjustment proceeding require significant amounts of work, not just for the parties, but for the Librarian, the Copyright Office, and the arbitrators as well. The rate setting proceeding for section 114 is not the only CARP proceeding likely to take place this year. The Library of Congress is currently conducting a royalty distribution proceeding under chapter 10 of the Copyright Act, a cable rate adjustment proceeding, a satellite carrier rate adjustment proceeding, and must schedule a cable royalty distribution proceeding, and a satellite carrier royalty distribution proceeding all within this calendar year. It would be extremely difficult for the Office to conduct the precontroversy discovery phase of more than one of these proceedings at the same time, and the Library must, therefore, conduct them sequentially.

Because of the number of CARP proceedings to be conducted this year, and the attending workload, selection of a date to initiate a section 114 rate setting proceeding is not dependent on the schedules of one or more of the participating parties, but must be weighed against the interests of all involved. The RIAA filed their petition in early June 1996, and it is likely that this arbitration proceeding will only involve three other parties who are already aware of the RIAA's petition. The Library therefore believes that a commencement of the precontroversy discovery period in the early fall would not come as a surprise to the affected parties or create an undue burden. Aware of the other proceedings which must be scheduled, the attending workload, and the need to manage the interests of all involved, the Library is announcing the precontroversy discovery schedule and arbitration period in this proceeding without seeking further comment from the participating parties.

B. Precontroversy Discovery Schedule and Procedures

Any party that has filed a Notice of Intent to Participate in the section 114 rate setting proceeding is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party nonprivileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The rules of the Library of Congress do not specify any particular steps or regimen to the precontroversy discovery period. We believe, however, that it is necessary to establish procedural dates for exchange of documents and filing of motions within the 45-day period to provide order and allow discovery to proceed smoothly and efficiently. The precontroversy discovery schedule set forth by the Library in the recent cable distribution proceeding, see 54 FR 14971, 14975–76 (March 21, 1995), proved to be successful in promoting an orderly and efficient discovery period, and we have chosen to adopt the same format and structure for the precontroversy discovery period in this proceeding.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

Action	Deadline
Filing of Written Direct Cases.	September 9, 1996.
Requests for Underlying Documents Related to Written Direct Cases.	September 18, 1996.
Responses to Requests for Underlying Documents.	September 25, 1996.
Completion of Document Production.	September 30, 1996.
Follow-up Requests for Underlying Documents.	October 7, 1996.
Responses to Follow-up Requests.	October 11, 1996.
Motions Related to Document Production.	October 15, 1996.
Production of Documents in Response to Follow-up Requests.	October 18, 1996.
All Other Motions, Petitions, and Objections.	October 23, 1996.

The precontroversy discovery period, as specified by § 251.45(b) of the rules, begins on September 9, 1996, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate must file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's case. Parties must comply with the form and content of written direct cases as prescribed in § 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on September 9, 1996, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by September 18, 1996, and responses to those requests are due by September 25, 1996. Documents which are produced as a result of the requests must be exchanged by September 30, 1996. It is important to note that all initial document requests must be made by the September 18, 1996, deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by September 18; otherwise, the party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by October 7, 1996, and responses to those requests are due by October 11, 1996. Any documentation produced as a result of a follow-up request must be exchanged by October 18, 1996. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by September 18, 1996. If, after receiving a copy of the study, the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the October 7, 1996 deadline. Again, failure to make a timely follow-up request would waive that party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by October 15, 1996. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by October 23, 1996, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, but are not limited to, objections to arbitrators appearing on the arbitrator list under § 251.4, and petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is not required.

Filing and service of all precontroversy motions, petitions, objections, oppositions and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be brought to the Copyright Office at the following address no later than 5 p.m. of the filing deadline date: Office of the Register of Copyrights, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20540. The form and content of all motions, petitions, objections, oppositions and replies filed with the Office must be in compliance with § 251.44 (b)–(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration

Because there are two phases to a rate adjustment proceeding—precontroversy discovery and arbitration—there are two time periods to be scheduled. The regulations do not provide how much time must separate precontroversy discovery from initiation of arbitration. There is no reason to schedule an inordinate amount of time between the two; however, there must be adequate time for the Librarian to rule upon all motions filed within the 45-day precontroversy period. In order to give the parties as much of the month of December as possible for proceedings before the CARP, the Library will initiate arbitration on December 2, 1996. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected. Delivery of the written report of the arbitrators to the Librarian, in accordance with 17 U.S.C. 802(e), must be no later than May 30, 1997.

Dated: July 29, 1996.

Marilyn J. Kretsinger,

Acting General Counsel.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–19666 Filed 8–1–96; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to renew the information collections described in this notice, which are used in the National Historical Publications and Records Commission grant program. The public is invited to comment on the proposed

information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 7, 1996 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (PIRM–POL), Room 4100, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7270; or electronically mailed to nancy.allard@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Nancy Allard at telephone number 301–713–6730, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. Title: Application for attendance at the Institute for the Editing of Historical Documents.

OMB number: 3095–0012, expiration date 10/31/96.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals, often already working on documentary editing projects, who wish to apply to attend the annual one-week Institute for the Editing of Historical Documents, an intensive seminar in all aspects of modern documentary editing techniques taught by visiting editors and specialists.

Estimated number of respondents: 25.

Estimated time per response: 2 hours.

Frequency of response: On occasion, no more than annually (when respondent wishes to apply for attendance at the Institute).

Estimated total annual burden hours: 50.

Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection of those individuals best qualified to attend the Institute jointly sponsored by the NHPRC, the State Historical Society of Wisconsin, and the University of Wisconsin. Selected applicants' forms are forwarded to the resident advisors of the Institute, who use them to determine what areas of instruction would be most useful to the applicants.

2. Title: National Historical Publications and Records Commission Grant Program.

OMB number: 3095–0013, expiration date 10/31/96.

Agency form number: None.

Type of review: Regular.

Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 174 per year submit applications; approximately 100 grantees among the applicant respondents also submit semiannual narrative performance reports.

Estimated time per response: 54 hours per application; 2 hours per narrative report.

Frequency of response: On occasion for the application; semiannually for the narrative report. Currently, the NHPRC considers grant applications 3 times per year; respondents usually submit no more than one application per year.

Estimated total annual burden hours: 9,796 hours.

Abstract: The application is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The narrative report is used by the NHPRC staff to monitor the performance of grants.

3. Title: Applications for Archival Administration and Historical Documentary Editing Fellowships.

OMB number: 3095–0011 and 3095–0014, expiration date 10/31/96. The applications are being combined in this request for OMB approval under the control number 3095–0014.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals who wish to apply for an NHPRC fellowship in archival administration or historical documentary editing. Applicants for the archival administration fellowship must have at least two years' professional archival work experience; applicants for the editing fellowship must hold an Ph.D. or have completed all requirements for the degree except the dissertation.

Estimated number of respondents: 15.

Estimated time per response: 8 hours.

Frequency of response: Generally one-time.

Estimated total annual burden hours: 120 hours.

Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection by the host institution of those individuals best qualified for the fellowships. One fellowship in archival administration and one fellowship in historical editing are awarded each year.

4. *Title:* Application for host institutions of archival administration and historical editing fellowships.

OMB number: 3095–0015, expiration date 10/31/96. The current approval covers only applications for host institution of the archival administration fellowship. The application for host institution of the historical documentary editing fellowship is a new information collection.

Agency form number: None.

Type of review: Regular.

Affected public: Nonprofit institutions or organizations that have active archival or special collections programs, and historical documentary publication projects that have received an NHPRC grant.

Estimated number of respondents: 9.

Estimated time per response: 17 hours.

Frequency of response: Generally, one-time although an institution may apply in subsequent years.

Estimated total annual burden hours: 153 hours.

Abstract: The application is used by the NHPRC staff to select applicants to serve as host institutions for the two fellowships supported by the NHPRC each year.

Dated: July 29, 1996.

L. Reynolds Cahoon,

Assistant Archivist for Policy and IRM Services.

[FR Doc. 96–19620 Filed 8–1–96; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Changes to NSF Systems of Records

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of changes to its Privacy Act Systems of Records. Eight (8) system notices are being deleted. The records described there are adequately covered by existing government-wide systems. Five (5) NSF system notices are being deleted because the records therein are covered by other, more comprehensive NSF system notices. Eleven (11) NSF system notices are being deleted because the records described therein are no longer maintained by NSF.

1. NSF Privacy Act Systems of Records Covered by Government-Wide Systems. The following eight (8) NSF System notices are being deleted. The records described therein are adequately covered by existing government-wide systems.

NSF–1, ''Employment Inquiries and Background Information.''
NSF–4, ''Confidential Statement of Employment and Financial Interests.''
NSF–11, ''Equal Employment Opportunity.''
NSF–15, ''Health Service Medical Records.''
NSF–17, ''Intergovernmental Personnel Act Assignment Agreements.''
NSF–20, ''Minority Applicants for Employment.''
NSF–25, ''Official Personnel Folders.''
NSF–32, ''Separated Employee Service Record (SF–7).''
NSF will rely on the following government-wide systems notices for Privacy Act requirements regarding these records.
OPM/GOVT–1, ''General Personnel Records.''
OPM/GOVT–5, ''Recruiting, Examining and Placement Records.''
OPM/GOVT–7, ''Applicant Race, Sex, National Origin, and Disability Records.
OPM/GOVT–10, ''Employee Medical File System of Records.''
OGE/GOVT–1, ''Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.''.
OGE/GOVT–2, ''Confidential Statements of Employment and Financial Interests.''
EEOC/GOVT–1, ''Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.''

2. NSF Privacy Act Systems of Records Covered by Other More Comprehensive NSF Systems. The following five (5) NSF system notices are being deleted because the records therein are covered by other, more comprehensive NSF system notices.

NSF–14, ''Grants to Individuals.''
NSF–21, ''Nominees for National Medal of Science, Waterman Award, Vannevar Bush Award, and NSB.''
NSF–37, ''U.S. Antarctic Research Program Field Participants.''
NSF–39, ''Reviewer/Panelist Information Subsystem.''
NSF–42, ''Waterman Award Nomination File.''

The records in these systems are covered by the following more comprehensive NSF Systems:

NSF–12, ''Fellowships and Other Awards,''
NSF–36, ''Personnel Tracking System (Antarctic).''
NSF–51, ''Reviewer/Proposal File and Associated Records.''

3. NSF Privacy Act Systems of Records No Longer Being Maintained. The following eleven (11) NSF system notices are being deleted since the records are no longer maintained by NSF.

NSF–2, ''Applicants to Committee on the Challenges of Modern Society.'' Fellowship Program.''
NSF–5, ''Congressional Contact File.''
NSF–27, ''Presidential Internships in Science and Engineering.''
NSF–31, ''Science Education Applicant Information Subsystem.''
NSF–33, ''Student Science Training Program Participant Information.''
NSF–35, ''Travelers Vouchers Folders (SF 1012).''
NSF–40, ''NSF Innovation Guide Mailing List.''
NSF–44, ''Visiting Women Scientists Roster.''
NSF–45, ''Study to Evaluate Scientific Information Services.''
NSF–46, ''Sample of U.S. Scientists Who Published Research Papers During 1978.''
NSF–47, ''NSF Applied Research Evaluation Roster.''

EFFECTIVE DATE: This action is effective immediately on August 2, 1996.

COMMENTS. Written comments should be submitted to Herman G. Fleming, NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, Room 485, Arlington, VA 22230.

Dated: July 29, 1996.

Herman G. Fleming,

Privacy Act Officer.

[FR Doc. 96–19613 Filed 8–1–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company, (Quad Cities Nuclear Power Station, Units 1 and 2); Order Approving the Indirect Transfer of Licenses as Part of the Corporate Restructuring of Midamerican Energy Company by Establishment of a Holding Company

I

MidAmerican Energy Company (MEC) holds a 25-percent ownership interest in Quad Cities Nuclear Power Station, Units 1 and 2. Commonwealth Edison Company (ComEd) owns the remaining 75-percent share of the facility. MEC and ComEd are governed by Facility Operating License Nos. DPR–29 and DPR–30 issued by the U.S. Atomic Energy Commission pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50) on December 14, 1972. Under these licenses, ComEd, acting as agent and representative of the two owners listed on the licenses, has the authority to operate the Quad Cities Nuclear Power Station, Units 1 and 2. Quad Cities is located in Rock Island County, Illinois.

II

By letter dated April 4, 1996, MEC informed the Commission that it was in the process of implementing a corporate restructuring. MEC proposes to restructure itself by establishing a holding company, MidAmerican Energy Holdings Company (MEHC), which would become the parent corporation to, and sole owner of, MEC. MEC would continue to remain a 25-percent minority owner and possession-only licensee of the Quad Cities Nuclear Power Station, Units 1 and 2. MEC would remain an ''electric utility'' as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale. Upon consummation of the restructuring, common stockholders of MEC would receive one share of stock in MEHC in exchange for each share of MEC stock held. MEC requested the Commission's approval of the indirect license transfers to the extent affected by the proposed corporate restructuring, pursuant to 10 CFR 50.80. Notice of this request for approval was published in the Federal Register on June 14, 1996 (61 FR 30263).

Upon review of the information submitted in MEC's letter of April 4, 1996, and other information before the Commission, the NRC staff has determined that the restructuring, subject to the conditions set forth herein, will not affect the qualifications of MEC as a holder of the license, and is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. These findings are supported by a Safety Evaluation dated July 29, 1996.

III

By September 3, 1996, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is

adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an Order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel and the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for ComEd; and Jack R. Newman, Esquire, Morgan, Lewis and Bockius, LLP, 1800 M Street, NW, Washington, D.C. 20036, attorney for MEC.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* That the Commission consents to the indirect transfers of the licenses held by MEC to the extent affected by the proposed restructuring of MEC subject to the following: (1) MEC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from MEC to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding one percent (1%) of MEC's consolidated net utility plant, as recorded on MEC's books of account, and (2) should the restructuring of MEC not be completed by December 31, 1997, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

For further details with respect to this action, see the application for consent concerning the proposed corporate restructuring of MEC dated April 4, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois.

Dated at Rockville, Maryland, this 29th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–19672 Filed 8–1–96; 8:45 am]

BILLING CODE 7590–01–P

1996 All Agreement States Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of the 29 Agreement States to discuss technical and program management issues in the regulation of Atomic Energy Act radioactive materials. Panel discussions will be held and individual presentations will be made to clarify and enhance a general understanding of regulatory requirements designed to protect the safety of the public and radiation workers.

DATES: The public meeting will be held on Tuesday, September 17, 1996, from 8:00 a.m. to 5:00 p.m.; Wednesday, September 18, 1996, from 8:00 a.m. to 5:00 p.m.; and Thursday, September 19, 1996, from 8:00 a.m. to 12:00 noon.

ADDRESSES: The meeting is to be held at the NRC's Two White Flint North building auditorium, 11554 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State Programs, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 415–2327, FAX (301) 415–3502 & Internet (LAB@NRC.GOV).

SUPPLEMENTARY INFORMATION: The following is a list of potential topics to be covered at this meeting:

1. Implementation of the Integrated Materials Performance Evaluation Program (IMPEP).
2. Business Process Reengineering—Materials Licensing.
3. Medical Program Issues.
4. Adequacy and Compatibility Implementing Procedures.
5. Operational Events and Nuclear Materials Events Database.
6. Radioactive Sources & Devices Working Group Report.
7. Contaminated Sites and Decommissioning.
8. Low-Level Waste Issues.

The meeting will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the meeting will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C. 20555 on or about October 30, 1996.

The following procedures apply to public attendance at the meeting:

1. Questions or statements from attendees other than participants, i.e., participating representatives of each Agreement State and participating NRC staff will be entertained as time permits; and

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 22nd day of July, 1996.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 96–19667 Filed 8–1–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Colllection title:* Medical Reports.

(2) *Form(s) submitted:* G–3EMP, G–250, G–250a, G–260, GL–12, RL–11b, and RL–11d.

(3) *OMB Number:* 3220–0038.

(4) *Expiration date of current OMB clearance:* August 31, 1996.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit, non-profit institutions, and State, Local or Tribal Government.

(7) *Estiamted annual number of respondents:* 60,950.

(8) *Total annual responses:* 60,950.

(9) *Total annual reporting hours:* 25,187.

(10) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information

needed for determining the nature and severity of the impairment.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–19619 Filed 8–1–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26547]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 26, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 19, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Transmission Corporation, et al. (70–7641)

CNG Transmission Corporation (''Transmission''), a wholly-owned subsidiary of Consolidated Natural Gas Company (''Consolidated''), a registered holding company, and CNG Iroquois, Inc. (''CNGI''), a wholly-owned subsidiary of Transmission, both Transmission and CNGI of 445 West Main Street, Clarksburg, West Virginia 26301, have filed a post-effective amendment, under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 45 and 54 thereunder and section 2(a) of the Gas Related Activities Act of 1990, to their application-declaration in the above file.

By orders dated January 9, 1991 (HCAR No. 25239), February 28, 1991 (HCAR No. 25263), May 7, 1991 (HCAR No. 25308) and July 6, 1993 (HCAR No. 25845) (collectively, the ''Orders''), among other things, CNGI was authorized to acquire a 9.4% general partnership interest in Iroquois Gas Transmission System L.P. (the ''Partnership''), a partnership formed to construct and own an interstate natural gas pipeline installed betwen Canada and Long Island, New York; to make equity contributions to the Partnership up to an aggregate amount of $55 million outstanding at any one time, through June 30, 1996; and in respect of the Partnership, to provide guarantees, indemnities, letters of credit and/or reimbursement agreements up to an aggregate amount of $20 million outstanding at any one time, through June 30, 1996. Pursuant to the Orders, among other things, Transmission was authorized to fund CNGI through the making of open account advances and/or the purchase of CNGI common stock, at $10,000 par value, up to an aggregate amount of $55 million outstanding at any one time, with CNGI retaining the right to repurchase the common stock at its par value, through June 30, 1996; and to provide guarantees, indemnities, letters of credit and/or reimbursement agreements to CNGI up to an aggregate amount of $20 million outstanding at any one time, through June 30, 1996.

CNGI now seeks to increase its ownership interest in the Partnership from 9.4% to 16% by purchasing a 6.6% general partnership interest from ANR Iroquois, Inc. for approximately $15 million.

The applicants state that construction of the pipeline was completed in 1992; a credit facility involving several institutional lenders currently provides long-term financing for the pipeline. In anticipation of funding obligations which may arise out of maintenance activities and expansion projects which the Partnership may undertake in the future from time to time, the applicants request extensions through June 30, 2001 of CNGI's and Transmission's authority to provide guarantees and indemnities, letters of credit and/or related reimbursement agreements in an amount, for each company, not to exceed $20 million outstanding at any one time, in respect of the Partnership and CNGI, respectively.

CNGI has 5,000 authorized shares of its common stock, $10,000 par value, of which 1,494 shares are issued and outstanding. CNGI requests authority to increase its authorized share capital from 5,000 to 10,000 shares. CNGI also seeks an extension through June 30, 2001 to buy back, at par value, shares of its common stock issued and sold to Transmission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19628 Filed 8–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22105; 811–8376]

Renaissance Capital Growth & Income Fund III, Inc.; Notice of Proposed Deregistration

July 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of proposed deregistration under the Investment Company Act of 1940 (the ''Act'').

RELEVANT ACT SECTIONS: Sections 8(a), 8(f) and (54(a).

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that the registration of Renaissance Capital Growth & Income Fund III, Inc. (''Renaissance Fund'') under the Act has ceased to be in effect, as of March 14, 1994, when it elected to be regulated as a business development company (''BDC'').

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 1996. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons requesting a hearing should serve Renaissance Fund with the request, either personally

or by mail, and also send the request to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Renaissance Fund, 8080 N. Central Expressway, Suite 210–LB 59, Dallas, TX 75206.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or Robert a. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

Statement of Facts

1. Renaissance Fund, a Texas corporation, filed a Notification of Registration on Form N–8A under section 8(a) of the Act and a registration statement on Form N–2 under section 8(b) of the Act and under the Securities Act of 1933 (the ''1933 Act'') on February 25, 1994. The registration statement became effective on May 6, 1994.

2. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under section 2(a)(48) (A) and (B) may elect to be subject to the provisions of sections 55 through 65 and be regulated as a BDC by filing with the SEC a notification of such election, if such company: (i) Has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the ''Exchange Act''); or (ii) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. On March 14, 1994, Renaissance Fund elected BDC status by filing a Form N–54A, which stated that, among other things, the company had filed a registration statement for a class of equity securities pursuant to section 12 of the Exchange Act.

3. Section 8(f) of the Act permits the SEC to deregister a registered investment company on its own motion if it finds that the company has ceased to be an investment company.

4. Section 8(a) of the Act, which requires registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. Such an order will be made effective retroactively, as of the time the SEC received the company's election. See Investment Company Act Release No. 11703 (March 26, 1981).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19627 Filed 8–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37488; File No. SR–DCC–96–10]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of GFI Group Inc., as an Interdealer Broker for Delta Clearing Corp.'s Repurchase Agreement Clearance System

July 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 18, 1996, Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to give notice that DCC has authorized GFI Group Inc. (''GFI'') to act as an interdealer broker in DCC's over-the-counter clearance and settlement system for repurchase agreement and reverse repurchase agreement (''repos'') transactions involving U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through its repo clearing system, DCC clears repo transactions that have been agreed to by DCC participants through the facilities of interdealer brokers that have been specially authorized by DCC (''authorized brokers'') to offer their services to DCC participants.[3] Currently, Liberty Brokerage, Inc., RMJ Special Brokerage Inc., Euro Brokers Maxcor Inc., Prebon Securities (USA) Inc., Tullet and Tokyo Securities Inc., Tradition (Government Securities), Inc., and Patriot Securities, Inc. are authorized brokers.[4] The purpose of the proposed rule change is to give notice that DCC has authorized GFI to act as a broker in DCC's clearance and settlement system for repo trades.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(e)(4) thereunder[7] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] Securities Exchange Act Release Nos. 36367 (October 13, 1995), 60 FR 54095; 36901 (February 28, 1996), 61 FR 8991; 37042 (March 29, 1996), 61 FR 15330; 37212 (May 14, 1996), 61 FR 25722; 37235 (May 20, 1996), 61 FR 26942; and 37392 (July 1, 1996), 61 FR 36095.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b–4(e)(4) (1995).

the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DDC–96–10 and should be submitted by August 23, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19663 Filed 8–1–96; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the Federal Register on July 26, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals:

(Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections)

1. Reporting Changes That Affect Your Social Security—0960–0073. The information collected by the Social Security Administration on form SSA–1425 is used to determine a beneficiary's continuing entitlement to Social Security benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event which could affect their payments.

Number of Respondents: 70,000.

Frequency of Response: On occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,833 hours.

2. Student Reporting Form—0960–0088. The information collected by the Social Security Administration on form SSA–1383 is used to determine if an event or change will affect a student's eligibility for Social Security benefits and to determine the correct benefit amount. The respondents are student beneficiaries or their representative payees who report an event or change.

Number of Respondents: 75,000.

Frequency of Response: On occasion.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

Social Security Administration

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: July 29, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–19673 Filed 8–1–96; 8:45 am]

BILLING CODE 4190–29–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

July 29, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 30, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62412, published on December 7, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the

[8] 17 CFR 200.30–3(a)(12) (1995).

implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 29, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on Novembr 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on July 30, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
333/334	239,658 dozen.
335	166,204 dozen.
336	624,274 dozen.
340/640	884,631 dozen.
347/348	1,729,785 dozen.
359–C/659–C [2]	822,203 kilograms.
433	3,275 dozen.
447	8,343 dozen.
634	386,530 dozen.
635	333,535 dozen.
638/639	1,767,107 dozen.
647/648	1,131,411 dozen.
650	102,839 dozen.
659–H [3]	1,194,366 kilograms.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [6], 665, 666, 669–O [7], 670–O [8], 831–846 and 850–859, as a group.	146,636,081 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H).

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–19617 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (#96–03–C–00–PDX) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Airport, Submitted by the Port of Portland, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Portland International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manger; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Haynes, at the following address: Port of Portland, 7000 N.E. Airport Way, Portland, OR 97218.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Portland International Airport, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (206) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–03–C–00–PDX) to impose and use PFC revenue at Portland International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 26, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Portland International Airport, Portland, Oregon, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 25, 1996.

The following is a brief overview if the application.

Level of the proposed PCF: $3.00.

Proposed charge effective date: November 1, 1996.

Proposed charge expiration date: August 31, 1999.

Total requested for use approval: $59,272,000.00.

Brief description of proposed project: Terminal Roadway Program; Runway 10R/28L (South) Rehabilitation including Associated Taxiways and Support Equipment; Federal Inspection Station (FIS) Expansion; Terminal Expansion South.

Class or classes of air carriers which the public agency has requested not be

required to collect PFC's: The carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. ''Air Taxi/Commercial Operator'' shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the Airport, ferry or training flights, aerial photography or survey charters, and fire fighting charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Airport.

Issued in Renton, Washington on July 26, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch—Northwest Mountain Region.

[FR Doc. 96–19677 Filed 8–1–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Stearns County, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed reconstruction of Trunk Highway 23 (TH 23) in Stearns County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Suite 490 Metro Square Building, 121 East Seventh Place, St. Paul, Minnesota, 55101, Telephone (612) 290–3240; or Tony Hughes, Project Manager, Minnesota Department of Transportation—District 3, P.O. Box 370, 3725 12th Street North, St. Cloud, MN 56303, Telephone (612) 255–2909.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 23 in Stearns County, Minnesota. The EIS will consider alternatives and impacts of reconstructing existing TH 23 between Richmond and I–94 for a distance of approximately 21 kilometers (13 miles). Improvements to the corridor are considered necessary to provide for existing and projected traffic demands. The alternatives to be studied in the Draft EIS as identified in the ''Draft Scoping Decision Document'' include:

- No Build.
- Utilize the existing TH 23 Corridor from the west end of Richmond, utilize an unused railroad corridor between County Road 163 in Richmond and County Road 158 near Cold Spring, utilize the existing TH 23 Corridor to the connection near I–94.
- Same as previously described alternative except this alternative includes the construction of a four-lane rural expressway on new alignment south and east of the City of Rockville. This segment of expressway would connect to existing TH 23 midway between Rockville and Cold Spring on the west and approximately midway between Rockville and I–94 on the east.
- Same as previously described alternative except the four-lane expressway on new alignment is shifted further south and east of the City of Rockville.

The ''TH 23 Scoping Document and Draft Scoping Decision Document'' was published July 12, 1996. Copies of the document are being distributed to agencies, interested persons, elected and appointed officials and libraries for review to aid in identifying issues and analyses to be contained in the EIS. The comment period for the ''TH 23 Scoping Document and Draft Scoping Decision Document'' extends through August 14, 1996. To afford an opportunity for all interested persons, agencies and groups to comment on the proposed action, a public scoping meeting will be held on August 8, 1996 to receive comments. A press release was published to inform citizens of the documents' availability.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in this project. A series of public meetings will be held. Public notice will be given for the time and place of the meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 25, 1996.

Alan J. Friesen,

Engineering and Operations Engineer, Federal Highway Administration.

[FR Doc. 96–19621 Filed 8–1–96; 8:45 am]

BILLING CODE 4910–22–M

Surface Transportation Board [1]

[STB Finance Docket No. 32951]

Cen-Tex Rail Link, Ltd.—Merger Exemption—South Orient Railroad Company, Ltd.

Cen-Tex Rail Link, Ltd. (Cen-Tex) has filed a notice of exemption to merge with South Orient Railroad Company, Ltd. (SORC). Cen-Tex and SORC are commonly controlled Class III rail carriers that own and operate rail property in Texas.[2] Under the Agreement and Plan of Merger, SORC will be merged with and into Cen-Tex, which will be the successor partnership. The name of the surviving partnership would be changed from Cen-Tex Rail Link, Ltd. to South Orient Railroad Company Ltd.[3] The transaction was to be consummated on or after July 18, 1996.

Because the parties are members of the same corporate family, and the merger will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] See *Joel T. Williams, III, Roy C. Coffee, Jr., Rafael Fernandez-MacGregor, and Bristol Investment Co., Inc.—Cen-Tex Rail Link, Ltd. and South Orient Railroad Company, Ltd.*, Finance Docket No. 32478 (ICC served Aug. 16, 1994).

[3] Counsel has confirmed that Cen-Tex Rail Link, Ltd. has changed its name to South Orient Railroad Company, Ltd.

exemption at 49 CFR 1180.2(d)(3). The purpose of the transaction is to streamline corporate functions and improve the efficiency of the surviving entity.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32951, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Washington, DC 20036.

Decided: July 26, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19614 Filed 8–1–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32892]

CSX Corporation and CSX Transportation, Inc.—Control—The Indiana Rail Road Company

AGENCY: Surface Transportation Board.

ACTION: Notice of acceptance of application.

SUMMARY: The Board accepts for consideration the application filed July 3, 1996, by CSX Corporation (CSX), CSX Transportation, Inc. (CSXT), and The Indiana Rail Road Company (INRD) (collectively, applicants), for CSX and CSXT to acquire control of INRD. In accordance with 49 CFR 1180.4(b)(2)(iv), the Board finds that this is a minor transaction as described in 49 CFR 1180.2(c).

DATES: This decision is effective on August 2, 1996. Written comments, including comments from the Secretary of Transportation and the Attorney General of the United States, must be filed with the Board no later than September 3, 1996. The Board will issue a service list shortly thereafter. Copies of the comments must be served on all parties of record within 10 days after the Board issues the service list and must be confirmed by certificate of service filed with the Board indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due September 23, 1996.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 32892 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, send one copy of all pleadings to applicants' representatives: (1) G. Paul Moates, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006; and (2) John H. Broadley, Jenner & Block, 601 Thirteenth Street, N.W., Twelfth Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Applicants seek approval under 49 U.S.C. 11323–25 for CSX and CSXT to acquire control of INRD by acquiring a controlling interest in Midland United Corporation (Midland), the noncarrier holding company that owns INRD.

Applicants state that this is a minor transaction as defined in 49 CFR part 1180, the regulations that implemented former 49 U.S.C. 11343–45. The ICCTA revised those statutory provisions and reenacted them as 49 U.S.C. 11323–25. Because the proposed transaction does not involve the merger or control of two Class I railroads, it is subject to the standards of 49 U.S.C. 11324(d). Also, as discussed below, because we have determined that the transaction is not of regional or national significance, the procedures set out at 49 U.S.C. 11325(d) apply. Under section 204(a) of the ICCTA, all ICC rules in effect on the date of enactment of the ICCTA ''shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * * or operation of law.'' While the standards and procedures of former sections 11343–45 and current sections 11323–25 are substantially similar, insofar as minor transactions are concerned, the procedures of current section 11325(d) differ slightly from those at 49 CFR 1180.4 and shall govern. Otherwise, the use of the regulations at 49 CFR part 1180 for this proceeding appears proper.

CSXT is a Class I rail carrier wholly owned by CSX, a noncarrier, and operates approximately 19,000 miles of track in 20 states, the District of Columbia, and the province of Ontario, Canada. INRD is a Class III rail carrier that operates approximately 155 miles of track between Newton, IL, and Indianapolis, IN. CSXT's lines, relevant to this transaction, run essentially north and south, while INRD's line runs essentially east and west. INRD and CSXT have direct connections at Sullivan and Bloomington, IN, and an indirect connection at Indianapolis, IN, through which they interchange freight traffic.

The principal commodity handled by INRD is Indiana coal. In 1995, INRD transported approximately 34,000 carloads of Indiana coal, which is more than 60% of its total annual carloads of approximately 56,000. According to applicants, Indiana coal is currently available from a number of mine sources served by Soo Line Railroad Company (Soo), INRD, and Indiana Southern Railroad Company (ISRR). Applicants argue that the availability of coal from mine sources located in neighboring states as well as from western coal mines creates competition in coal transportation services for shippers and receivers served by INRD. Applicants submit that the wide variety of coal source and transportation options precludes any significant competitive harm as a result of the proposed transaction.

In support of its contention that the proposed transaction is unlikely to affect, much less diminish, competition for INRD's shippers and receivers, applicants provide the following traffic data. Approximately two-thirds of INRD's coal traffic consists of movements to electric power generating utility plants served directly by INRD. Nearly one-half of that traffic moved in all-local service from two active INRD-served mines at Switz City, IN. The remainder of INRD's terminating coal traffic consisted of interline movements originating at mines served by Soo and/or ISRR. With only one exception, generating fewer than 1,000 carloads of INRD traffic in 1995, those mines are not served by CSXT. All of INRD's interline-received coal traffic served utility plants that currently are served either exclusively by INRD or by two rail carriers other than CSXT. Only one

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to an acquisition of control of a rail carrier that is subject to Board jurisdiction pursuant to 49 U.S.C. 11323–25.

coal receiver located on INRD's line currently can be served directly by CSXT. The remainder of INRD's 1995 coal traffic (approximately 12,000 carloads) moved in joint-line service with Soo, ISRR, and/or Conrail to utilities and industrial users in Indiana, Wisconsin, and Iowa, and none of those receivers is served by CSXT. Therefore, applicants conclude that the common control of INRD and CSXT will not diminish competition for INRD-originating coal traffic. INRD also provides overhead haulage services for CSXT between Bloomington and Sullivan, which accounted for approximately 10% of INRD's traffic in 1995.

The largest share of INRD's non-coal traffic, approximately 8,200 carloads in 1995, originated or terminated at local industries on INRD's main line at Robinson, IL. INRD is the only rail carrier serving Robinson. Less than 10% of INRD's 1995 traffic consisted of farm products (primarily grain) that originated at one of three country elevators located on INRD's main line between Newton and Sullivan. Applicants submit that the proposed transaction will strengthen grain competition by enhancing rail service between INRD origins and CSXT long-haul destinations, thereby improving access to potential markets for Indiana and Illinois grain producers.

CSXT owns 40% of Midland's issued and outstanding voting common stock, as well as options to acquire the remaining 60% of Midland's stock and certain nonvoting covertible preferred stock. CSXT proposes to acquire control of INRD through control of Midland, either by converting its preferred stock or by exercising its options to purchase the remainder of the outstanding common stock.[2]

Applicants maintain that the proposed transaction will preserve the quality of INRD's transportation services, improve those services through better coordination of operations and marketing with CSXT, and allow the pursuit of opportunities for operating efficiencies and expanded marketing through common ownership and operation. They state that the acquisition of control provides a financially attractive investment opportunity for CSXT, and that INRD's rail operations are a natural complement to those of CSXT, strengthening their existing operating relationship and facilitating joint marketing of their rail services and tighter coordination of their operations. It will also allow INRD to enhance its services to its customers and provide greater access to CSXT's supply of freight cars.

Applicants propose to maintain INRD as a separate subsidiary for the foreseeable future, operating essentially in the same manner as it does today, with no significant changes in operations or service. Under CSXT's current operating plan, only modest operating efficiencies, marketing considerations, and service improvements are contemplated, while preserving INRD's existing schedules and services. If, however, CSXT later acquires the balance of Midland's common stock under the terms of its Option Agreement, applicants indicate that it is possible that CSXT will seek to coordinate more closely the carriers' operations. Applicants state that there are no present plans to close any existing interline route or to alter or cancel any existing divisions with connecting carriers.

Applicants submit that the proposed transaction will have no adverse impact on employees, and that all CSXT and INRD employees will retain their existing positions and responsibilities. Applicants acknowledge that approval of the transaction will be subject to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Under 49 CFR part 1180, we must determine whether a proposed transaction is major, significant, or minor. The proposed transaction, which involves the control by a Class I rail carrier of a Class III rail carrier, has no regional or national significance and will clearly not have any anticompetitive effects. We conclude that the competitive and operational effects of CSXT's control of INRD would be minimal and that none is adverse. Moreover, it appears that there is considerable potential for improved coordination of operations and marketing between CSXT and INRD that will positively affect the services provided by both carriers, especially INRD. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c), consistent with the categories of transactions now defined at 49 U.S.C. 11325(a). Because the application complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Board in Washington, DC. In addition, they may be obtained upon request from applicants' above named representatives.

Interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely comments will be considered a party of record if the person so requests. No petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(c)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position (i.e., whether it supports or opposes the proposed transaction);

(d) A statement whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(f) A list of all information sought to be discovered from the applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing this transaction are set forth at 49 U.S.C. 11325(d).

Discovery may begin immediately. We encourage parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration under 49 U.S.C. 11323–25 as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on August 2, 1996.

Decided: July 25, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19615 Filed 8–1–96; 8:45 am]

BILLING CODE 4915–00–P

[2] By decision served May 3, 1996, in this proceeding, the Board granted a waiver to permit applicants to file this application without disclosing the consideration to be paid in connection with the transaction.

[STB Docket No. AB–475 (Sub-No. 2X)]

New Hampshire and Vermont Railroad Company—Abandonment Exemption—in Coos County, NH

New Hampshire and Vermont Railroad Company (NHVT) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over approximately 1.1 miles of railroad from milepost 154.6 (Station 1587.50 on Val. Sec. 24.2), to milepost 155.7 (Station 1645+23.5 on Val. Sec. 24.2), in Berlin Coos County, NH.[2]

NHVT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 3, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by August 12, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 22, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: David H. Anderson, 288 Littleton Road, Suite 21, Westford, MA 01886.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NHVT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 7, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19687 Filed 8–1–96; 8:45 am]

BILLING CODE 4915–00–P

[2] Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. NHVT's verified notice indicated a proposed consummation date of September 1, 1996. Because the verified notice was not filed until July 15, 1996, consummation should not have been proposed to take place prior to September 3, 1996. NHVT's representative has confirmed that the correct consummation date is on or after September 3, 1996.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 22, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Data Management

OMB Number: 1505–0149.
Form Number: None.
Type of Review: Extension.
Title: Reporting of International Capital and Foreign Currency Transactions and Positions, 31 CFR Part 128.

Description: 31 CFR Part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserves of the United States. It also establishes guidelines for reporting on the foreign currency transactions of U.S. persons. It includes recordkeeping requirement, § 128.5.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 2,000.

Estimated Burden Hours Per Recordkeeper: 3 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 6,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220,

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–19631 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–25–U

Submission to OMB for Review; Comment Request

July 23, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0110.
Form Number: IRS Form 1099–DIV.
Type of Review: Extension.
Title: Dividends and Distributions.
Description: The form is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 140,560.
Estimated Burden Hours Per Respondent: 14 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 23,297,824 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–19632 Filed 8–1–96; 8:45 am]

BILLING CODE 4830–01–U

Submission for OMB Review; Comment Request

July 23, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC. 20220.

U.S. Secret Service (USSS)

OMB Number: New.
Form Number: SSF 86A.
Type of Review: New collection.
Title: Supplemental Investigative Data.
Description: Respondents are *all* Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Service Clearance, and possibly SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that applicant meets all internal agency requirements.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,500 hours.
Clearance Officer: Sandy Bigley, (202) 435–7025, U.S. Secret Service, Room 670, 1310 L Street, NW., Washington, DC 20005.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–19633 Filed 8–1–96; 8:45 am]

BILLING CODE 4830–01–U

Submission for OMB Review; Comment Request

July 26, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0069.
Form Number: CF 3461 and CF 3461 Alternate.
Type of Review: Reinstatement.
Title: Immediate Delivery Application.
Description: Customs Forms 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 6,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 838,158 hours.
OMB Number: 1515–0124.
Form Number: None.
Type of Review: Extension.
Title: Disclosure of Information on Inward and Outward Vessel Manifest.
Description: This information is used to grant a domestic importer's, consignee's, and exporter's request for confidentiality of its identity from public disclosure.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 578.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting Burden: 289 hours.
Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–19634 Filed 8–1–96; 8:45 am]

BILLING CODE 4820–02–U

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Beer for Exportation.

DATES: Written comments should be received on or before October 1, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and

Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Beer for Exportation.

OMB Number: 1512–0096.

Form Number: ATF F 5130.12.

Abstract: ATF collects this information in order to monitor export activities by brewers. Certification as to type and quantity of beer exported is analyzed by brewers' operational reports to ensure compliance with tax laws enforced by ATF. The ATF District Director is authorized to direct a proprietor to retain records for an additional 3 years where it is deemed necessary.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Time Per Respondent: 1 hour and 39 minutes.

Estimated Total Annual Burden Hours: 38,808.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: July 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–19680 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Explosives Delivery Record.

DATES: Written comments should be received on or before October 1, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dottie Morales, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8576.

SUPPLEMENTARY INFORMATION:

Title: Explosives Delivery Record.

OMB Number: 1512–0133.

Form Number: ATF F 5400.8.

Abstract: This information collection activity is used to verify distributors' compliance with Federal law and regulations, thereby documenting the flow of explosives in commerce and as a tracing tool to prevent misuse and traffic in stolen explosives. The records retention period for this information collection is 5 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 2,5000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: July 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–19681 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Wine.

DATES: Written comments should be received on or before October 1, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joyce Drake, Wine,

Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Wine.

OMB Number: 1512–0298.

Recordkeeping Requirement ID Number: ATF REC 5120/1

Abstract: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government. The records retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 165 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this information collection.

Dated: July 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–19682 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond for Drawback Under 26 U.S.C. 5131.

DATES: Written comments should be received on or before October 1, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Bond for Drawback Under 26 U.S.C. 5131.

Form Number: ATF F 5154.3.

Abstract: This bond form is required pursuant to 26 U.S.C. 5131 from all persons who claim, on a monthly basis, drawback of tax on distilled spirits used in the manufacture of approved nonbeverage products. The form is used to establish eligibility to file drawback claims on a monthly basis and, when necessary, to enforce collection of money owed to the Government.

Current Actions: This is a new application. The bond has been required for many years, but because the form requests no information other than that necessary to identify the parties involved and the amount of the bond, it had not previously been considered to be a collection of information subject to OMB review and approval.

Type of Review: New.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 12 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: July 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–19683 Filed 8–1–96; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register
Vol. 61, No. 150
Friday, August 2, 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 AGRICULTURE

Food and Consumer Service

7 CFR Parts 220 and 226

RIN 0584-AC15

National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program and Summer Food Service Program for Children: Meat Alternates Used in the Child Nutrition Programs

Correction

In proposed rule document 96–16992 beginning on page 35152 in the issue of Friday, July 5, 1996, make the following corrections:

§ 220.8 [Corrected]

1. On page 35156, in § 220.8(g), in the table, in the fourth column (Grades K-12), ''¼ cup'' should read ''½ cup''.

§ 226.20 [Corrected]

2. On page 35157, in § 226.20(c)(2) and (c)(3), in the tables, insert ''* * *'' after ''Alternates''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 679

[Docket No. 960531152-6152-01; I.D. 042996B]

RIN 0648-AI18

Fisheries of the Exclusive Economic Zone Off Alaska

Correction

In rule document 96–14593, beginning on page 31228, in the issue of Wednesday, June 19, 1996, make the following corrections:

1. On page 31288, in the Figure 4 caption, ''a. Map'' should be centered beneath ''Figure 4 to Part 679--Herring Savings Areas in the BSAI''.

2. On page 31297, in TABLE 3, on the FMP SPECIES line, the numbering sequence should begin with column 3, WHOLE FISH, instead of column 2, SPECIES CODE, and the subsequent columns should be renumbered sequentially.

3. On page 31302, in TABLE 9, on the second line, in the third column, ''Cather-processor'' should read ''Catcher-processor''.

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 20]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Oshkosh, WI

Correction

In notice document 96–16798 beginning on page 34436 in the issue of Tuesday, July 2, 1996, make the following correction:

On page 34437, in the first column, in the eighth line from the top ''July 26'' should read ''July 27''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

RIN 1018-AB49

Importation, Exportation, and Transportation of Wildlife

Correction

In rule document 96–15388 beginning on page 31850 in the issue of Friday, June 21, 1996, make the following correction:

§ 14.33 [Corrected]

On page 31869, in the first column, in the first line ''§14.21'' should read ''§14.33''.

BILLING CODE 1505–01–D

Federal Register

Friday
August 2, 1996

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 655

Uniform Traffic Control Devices Manual Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 96–15]

RIN 2125–AD68

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Standards for Center Line and Edge Line Markings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed admendment for the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 Code of Federal Regulations (CFR) part 655, subpart F, and recognized as the national standard for traffic control on all public roads. Sec. 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993, requires that the MUTCD include a national standard to define the roads that must have center line or edge line markings or both, provided that in setting such a standard, consideration be given to the functional classification of roads, traffic volumes, and the number and width of lanes. The MUTCD amendments herein proposed are intended to improve traffic operations and safety by providing national standards and guidance to establish uniform application and use of center line and edge line markings on streets and highways.

DATES: Submit written, signed comments on or before May 2, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 96–15, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notifications of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest D. L. Huckaby, Office of Highway Safety (HHS–10), (202) 366–9064; or Mr. Raymond W. Cuprill, Office of Chief Counsel (HCC–20), (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is approved by the FHWA as the national standard for all streets and highways open to public travel. The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, stock no. 050–001–00308–2. The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number that shows, by Roman numeral, the part of the MUTCD affected and, by Arabic numeral, the order in which the request was received. The MUTCD request identification number for the amendments in this rulemaking is III–73 (Change) and is titled ''Standards for Center Line and Edge Line Markings.''

This notice is being issued to provide an opportunity to review and comment on the proposed amendments to the MUTCD. The FHWA will issue a final rule after considering the comments offered.

Proposed Amendment

Section 406 of the Department of Transportation and Related Agencies Appropriations Act for FY ending September 30, 1993, Pub. L. 102–388, 106 Stat 1520, requires that the MUTCD include a standard to define the roads that must have center line or edge line markings or both, provided that in setting such a standard, consideration be given to the functional classification of roads, traffic volumes, and the number and width of lanes.

Definitions

The proposed amendment uses terminology that is in compliance with the MUTCD definitions. As included in the Section 1A–9 of the MUTCD, the term ''roadway'' shall be defined as: ''That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of parking and auxiliary lanes, berms, and shoulders. In the event a highway includes two or more separate roadways, the term 'roadway' as used herein, refers to any such roadway separately, but not to all such roads collectively.'' Center Line Marking

The FHWA proposes replacing the fifth paragraph of Section 3B–1 of the 1988 version of the MUTCD with the following:

Center line markings shall be placed on paved, undivided 2-way streets and highways having the characteristics as follows:

1. Rural arterials and collectors with roadways 18 feet or more in width and an average daily traffic (ADT) of 1000 or more.

2. Urban arterials and collectors with roadways 20 feet or more in width and an ADT of 2000 or more.

3. Roadways with 3 lanes or more.

Center line markings should be placed on paved, undivided 2-way streets and highways having the following characteristics:

1. Rural roadways 18 feet or more in width with an ADT of 500 or more.

2. Urban roadways 20 feet or more in width with an ADT of 1000 or more.

3. Roadways were engineering studies indicate a need.

Center line markings may be placed on any undivided 2-way streets and highways.

In determining whether to place centerline markings on roadways less than 16 feet wide, the risk of vehicles on pavement edges or of drivers being adversely affected by parked vehicles may be considered. Also when edge line markings are used the risk of persistent vehicle encroachment into the lane of opposing traffic may be considered.

Edge Line Marking

The FHWA proposes replacing the second paragraph of Section 3B–6 with the following:

Edge line markings shall be white except that on the left edge of each roadway of divided streets and highways, and 1-way roadways in the direction of travel, they shall be yellow.

Edge line markings shall be placed on paved streets and highways of the following types or with the following characteristics, except when roadway edges are defined by curbs and/or by markings for parking spaces:

1. Freeways,
2. Expressways, and
3. Rural arterials.

Edge line markings should be placed on paved streets and highways with the following characteristics, except when roadway edges are defined by curbs and/or by markings for parking spaces:

1. Rural collectors 20 feet or more in width,
2. Paved streets and highways where an engineering study indicates a need.

Edge line markings may be placed on other classes of streets and highways with or without center line markings.

Compliance Date

The proposed compliance date for the proposed amendments is three years after the date of publication of the final rule in the Federal Register.

When reviewing the proposed amendments, readers should consider the additional center line marking

standards in the MUTCD Section 3B–3, ''No-Passing Zone Markings'' which states:

Where center line markings are installed, no-passing zones shall be established at vertical and horizontal curves and elsewhere on two- and three-lane highways where an engineering study indicates passing must be prohibited because of inadequate sight distances or other special conditions. Specific reference is made to section 11–307 UVC Revised 1968.

A no-passing zone shall be marked by either a one direction, no-passing markings (no. 5, section 3A–7) or a two direction, no-passing markings (no. 6, section 3A–7) as illustrated in figure 3–2b.

Background

Current Practice

Part III of the current MUTCD, the 1988 edition, sets forth basic principles and prescribes standards and guidelines for markings on all streets and highways open to public travel in the United States. The primary purposes of center line markings are to separate opposing directions of traffic flows, and to provide positive guidance to drivers by defining the left limit of a driver's field of safe travel and no-passing zones. The primary purpose of edge line markings is to provide positive guidance by defining the right and left limits of a driver's field of safe travel.

Sections 3B–1 and 3B–6 of the MUTCD state the following regarding the roadways on which center line and edge line marking, respectively, are recommended:

In Section 3B–1:

Center line markings are recommended on paved highways under the following conditions:

1. In rural districts on two-lane pavements 16 feet or more in width with prevailing speeds of greater than 35 mph.

2. In residential or business districts on through highways where there are significant traffic volumes.

3. On undivided pavements of four or more lanes.

4. At other locations where an engineering study indicates a need for them.

In Section 3B–6:

Edge line markings shall be provided on Interstate highways, on rural multilane highways, and may be used on other classes of roads.

Previous Proposal

Concurrently with the preparation of the 1988 edition of the MUTCD, the FHWA proposed an amendment to the MUTCD on center line markings. In response to a February 20, 1985, petition from the Center for Auto Safety, designated by FHWA as MUTCD request III–35 (Change) titled ''Warrants for Center Line Pavement Markings,'' the FHWA considered establishing warrants for center line markings. The FHWA's proposed amendments to the MUTCD were made available to the public for review and comment in FHWA Docket No. 87–21 on January 27, 1988, as published at 53 FR 2233. At that time the FHWA contended that minimum standards should be established for center line markings. The FHWA received 200 comments in response to the proposed amendments in FHWA Docket No. 87–21. Most of the commenters implied that: (1) The center line and edge line markings' standards and guidelines contained in the MUTCD were satisfactory, and (2) no additional standards were needed at that time. A termination notice for the rulemaking was published on January 23, 1989, at 54 FR 2998. Although denying the request for change in the termination notice, the FHWA stated that it would consider alternative actions necessary to better determine standards responsive to the motorists' needs and to the concerns expressed in the docket comments.

After the current 1988 edition of the MUTCD was published, a decision was made by the FHWA on January 6, 1988, at 53 FR 236, to postpone rulemaking on all requests for revisions to the MUTCD except those changes that would significantly impact safety. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

Findings of Research

In Appendix G, Analysis of Need for Centerline Stripes, of the National Cooperative Highway Research Program Report 214, ''Design and Traffic Control Guidelines for Low-Volume Rural Roads,'' [1] the author, Mr. John Glennon, concludes that center line markings are justified by a benefit-cost tradeoff for low volume roads with ADT's above 300 vpd. Mr. Glennon cautioned, however, that the exact decision point is sensitive to the assumed accident costs and the obtainable accident reduction.

Messrs. Richard N. Schwab and Donald G. Capelle reported on findings and recommendations that they deduced from FHWA research studies on roadway delineation in an article titled ''Is Delineation Needed,'' in the May 1980 issue of the ''ITE Journal.'' [2] They reported that center line markings can be cost beneficial at an ADT as low as 50 vpd, and that center line markings should be used on any paved roadway surface that will retain markings and that carries two-way traffic.

According to Mr. Ted R. Miller in a paper, ''Benefit-Cost Analysis of Lane Marking,'' [3] contained in Transportation Research Record 1334 published in 1992, even at 500 ADT, edge lines on rural two-lane roads yield safety benefits of $17.00 for every dollar invested.

Present Practice

The American Traffic Safety Services Association (ATSSA) conducted a survey of current State practices in 1993 and published the results in a 1994 report, ''Pavement Marking Programs and Practices.'' [4] The survey showed that for the 794,917 miles of State roadway in the 42 responding States, 80 percent received both center line and edge line markings, while 12 percent received only center line markings. The 8 percent receiving neither center line nor edge line markings were unpaved or had an ADT of 300 vpd or less in rural areas. Either center line and edge line markings, or center line markings only are placed on all State roadways in 27, or 77 percent, of 35 responding States. Several States indicated that edge line markings are placed on all roadways 20 feet or more in width and several said that edge line markings were not used on roadways less than 16 feet in width.

The National Committee on Uniform Traffic Control Devices (NC) conducted three surveys between 1989 and 1994 to collect information from States and many local jurisdictions about their use of center line and edge line markings. The surveys focused on and provided insight regarding the best practices and the state of the practice by States and local governments. The surveys showed that most States are placing center line and edge line markings on the highways that are under the State jurisdiction. Also, the city governments preferred higher ADT limits for requiring center line markings than did the State governments.

[1] This document is available for inspection and copying as prescribed at 49 CFR Part 7, Appendix D. A copy is in the files for FHWA Docket No. 96–15.

[2] This document is available for inspection and copying as prescribed at 49 CFR Part 7, Appendix D. A copy is in the files for FHWA Docket No. 96–15.

[3] This document is available for inspection and copying as prescribed at 49 CFR Part 7, Appendix D. A copy is in the files for FHFWA Docket No. 96–15.

[4] This document is available for inspection and copying as prescribed at 49 CFR Part 7, Appendix D. A copy is in the files for FHWA Docket No. 96–15.

Proposals by Others

Since 1948 the NC has served as an independent organization providing professional ideas on the content of the MUTCD, which is published by the FHWA. Beginning in 1980, the responsibilities of the NC were to initiate, review, or comment on proposed changes to the MUTCD. As such, the NC had the opportunity to review proposals and make recommendations to the FHWA in the same manner as any other member of the public. It is composed of sponsoring organizations that have substantial and continuing interest in traffic control.

The NC has been drafting proposals for amending the next version of the MUTCD. The NC proposal for Sections 3B–1 and 3B–6 contain mandatory standards, recommended guidance, and permissive options. The NC proposal also includes the types of criteria required by the Department of Transportation and Related Agencies Appropriations Act, of 1993.

The proposed NC amendment to the fifth paragraph in Section 3B–1 provides for the use of center line markings as follows. The definition of the ''traveled way'' in the proposal is the portion of the roadway for the movement of vehicles, exclusive of shoulders, and exclusive of parking lanes which are not excluded in the American Association of State Highway and Transportation Officials' definition.

STANDARD

Center line markings shall be placed on paved, undivided streets and highways as follows:

1. All rural arterials and collectors with a traveled way 18 feet or more in width with an ADT of 1000 or greater.

2. All urban arterials and collectors with a traveled way 20 feet or more in width with an ADT of 5000 or greater.

3. All two-way streets and highways having three or more travel lanes.

GUIDANCE

Center line markings should be placed on paved, undivided streets and highways as follows:

1. Urban arterials and collectors with a traveled way 20 feet or more in width with an ADT of 2500 or greater.

2. At other locations where an engineering study indicates a need for them.

OPTION

Center line markings may be placed on other paved, undivided streets and highways with a traveled way of 16 feet or more in width.

The proposed NC amendments in Section 3B–6 provide for the use of edge line markings as follows:

STANDARD

Edge line markings shall be placed on all freeways, expressways, and on all rural arterials with a traveled way 20 feet or more in width.

GUIDANCE

Edge line markings should be placed on paved streets and highways as follows:

1. Rural collectors with a traveled way 20 feet or more in width and where the edge of the traveled way is not otherwise delineated with curbs or other pavement markings.

2. At other locations where an engineering study indicates a need for them.

OPTION

Edge line markings may be placed on streets and highways with or without center line markings.

The ATSSA, which is one of the NC sponsoring organizations, had supported an earlier and similar draft of the above NC proposed amendments to the MUTCD Sections 3B–1 and 3B–6, with the following exceptions:

In Section 3B–1, for the use of center line markings, the ATSSA recommends that the first standard use an ADT of 500 vpd in lieu of an ADT of 1000 vpd and that the second standard use an ADT of 2000 vpd in lieu of an ADT of 5000 vpd. The ATSSA also recommends that the first guidance statement use 18 feet or more in lieu of 20 feet or more for the travel way width criteria, and an ADT of 1500 vpd in lieu of an ADT of 2500 vpd. The ATSSA reasons for recommending the lower criteria include current State practices discussed in NCHRP Synthesis of Highway Practice No. 138, ''Pavement Markings: Materials and Application for Extended Service Life'' [5] dated 1988, that concludes that an ADT of 300 or greater warrants markings based on opposing traffic per day; and previously mentioned paper, ''Benefit-Cost Analysis of Lane Marking,'' [6] contained in Transportation Research Record 1334 dated 1992, that reports that pavement striping yields benefits of $60.00 for every dollar spent.

In Section 3B–6, for the use of edge line markings, the ATSSA recommends adding the following as a guidance statement: ''Pavement edge line markings should be used where there is no ambient light, minimum sight distance, or the presence of other road hazards such as soft shoulder, steep drop-offs, or unprotected long slopes.''

Discussion of Amendments

A review of above-mentioned research and the NC and ATSSA surveys of current State and local government practices showed that center line and edge line markings are beneficial and that most States currently use them extensively on their roadways.

The FHWA proposed amendments to the MUTCD contain national standards and guidance for determining the streets and highways on which placement of center line markings and edge line markings are both required or recommended. The criteria in these standards and guidance provide for a uniform application on roadways while considering the flexibility needed by States and other jurisdictions in applying limited resources for improved safety. The proposed amendments also reflect current acceptable practice since many States are currently providing the required center line and edge line markings or better at their own discretion.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The proposed MUTCD changes in this notice contain additional guidance and requirements for the application of center line and edge line markings on roadways. The FHWA expects that application uniformity will be improved at little additional expense to the public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This notice of proposed rulemaking adds some alternative traffic control devices and only a very limited number

[5] This document is available for inspection and copying as prescribed at 49 CFR Part 7, Appendix D. A copy is in the files for FHWA Docket No. 96–15.

[6] This document is available for inspection and copying as prescribed at 49 CFR Part 7, Appendix D. A copy is in the files for FHWA Docket No. 96–15.

of new or changed requirements. Most of the proposed changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. This proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d) and 315 to promulgate uniform guidelines to promote the safe and efficient use of the highway.

Executive Order 12372 (Intergovernmental Review)

These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, 655.603; 49 CFR 1.48)

Issued on: July 24, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–19721 Filed 8–1–96; 8:45 am]

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Part III

Federal Deposit Insurance Corporation

General Counsel's Opinion No. 8; Stored Value Cards and Other Electronic Payment Systems; Notices

FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 8; Stored Value Cards

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of FDIC General Counsel's Opinion No. 8.

SUMMARY: The FDIC has received inquiries on whether and under what circumstances funds underlying stored value cards may be considered deposits under the Federal Deposit Insurance Act. This General Counsel Opinion sets forth the Legal Division's conclusions on this issue.

FOR FURTHER INFORMATION CONTACT: Marc J. Goldstrom, Counsel, Legal Division, (202) 898–8807, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Text of General Counsel's Opinion

General Counsel's Opinion No. 8—Stored Value Cards

By: William F. Kroener, III, General Counsel, FDIC

Introduction

Insured depository institutions are increasingly utilizing new technology to offer novel and innovative products to customers. One such product is the stored-value card. A stored value card stores information electronically on a magnetic stripe or computer chip and can be used to purchase goods or services. The balance recorded on the card is debited at a merchant's point of sale terminal when the consumer makes a purchase. Generally, stored value cards contain all the information necessary to identify the card and its value. This has enabled point of sale terminals in most systems to be ''off line''.[1] In other words, it is unnecessary to contact a depository institution or database for transaction authorization.

Some stored value cards are designed to be used until their value is exhausted and then are disposed. Other more sophisticated stored value cards may be ''reloadable''. The cards may have multiple uses, such as credit and debit features, in addition to the stored value component. Also, a particular stored value card system may have multiple card issuers and multiple card-accepting merchants. Some cards (or the stored value component of some cards) may be utilized by whomever may be in possession of such card, while others require a personal identification number to use.

Consumers may typically load value[2] onto a card in a number of ways. A customer without a pre-existing depositor relationship with an insured institution may purchase a stored value card from that institution. A deposit account holder may load value onto the card by withdrawing from an account through a teller, via an ATM, or, potentially, via a specially equipped telephone or personal computer. At least one system would allow the consumer to transfer the stored value to another person's card.

Typically, stored value cards are touted as substitutes for cash. Technically, however, they are not cash, and they do not have the finality of cash. Although it may not be apparent to the consumer, a stored value card transaction must typically move through a complex payment system before a payment is completed. Moreover, what is actually stored on stored value cards is information that, through the use of programmed terminals, advises a prospective payee that rights to a sum of money can be transferred to the payee, who in turn can exercise such right and be paid.

In addition to the development of stored value cards, stored value systems are being developed for making payments over computer networks such as the Internet. In such systems funds may be accessed using a personal computer, and transferred to individuals, merchants, or companies. While this opinion addresses stored value cards, the Legal Division believes that in general the principles discussed herein would apply equally to stored value computer network payment products.

Types of Stored Value Systems[3]

In some systems the funds underlying the stored value card could remain in a customer's account until the value is transferred to a merchant or other third party, who in turn collects the funds from the customer's bank (''Bank Primary—Customer Account Systems'').[4] In other systems, as value is downloaded onto a card, funds are withdrawn from a customer's account (or paid directly by the customer) and paid into a reserve or general liability account held at the institution to pay merchants and other payees as they make claims for payments (''Bank Primary—Reserve Systems'').

In still other systems, the electronic value is created by a third party and the funds underlying the electronic value are ultimately held by such third party (''Bank Secondary Systems''). In such systems, depository institutions act as intermediaries in collecting funds from customers in exchange for electronic value. In some Bank Secondary Systems, the electronic value is provided to the institution to have available for its customers. As customers exchange funds for electronic value, the funds are held for a short period of time and then forwarded to the third party (''Bank Secondary—Advance Systems''). In other systems of this nature, the depository institution will exchange its own funds for electronic value from the third party and in turn exchange electronic value for funds with its customers (''Bank Secondary—Pre-Acquisition Systems'').

In Bank Secondary Systems, the depository institution may have a contingent liability to redeem the electronic value from consumers and merchants. As such electronic value is redeemed, the institution may in turn exchange the electronic value for funds with the third party.

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[1] While most stored value card systems are ''off line'', we understand that there are ''on line'' stored value card systems (*i.e.*, the primary record of the balance of funds available to the consumer is not maintained on the card itself, but at the depository institution or a central data facility). Such cards are similar to debit cards except that the cardholder specifically designates the amount of money that may be accessed through the card and once so designated, such funds may only be accessed through the card. So far as we are aware, the systems of this type are not currently being utilized by depository institutions.

In its proposed amendment to Regulation E, 61 FR 19,696 (May 2, 1996), the Board of Governors of the Federal Reserve System has distinguished between ''off-line accountable'', ''off-line unaccountable'', and ''on-line'' stored value systems in determining whether the regulation applies to various types of stored value systems. This opinion does not use these distinctions. This is not intended as a criticism or rejection of the Board's classification system. Rather, it is indicative of the fact that these particular distinctions are not necessarily germane as to whether and under what circumstances the funds underlying a stored value card are ''deposits'' under the Federal Deposit Insurance Act (FDIA).

[2] The use of the phrase ''load value onto a card'', ''electronic value'', or any similar terms used in this opinion, is not meant to imply that the information loaded on stored value cards is legal tender or anything similar to legal tender. See 12 U.S.C. 5103. Rather, as discussed in the text below, such information is more in the nature of a right to be paid a sum of money.

[3] The classification of stored value systems described below is not intended to encompass all of the possible ways that stored value card systems may be structured. Rather, this classification system represents a mechanism to generalize the circumstances under which the funds underlying stored value cards may or may not be considered deposits within the meaning of the FDIA.

[4] Such a system would be similar to debit card systems, except that, unlike a debit card the information or value is on the card itself. The staff is not aware of any such system currently in development. It is our understanding, however, that such a system could be developed.

Primary Legal Issue

From the FDIC's perspective, the primary legal issue raised by the development of stored value card systems is whether and to what extent the funds or obligations underlying stored value cards constitute ''deposits'' [5] within the meaning of section 3(l) of the Federal Deposit Insurance Act (FDIA) and are therefore assessable and qualify for deposit insurance.[6] The FDIC General Counsel's legal opinion on this issue is contained herein. The opinion expressed herein is general in nature and based upon the information that the FDIC staff has gathered on stored value cards to date. No view is expressed on any specific stored value card system and the specific facts of any such system might cause the opinion expressed herein to change.

Applicable Statutes

An analysis of whether funds underlying the value on a stored value card are considered to be a part of the institution's assessment base and qualify for deposit insurance coverage begins with the definition of a deposit under section 3(l) of the FDIA. This section provides in pertinent part that:

The term ''deposit'' means—

(1) The unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable * * *

(2) Trust funds as defined in this Act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association,

(3) Money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes * * *

(4) Outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) Such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage * * *.

12 U.S.C. 1813(l).

Analysis

For purposes of this analysis, the most relevant provisions of section 3(l) of the FDIA are subsections (1) and (3). Synthesizing the requirements of these two subsections, in order for the funds underlying stored value cards to constitute deposits under section 3(l)(1) or (3) of the FDIA, 12 U.S.C. 1813(l)(1) & (3), the funds must represent: (1) An unpaid balance of money or its equivalent received or held by an institution; (2) in the usual course of business; and (3) either (a) the institution must have given or be obligated to give credit to a commercial, checking, savings, time, or thrift account; or (b) the funds must be held for a special or specific purpose.

An Unpaid Balance of Money or Its Equivalent Received or Held by an Institution

The first requirement is that there must be ''an unpaid balance of money or its equivalent received or held by a bank or savings association''. In each type of Bank Primary System described above, the institution will hold the funds to pay merchants and other payees. Consequently, this requirement of the statute would be satisfied.

In Bank Secondary—Advance Systems the funds may initially be received by the institution but later transferred to a third party. The issue then arises as to whether the fact that funds are received and held by an institution, albeit for a short time period, satisfies this requirement of the statute, thereby possibly creating a deposit liability during the period for which the institution holds the money.

In my opinion in Bank Secondary—Advance Systems funds held by an institution for a time period prior to transfer would meet the statutory requirement of ''the unpaid balance of money or its equivalent received or held by a bank or savings association''. In the analogous case of an institution selling travelers' checks issued by others, the FDIC staff has long held the opinion that the proceeds from such sale are deposits while held by the institution.[7] In my view, an institution holding funds prior to transfer to a third party in a Bank Secondary—Advance System is indistinguishable from the aforementioned travelers' check case. It is important to note, however, that the institution would owe the obligation to the third party, not the holder of the card. Thus, to the extent such funds may constitute a deposit, the ''depositor'' would be the third party. Moreover, any deposit liability for such funds would be extinguished upon transfer of the funds to the third party.

In Bank Secondary—Pre-Acquisition Systems the funds underlying the stored value are received or held by the third party. The institution in effect advances these funds on behalf of its customers and later collects funds from its customer in exchange for electronic value loaded onto stored value cards. Because the funds underlying the stored value are held by the third party, in my view, such funds are received or held by the third party, not the depository institution. Consequently, it appears that the requirement of ''an unpaid balance of money or its equivalent received or held by [an institution]'' would not be satisfied in Bank Secondary—Pre-Acquisition Systems.

Also in some Bank Secondary Systems the institution may by contract retain a contingent liability to redeem

[5] Whether and to what extent the funds or obligations underlying stored value cards constitute ''deposits'' within the meaning of section 3(l) of the FDIA will in large part determine whether such funds are ''insured deposits'' under section 3(m) of the FDIA. An ''insured deposit'' is that portion of a ''deposit'' that is insured. It is the ''net amount due to any depositor'' for ''deposits in an insured depository institution'' (after deducting offsets) less any part thereof that is in excess of $100,000. 12 U.S.C. 1813(m), 1817(i), and 1821(a). Such net amount is also determined in accordance with regulations prescribed by the FDIC. See 12 C.F.R. Part 330.

[6] This opinion only addresses whether the funds underlying stored value cards constitute deposits under the FDIA. Such determinations are relevant for assessment and insurance purposes. There are other issues, not addressed by this opinion, which are of great importance to the FDIC and which the FDIC will continue to monitor as appropriate. Such issues include, but are not limited to, consumer disclosure matters, systemic risk, security, electronic funds transfer matters, reserve requirements, counterfeiting, monetary policy, and money laundering.

[7] *See* FDIC Staff Advisory Opinion 93–55 (August 6, 1993) (funds held for one business day by an agent bank selling travelers checks on behalf of a company issuing travelers' checks, are deposits of the bank under 3(l)(3) of the FDIA, until such funds are forwarded to the company).

the electronic value from consumers and merchants. This raises the issue whether a contingent liability to redeem the electronic value represents an unpaid balance of money or its equivalent received or held by an institution. In interpreting 12 U.S.C. 1813(l)(1), the Supreme Court, in accordance with the purpose of the statute, imposed the requirement that a deposit of money or its equivalent be ''hard earnings'' that businesses and individuals have entrusted to banks. *FDIC* v. *Philadelphia Gear Corp.*, 476 U.S. 426, 435 (1986). The Court held that a stand-by letter of credit does not fall within the meaning of section 3(l)(1) of the FDIA because this was only a contingent obligation and did not represent ''hard earnings''. *Id.* at 440.

Any contingent liability of an institution to redeem electronic value in a Bank Secondary System would in my view not constitute ''hard earnings'' and thus, in accordance with the Court's holding in *Philadelphia Gear,* would not satisfy the requirement of an unpaid balance of money or its equivalent received or held by a bank or savings association. In Bank Secondary Systems the ''hard earnings'' are ultimately held by the third party, not the institution.

In the Usual Course of Business

Insured depository institutions are increasingly participating in stored value card systems. In light of this, the FDIC would likely view any funds received or held by institutions pursuant to participation in stored value card systems to be in the usual course of business.

The Institution Must Have Given or Be Obligated To Give Credit to An Account

To be a deposit under section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1), money or its equivalent must not only be held or received by an institution in the usual course of business, but must (unless another alternative condition is satisfied) be a payment for which the institution has given or is obligated to give credit to a commercial, checking, savings, time or thrift account. This requirement would not appear to be at issue in Bank Primary—Customer Account Systems because the funds remain credited to the customer's account until claims on such funds are made by payees. Assuming the other aforementioned requirements are met, the funds underlying Bank Primary—Customer Account Systems would appear to be deposits under section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1).

With respect to Bank Primary—Reserve Systems and both types of Bank Secondary Systems, stored value card products appear to be structured so that the institution does not credit and is not obligated to credit a commercial, checking, savings, time or thrift account. As described previously, when a customer purchases a stored value card in a Bank Primary—Reserve System funds are withdrawn from the customer's account (or paid directly by the customer) and paid into a reserve or general liability account maintained by the institution. Such accounts are routinely created and maintained by insured depository institutions. The FDIC does not consider such reserve or general liability accounts to be ''deposits'' within the meaning of section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1), because there does not appear to be an obligation to credit the funds to a commercial, checking, savings, time, or thrift account. In addition, the sample agreements which the FDIC staff has reviewed clearly indicate that the parties to a stored value card agreement, *i.e.,* the insured depository institution and the purchaser of the card, do not intend that the funds be credited to one of the five enumerated accounts.

Similarly, in Bank Secondary Systems the funds which consumers pay to load value onto a stored value card are ultimately held by the third party originator of the stored value. In these cases also it would appear that no commercial, checking, savings, time or thrift account has been credited nor is the institution obligated to credit such an account.

The foregoing notwithstanding, at some point the institution may become obligated to credit a payee's deposit account maintained at that institution and thus create a deposit liability to the payee. For example, after a transaction wherein the value on the card is transferred from a consumer to a merchant, and the merchant requests that the funds underlying the electronic value be credited to the merchant's account, the institution would appear to be under an obligation to credit the merchant's account; thereby, possibly creating a deposit liability to the merchant.

If the Institution Has Not Given or Is Not Obligated To Give Credit To An Account; The Funds Must Be Held For a Special or Specific Purpose

If funds held by an institution underlying stored value cards are not deposits under section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1), because the institution is not obligated to credit an account, the analysis must turn to whether such funds may be considered deposits under section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3). In order to be considered a deposit under 3(l)(3) of the FDIA, the value underlying a stored value card must represent: (1) Money or its equivalent (or the credit given for money or its equivalent) received or held by an institution; (2) in the usual course of business; and (3) for a special or specific purpose.

The first two requirements are essentially the same as under section 3(l)(1) of the FDIA as discussed above. While section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3), does not require that the institution be obligated to credit the funds to an account, it does require that funds be held ''for a special or specific purpose'' in order to qualify as a deposit.

Congress included in the statute, without limitation, the following examples of a bank or savings association holding funds for a special or specific purpose: ''escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes * * * .'' 12 U.S.C. 1813(l)(3).

While Congress included in section 3(l)(3) a number of special or specific purposes for which money may be held to qualify as a deposit, the clause ''without being limited to'' means that the section does not state each and every such purpose. Courts have held that money covering a Clearing House Interpayment System (CHIPS) release [8] and monies wired by a loan participant to the lead bank for the purpose of funding a participated loan [9], each constitute funds held for a special or specific purpose within the meaning of this statute. The case law seems to suggest that to qualify as a deposit under 3(l)(3) the purpose for which the

[8] *FDIC* v. *European American Bank & Trust Co.,* 576 F. Supp. 950, 957 (S.D.N.Y. 1983) (Money covering a CHIPS transfer has as specific a purpose as the money in the accounts listed by the statute. Just like money deposited to meet maturing obligations, money backing a CHIPS release is to insure payment to the recipient of the release.)

[9] *Seattle-First Bank* v. *FDIC,* 619 F. Supp. 1351, 1360 (D.C. Okl. 1985) (monies wired by a loan participant to the lead bank, at the lead's direction, for the purpose of funding a participated loan can become deposits within the meaning of 3(l)(3) when the wired funds are not drawn by the intended borrower. The funds were received for the special or specific purpose of funding the participated loan).

money is being held must at least be as specific as the purposes listed in the statute. See *FDIC* v. *European American Bank & Trust Co.*, 576 F. Supp. 950, 957 (S.D.N.Y. 1983); *Seattle-First Bank* v. *FDIC*, 619 F. Supp. 1351, 1360 (D.C. Okl. 1985).

When an institution holds funds in exchange for electronic value embedded in a stored value card, the relevant questions are: (1) What is the purpose for which these funds are being held? and (2) Is that purpose at least as specific as the purposes enumerated in the statute?

With respect to Bank Primary—Reserve Systems funds appear to be held by an institution to meet its obligations to payees as they make claims on such funds pursuant to general or miscellaneous and unrelated transactions undertaken within the stored value card system. It is my opinion that this purpose is fundamentally different from the examples listed in section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3). For example, an escrow account will typically have a very specific purpose associated with a particular transaction (or two or more related transactions). Similarly, funds underlying a letter of credit and funds held for purchasing securities are linked to a specific transaction or transactions.

The cases holding that certain funds are deposits within the meaning of section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3), also involve funds held with respect to a specific transaction. For example, in *Seattle-First Bank* the court held that monies wired by a loan participant to the lead bank at the lead bank's direction for the purpose of funding a participated loan were monies received for the special or specific purpose of funding the loan. 619 F. Supp. at 1360. In that case, as in the examples contained within section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3), the funds held are for a purpose associated with a particular transaction or two or more related transactions.

Conversely, a customer who transfers funds to an institution in exchange for electronic value may engage in any of a number of unrelated transactions. Indeed, when a customer has electronic value loaded onto a card he may have no idea as to what transactions he will use the card to engage in, nor whom the transferees may be. Thus, unlike the examples listed in the statute, funds held by an institution to redeem electronic value could be associated with general or miscellaneous unrelated transactions. Consequently, an institution holding funds to meet obligations to transferees in a Bank Primary—Reserve System does not appear to be as specific a purpose as the examples in the statute and in the cases finding deposit liabilities under section 3(l)(3) of the FDIA.[10] Therefore, in my view such funds would not be held for a special or specific purpose within the meaning of section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3).[11]

On the other hand, in the case of Bank Secondary—Advance Systems the funds are being held or received by the institution in order to pay the third party in consideration of the electronic value transferred by such third party to the institution and ultimately its customer. Thus, like the examples listed in the statute and the cases finding monies to be deposits under section 3(l)(3),[12] these funds are linked to a specific transaction. Moreover, these funds are analogous to funds held for one business day by an agent bank selling travelers checks on behalf of a company issuing travelers' checks. The FDIC staff considers such funds to be deposits of the bank under 3(l)(3) of the FDIA until such funds are forwarded to the company. *See* FDIC Staff Advisory Opinion 93–55, (August 6, 1993). Thus, in the case of Bank Secondary—Advance Systems, the funds being held or received in order to pay the third party may be considered held or received for a special or specific purpose within the meaning of section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3) and may therefore qualify as a deposit under such section. It is important to note, however, that such a deposit liability would be to the third party, not the institution's customer.

Other Subsections of the Statute Defining Deposit—Trust Funds

Trust funds are deposits under section 3(l)(2) of the FDIA, 12 U.S.C. 1813(l)(2). For purposes of the FDIA trust funds are funds held by an insured depository institution in a fiduciary capacity, including funds held as trustee, executor, administrator, guardian, or agent. 12 U.S.C. 1813(p). The FDIC staff is not aware of stored value card systems in which funds are held by an institution in a fiduciary capacity.

Other Subsections of the Statute Defining Deposit—Certain Negotiable Instruments

Section 3(l)(4) of the FDIA, 12 U.S.C. 1813(l)(4), includes within the definition of deposit an ''outstanding draft * * * cashier's check, money order, or other officer's check * * *.'' Stored value obligations have been analogized to cashier's checks and money orders. Indeed, Bank Primary—Reserve System stored value cards operate in much the same way that these instruments do. Nonetheless, unlike the payment mechanisms listed in the statute, stored value cards are not negotiable instruments.[13] Moreover, unlike a cashier's check or money order, the institution is not drawing a check upon itself. Rather, the institution's customer transfers to a payee the rights to a sum of money being held at the institution and in making payment to the payee, the institution is recognizing that its customer has transferred that right. See *FDIC* v. *European American Bank & Trust Co.*, 576 F. Supp. at 957.

Notwithstanding the fact that stored value card obligations operate in a manner similar to cashier's checks and money orders, I am of the view that there are differences between these instruments and stored value cards. Moreover, for purposes of considering whether a payment mechanism is a deposit within the meaning of section 3(l)(4) of the FDIA, 12 U.S.C. 1813(l)(4), I believe that Congress did not intend to include payment mechanisms other than the negotiable instruments enumerated in the subsection. *Id.*[14]

Other Subsections of The Statute Defining Deposit—Authority of the FDIC to Promulgate a Regulation Finding That Funds Underlying Stored Value Cards are Deposits

In addition to the statutory definition of deposits under sections 3(l)(1)–(4) of the FDIA, 12 U.S.C. 1813(l)(1)–(4), section 3(l)(5) of the FDIA, 12 U.S.C. 1813(l)(5), gives the Board of Directors the authority, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, to find and prescribe by

[10] See *Seattle-First Bank* v. *FDIC*, 619 F. Supp. at 1360; *FDIC* v. *European American Bank & Trust Co.*, 576 F. Supp. at 957.

[11] The funds underlying a stored value card in a Bank Primary—Reserve System could, in our view, be considered to be held for a special or specific purpose within the meaning of section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3), if the system is structured so that the ultimate payee can only be one pre-determined specific party. For example, if an institution were to issue a stored value card solely for the purchase of long-distance telephone services from a specific company, such funds could be considered to be held for a special or specific purpose.

[12] See *Seattle-First Bank* v. *FDIC*, 619 F. Supp. at 1360; *FDIC* v. *European American Bank & Trust Co.*, 576 F. Supp. at 957.

[13] A stored value card is not in writing, not signed by the maker, and does not contain an ''unconditional promise to pay a sum certain in money and no other promise, order, obligation or power''. *See* U.C.C., Section 3–104(1).

[14] In my view the same conclusion would apply with respect to analogizing stored value cards to travelers' checks on which the institution is primarily liable, which are deposits under section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1).

regulation other obligations of an insured depository institution to be deposit liabilities by general usage. The FDIC has not promulgated such a regulation.

Summary

In summary, in my opinion funds underlying Bank Primary—Customer Account Systems appear to be funds held by an institution, in the usual course of business, which remain credited to the customer's account until the payee makes a claim on the funds. Such funds would therefore appear to be deposits under section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1).

As a general matter, funds held by an institution to meet obligations under Bank Primary—Reserve Systems would appear not to be deposits under section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1), because the funds are not credited to or obligated to be credited to a commercial, checking, time, or thrift account.

It is my further opinion that the funds underlying Bank Primary—Reserve Systems are not deposits under section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3), because such funds are not held for a special or specific purpose. The examples of funds held for such purposes in the statute are all linked to one or more specific transactions. Conversely, the funds underlying stored value card transactions are not necessarily linked to a specific transaction.

In Bank Secondary—Pre-Acquisition Systems the funds underlying the stored value are, in my view, received or held by the third party, not the depository institution. Consequently, it appears that this requirement of section 3(l) (1) and (3) of the FDIA, 12 U.S.C. 1813(l)(1), (3), would not be satisfied in such systems.

The funds held by an institution in a Bank Secondary—Advance System would not create a deposit liability to the customer because the liability is owed to the third party for whom the institution is temporarily holding the funds. Such funds may create a deposit liability to the third party. The funds are held by the institution in the usual course of business prior to transferring such funds to the third party. The parties may or may not intend that the institution credit an account. Even if the institution is not obligated to credit such funds to an account, and thus such funds would not be a deposit under section 3(l)(1) of the FDIA, the funds may be deemed to be held for the specific purpose of transferring the funds to the third party and thus would be considered a deposit under section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3).

The fact that an institution may retain a contingent liability to redeem electronic value from consumers and merchants in Bank Secondary Systems does not meet the requirement of ''money or its equivalent held by an institution'' and therefore would not give rise to a deposit liability to the customer under either 3(l)(1) or (3) of the FDIA, 12 U.S.C. 1813(l)(1), (3).

With respect to the other provisions of section 3(l) of the FDIA, 12 U.S.C. 1813(l), the FDIC staff is not aware of stored value card systems in which funds will be held as trust funds. Thus, the funds underlying stored value cards would not be deposits under section 3(l)(2) of the FDIA, 12 U.S.C. 1813(l)(2). Similarly, while stored value cards have certain similarities to cashier's checks and money orders, they are not drafts drawn on the bank, nor are they negotiable instruments. Consequently, they cannot be considered deposits under section 3(l)(4) of the FDIA, 12 U.S.C. 1813(l)(4).

Notwithstanding the question of whether and under what circumstances stored value card obligations are deposits within the meaning of section 3(l)(1)–(4) of the FDIA, 12 U.S.C. 1813(l)(1)–(4), section 3(l)(5) of the FDIA, 12 U.S.C. 1813(l)(5), gives the Board of Directors the authority to find and prescribe by regulation that other obligations of an insured depository institution are deposit liabilities by general usage. The FDIC has not promulgated such a regulation.

This General Counsel Opinion only addresses the extent to which funds underlying stored value cards may constitute a deposit under 12 U.S.C. 1813(l). It is not intended to address the way in which FDIC would act in its role as receiver. In the event of an institution's failure, to the extent that any funds underlying stored value cards are recognized as deposits, there may be recordkeeping issues and other issues as to who may be entitled to deposit insurance and in what amount. See 12 C.F.R. Part 330.

Finally, the FDIC would expect that institutions clearly and conspicuously disclose to their customers the insured or non-insured status of their stored value products, as appropriate.

By order of the Board of Directors, dated at Washington, D.C., this 16th day of July, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–19697 Filed 8–1–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Stored Value Cards and Other Electronic Payment Systems

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice; request for comment; public hearing.

SUMMARY: The FDIC is seeking comment on whether and under what circumstances the FDIC should take regulatory action with respect to finding that the funds underlying stored value cards or other similar electronic payment systems are deposit liabilities for purposes of the Federal Deposit Insurance Act. The FDIC is also seeking comment on types of proposed or existing stored value card systems, similar electronic payment systems, and the safety and soundness concerns raised by the emergence of these new technologies. This notice also sets forth the time and other particulars concerning a public hearing that the FDIC will conduct on this topic.

DATES: Written comments must be received by the FDIC on or before October 31, 1996. Requests to participate in the public hearing must be received by August 26, 1996. Each participant must submit a summary of his or her written testimony by September 3, 1996. The public hearing will be held on September 12, 1996 and possibly also on September 13, 1996, and other dates, depending upon the number of requests received to participate in the public hearing.

ADDRESSES: Written comments, requests to participate in the public hearing, and summaries of testimony are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–400, 1776 F Street N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@FDIC.gov). Comments will be available for inspection and photocopying in Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 5:00 p.m. on business days.

Hearing location. Federal Deposit Insurance Corporation, Board of Directors' Room (6th Floor), 550 17th Street N.W., Washington, D.C. 20429

FOR FURTHER INFORMATION CONTACT: Sharon Powers Sivertsen, Director, Office of Policy Development, (202) 898–8710; Cary Hiner, Assistant Director, Policy Branch, Division of

Supervision (202) 898–6814; Marc J. Goldstrom, Counsel, Legal Division, (202) 898–8807, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

Background

Insured depository institutions are increasingly utilizing new technology to offer novel and innovative products to customers. One such product is the stored-value card. A stored value card stores information electronically on a magnetic stripe or computer chip and can be used to purchase goods or services. From the FDIC's perspective, the primary legal issue raised by the development of stored value card systems is whether and to what extent the funds, or obligations, underlying stored value cards constitute ''deposits'' within the meaning of section 3(l) of the Federal Deposit Insurance Act (FDIA) and are therefore assessable and qualify for deposit insurance. There has been a need for the FDIC to provide guidance on this issue. The FDIC has provided guidance with respect to this matter in General Counsel Opinion No. 8, published elsewhere in this issue of the Federal Register.

General Counsel Opinion No. 8 sets forth the Legal Division's views on whether and under what circumstances the funds underlying stored value cards may be considered deposits under sections 3(l)(1) through (4) of the FDIA, 12 U.S.C. 1813(l)(1)–(4). Notwithstanding the question of whether and under what circumstances the funds underlying stored value cards meet this statutory definition of deposit, the FDIC has the authority to find and prescribe by regulation that some or all stored value card obligations of a depository institution are deposit liabilities by general usage. 12 U.S.C. 1813(l)(5). The FDIC has not promulgated such a regulation and there are no current plans to propose a regulation on this matter. However, the FDIC wishes to solicit comments from the public as to the policy considerations concerning whether it should consider proposing such a rule at some point in the future. This request for comments is independent of and will in no way effect or undermine the analysis or conclusions in General Counsel Opinion No. 8.

In addition, General Counsel Opinion No. 8 is based generally on systems and technologies that have come to the attention of the staff. The FDIC is also soliciting comment with respect to whether there are other types of stored value card systems in which depository institutions are involved.

Types of Stored Value Card Systems Discussed in General Counsel Opinion No. 8

General Counsel Opinion No. 8 identifies four types of stored value systems: (1) Bank Primary—Customer Account Systems; (2) Bank Primary—Reserve Systems; (3) Bank Secondary—Advance Systems; and (4) Bank Secondary—Pre-Acquisition Systems. These systems, as described below, represent a mechanism to generalize the circumstances under which the funds underlying stored value cards may or may not be considered deposits within the meaning of the FDIA.[1] The FDIC is soliciting comment with respect to whether there are other types of stored value card systems in which depository institutions are involved.

In Bank Primary—Customer Account Systems the funds underlying the stored value card could remain in a customer's account until the value is transferred to a merchant or other third party, who in turn collects the funds from the customer's bank.[2] In Bank Primary—Reserve Systems, as value is downloaded onto a card, funds are withdrawn from a customer's account (or paid directly by the customer) and paid into a reserve or general liability account held at the institution to pay merchants and other payees as they make claims for payments.

In the two types of Bank Secondary Systems, the electronic value is created by a third party and the funds underlying the electronic value are ultimately held by such third party. In such systems, depository institutions act as intermediaries in collecting funds from customers in exchange for electronic value. In Bank Secondary—Advance Systems, the electronic value is provided to the institution to have available for its customers. As customers exchange funds for electronic value, the funds are held for a short period of time and then forwarded to the third party. In Bank Secondary—Pre-Acquisition Systems, the depository institution will exchange its own funds for electronic value from the third party and in turn exchange electronic value for funds with its customers.

In some Bank Secondary Systems, the depository institution may have a contingent liability to redeem the electronic value from consumers and merchants. As such electronic value is redeemed, the institution may in turn exchange the electronic value for funds with the third party.

Authority of the FDIC To Promulgate a Regulation Finding That Funds Underlying Stored Value Cards are Deposits

General Counsel Opinion No. 8 addresses the question of whether and under what circumstances stored value card obligations are deposits within the meaning of sections 3(l) (1)–(4) of the FDIA, 12 U.S.C. 1813(l) (1)–(4). Section 3(l)(5) of the FDIA, 12 U.S.C. 1813(l)(5), gives the Board of Directors the authority, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, to find and prescribe by regulation other obligations of an insured depository institution to be deposit liabilities by general usage.

In considering whether to promulgate such a regulation, the FDIC may wish to consider a number of policy issues. Through this notice and request for comment, and the related public hearing, the FDIC is inviting comment on any policy issues the FDIC should consider in determining whether to promulgate such a regulation. Some of these policy issues are discussed below. This discussion is intended to highlight the issues and does not represent the positions of either the Board of Directors or the staff.

While the discussion of policy considerations below focuses on stored value cards, the FDIC staff believes that such policy analysis would in general apply to a variety of electronic payment system issues, including concerns raised by Internet banking and the use of electronic cash. The FDIC is therefore also inviting comment on policy issues in connection with electronic payment systems.

Policy Considerations in Determining Whether To Promulgate a Regulation

Many industry participants are of the view that stored value cards and related products will eventually become a

[1] We would also note that in its proposed amendment to Regulation E, 61 FR 19696 (May 2, 1996), the Board of Governors of the Federal Reserve System has distinguished between ''off-line accountable'', ''off-line unaccountable'', and ''on-line'' stored value systems in determining whether the regulation applies to various types of stored value systems. General Counsel Opinion No. 8 does not use these distinctions. This is not intended as a criticism or rejection of the Federal Reserve Board's classification system. Rather, it is indicative of the fact that these particular distinctions are not necessarily germane as to whether and under what circumstances the funds underlying a stored value card are ''deposits'' under the Federal Deposit Insurance Act (FDIA).

[2] Such a system would be similar to debit card systems, except that unlike a debit card, the information or value is on the card itself. The staff is not aware of any such system currently in development. It is our understanding, however, that such a system could be developed.

significant element of the payment system and stream of commerce. By such reports, a significant portion of the payment system could be represented by stored value systems. As a result of the potential widespread use of such systems, it may be that the FDIC should determine that public confidence in these payment systems is critical to the safety and soundness of the banking system, such that deposit insurance is warranted.

Alternatively, it may be argued that the development of stored value technologies is in its very early stages. As such, stored value systems do not presently pose a threat to public confidence or the banking system, and therefore do not warrant deposit insurance coverage today.

Related to the public confidence issue are the expectations of depository institution customers. Consumers presently understand that if they open a checking or savings account with an institution, such accounts are insured up to applicable limits by the FDIC. It is possible that consumers could reasonably expect that deposit insurance protection is being obtained when they obtain stored value cards from institutions. The failure to provide deposit insurance in an instance where protection is reasonably expected by a consumer could, in the event of failure of an issuer, result in a loss of public confidence in these developing payment mechanisms.

Conversely, the staff would expect the relationship between a stored value card customer and the institution to be clearly and conspicuously stated on the disclosures and agreements accompanying the card. It is the staff's understanding that many of the stored value card systems in development intend to clearly and conspicuously inform customers that the card is to be treated like cash, and that if lost or stolen, it will not be replaced. Moreover, to the extent that stored value obligations do not otherwise constitute a deposit under sections 3(l)(1)–(4) of the FDIA, 12 U.S.C. 1813(l)(1)–(4), such disclosures and agreements should provide that the card does not constitute an account or deposit with the institution and that the funds underlying the card are not insured by the FDIC. Agreements and disclosures of this nature could influence consumer expectations as to deposit insurance with respect to stored value products.

It is also possible that consumer expectations regarding the existence of deposit insurance may differ depending upon the type of stored value card provided to the customer. Currently in development are both disposable and reloadable stored value cards. The staff believes that this distinction is in large part irrelevant with respect to whether the funds underlying such cards constitute deposits within the meaning of sections 3(l)(1)–(4) of the FDIA, 12 U.S.C. 1813(l)(1)–(4). Nonetheless, such distinctions may be relevant with respect to consumer expectations and whether the FDIC should distinguish between the two if it decides to promulgate a regulation with respect to stored value cards.

A consumer may be more likely to believe that a reloadable card gives rise to an insured deposit. We understand that reloadable cards may contain information about the customer and may contain information about accounts the customer maintains with the institution. The customer may be required to provide name, address, and social security number to establish such a relationship. In addition, such stored value cards may allow the customer to transfer funds from existing insured accounts to a stored value component of the card.

On the other hand, if a consumer transfers funds in exchange for a disposable stored value card (which necessarily contemplates a transfer of value to an anonymous individual or entity, the only identifier being the card serial number), then a consumer could reasonably conclude that no deposit relationship has been established with the institution. Indeed, the consumer may not have been required to provide his name, address, telephone number, social security number, driver's license or other form of identification. After the transfer of funds by the customer, the institution may have no further relationship with him or her.

Another factor that may influence consumer expectations with respect to deposit insurance is whether the value on the card which has not been transferred is redeemable. If the value on the card is not redeemable, consumers may be less likely to expect deposit insurance associated with the product.

In addition to the issue of consumer expectations, the FDIC must consider whether insuring disposable/anonymous stored value cards is consistent with the statutory requirement that no more than $100,000 in insurance coverage shall be provided to any one individual or entity. 12 U.S.C. 1821(a). Disposable/anonymous cards pose the possibility that an institution depositor, with $100,000 in covered deposits, could transfer a disposable stored value card to another person in order to avoid the limit on deposit insurance coverage. In such a case, the FDIC could have essentially unlimited liability for the total amount of stored value outstanding.

Another policy consideration is whether the FDIC should find that Bank Primary—Reserve System stored value cards are deposits based upon their similarity to cashier's checks, money orders, and traveler's checks on which an institution is primarily liable. As discussed in General Counsel Opinion No. 8, the differences between stored value cards and money orders, cashier's checks, and other drafts drawn on an institution, are such that they may not be included as one of the instruments listed in section 3(l)(4) of the FDIA, 12 U.S.C. 1813(l)(4). Similarly, inasmuch as stored value cards are not traveler's checks on which the institution is primarily liable, they may not come under this provision of section 3(l)(1) of the FDIA, 12 U.S.C. 1813(l)(1). Nonetheless, Bank Primary—Reserve System stored value cards resemble cashier's checks and money orders. The primary obligation of the institution reflected by a cashier's check, created in exchange for cash deposited in the general funds of the institution or transferred from a checking account, bears a resemblance to the obligation which appears to be established by stored value cards. Based upon the similarities, the FDIC could, by regulation, find that Bank Primary—Reserve System stored value card obligations are deposit liabilities.

In considering whether to promulgate a regulation, the FDIC is also concerned about competitive equity between depository institution issuers and other issuers of stored value products. If institutions pay deposit insurance assessments on the funds held in support of stored value, and non-banks do not, depository institutions could possibly be placed at a competitive disadvantage. If so, the question arises as to whether this disadvantage would be of such a magnitude that depository institutions would be prohibited entry into this new market for services. On the other hand, insurability could be a desirable feature of bank issued cards, such that consumers may be willing to pay a higher price for stored value products that are FDIC insured.

Finally, it is our understanding that, at least at the outset, many stored value cards will limit the amounts that may be loaded onto the cards to $100 or $200. Thus, it would appear that consumers will not be entrusting any significant or meaningful amount of money in exchange for the stored value card. Conversely, there is nothing preventing consumers from obtaining many stored value cards. Moreover, issuers may soon

allow cards to be loaded or issued in larger denominations. This issue may be considered by the FDIC in determining whether to find, by regulation, that certain stored value obligations are deposits.

In sum, notwithstanding the question of whether and under what circumstances stored value card obligations are deposits within the meaning of section 3(l) (1)–(4) of the FDIA, 12 U.S.C. 1813(l) (1)–(4), section 3(l)(5) of the FDIA, 12 U.S.C. 1813(l)(5), gives the Board of Directors the authority to find and prescribe by regulation that other obligations of an insured depository institution are deposit liabilities by general usage. In considering whether to promulgate such a regulation with respect to the stored value cards, the FDIC must consider a number of competing policy issues. Such policy issues include, but are not limited to, the level of public confidence in these new payment systems, consumer expectations, statutory limits with respect to ''bearer'' instruments, the similarities of stored value cards to other payment mechanisms which are deposits, competitive equity with non-bank issuers of stored value products, and the low denominations under which stored value cards will be issued.

Safety and Soundness Issues

The emergence of stored value cards and other electronic payment systems raises certain safety and soundness concerns for depository institutions and regulators. For example, institutions must take steps to ensure that the stored value or similar system in which they are participating has adequate safeguards to prevent counterfeiting or other fraudulent activities which could harm the institution, its customers, or other participants in the system. The FDIC is soliciting public comment on this and other safety and soundness issues in connection with stored value cards and other electronic payment systems.

Request for Comment

The FDIC is hereby requesting comment during a 90-day comment period on all aspects of this notice, including the following specific issues:

(1) General Counsel Opinion No. 8 is based generally on systems and technologies that have come to the attention of the staff. Are there other stored value systems or technologies of which the staff may not be aware?

(2) Funds held by depository institutions to meet obligations arising under stored value card systems have been compared to funds held by an institution to meet letters of credit, which are deposits under section 3(l)(3) of the FDIA, 12 U.S.C. 1813(l)(3). In determining whether to promulgate a regulation, should funds held to meet obligations underlying stored value cards be distinguished from, or analogized to, funds held to meet letters of credit?

(3) Similarly, stored value cards have been compared to money orders or cashiers' checks drawn on an institution, which are considered deposits under section 3(l)(4) of the FDIA, 12 U.S.C. 1813(l)(4). In determining whether to promulgate a regulation, should stored value cards be distinguished from, or analogized to, such instruments?

(4) What are the expectations of consumers with respect to whether stored value cards are insured products? To what extent should consumer expectations be a factor in whether the FDIC finds by regulation that certain stored value products represent deposits?

(5) In determining whether to promulgate a regulation, should the FDIC distinguish between reloadable and disposable stored value cards or between single function and multiple function cards?

(6) Should the projected low dollar denominations for stored value cards be considered by the FDIC in determining whether to promulgate a regulation?

(7) What types of disclosure should the FDIC require with respect to the insured or non-insured status of these products? What types of disclosure would be most beneficial to consumers, while not overburdening depository institutions?

(8) If the funds underlying some or all stored value products issued by depository institutions are deemed by regulation to be deposits, to what extent would depository institutions be placed at a competitive advantage or disadvantage with respect to other issuers of stored value products?

(9) Should the FDIC ask Congress to amend section 3(l) of the FDIA, 12 U.S.C. 1813(l) to either include or exempt stored value cards from the definition of deposit?

(10) What safety and soundness concerns are raised by the development of stored value cards and other electronic payment systems?

Public Hearing

The FDIC will hold a public hearing on all aspects of this notice on September 12, 1996 from 9:00 a.m. until 4:30 p.m. and possibly also on September 13, 1996, and other dates, depending upon the number of requests received to participate in the public hearing. The hearing will be held in the FDIC's Board of Directors' room which is located on the sixth floor of the FDIC's main building (550 17th Street NW, Washington, D.C.). At that hearing one or more members of the Board of Directors of the FDIC and other representatives of the FDIC will receive oral comments from all interested persons, who have been scheduled in advance to appear, on all aspects of this notice.

Persons wishing to participate in the hearing must send, or hand-deliver, a written request to participate in the hearing, so that it is received no later than August 26, 1996, to the Office of the Executive Secretary, 550 17th Street NW, Washington, DC 20429. All requests will be time and date stamped upon receipt. Participants will be limited to a 15 minute oral presentation and will be advised in writing of the time scheduled for their presentation. This procedure is necessary so that the hearing officers may adjust their schedules accordingly and so that alternative arrangements for the hearing may be made if more persons are expected to attend than the Board of Directors' room will accommodate. This deadline will also provide sufficient time to acknowledge receipt of the notices and inform participants of scheduling.

In addition, each participant must send, or hand-deliver, so that it is received no later than September 3, 1996 a written summary of his or her testimony to be given at the hearing, to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429.

By order of the Board of Directors, dated at Washington, D.C., this 16th day of July, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–19698 Filed 8–1–96; 8:45 am]

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Federal Register

Friday
August 2, 1996

Part IV

Environmental Protection Agency

5 CFR Ch. LIV

40 CFR Part 3

Supplemental Standards of Ethical Conduct for Employees of the Environmental Protection Agency; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

5 CFR Chapter LIV

40 CFR Part 3

[FRL–5544–5]

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for the employees of EPA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. This final rule is a necessary supplement to the executive branch-wide Standards because it addresses ethical issues unique to EPA. This rule prohibits certain financial interests, including compensated outside employment with certain persons, and requires prior approval to engage in certain categories of outside employment. The Agency is also revoking superseded portions of its existing standards of conduct regulation, 40 CFR part 3, and, in their stead, inserting cross-references to the executive branch-wide Standards and this supplemental regulation, as well as to executive branch financial disclosure regulations.

EFFECTIVE DATE: These regulations are effective August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Hale W. Hawbecker, Office of General Counsel (2379), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4550.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583 with additional extensions for certain existing provisions at 59 FR 4779–4780 and 60 FR 6390 - 6391. The executive branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Environmental Protection Agency, with OGE's concurrence, has determined that the following supplemental regulations, for codification in new 5 CFR chapter LIV, to consist of part 6401, are necessary to implement EPA's ethics program successfully, in light of EPA's unique programs and operations. The Environmental Protection Agency is also simultaneously revoking the provisions of its existing standards of conduct regulations which have already been superseded or which are superseded upon issuance of this supplemental regulation and replacing them with a new section that provides a cross reference to these supplemental regulations and to 5 CFR parts 2634 and 2635.

II. Analysis of the Regulations

Section 6401.101 General

Section 6401.101 explains that the regulations apply to all EPA employees and supplement the executive branch-wide Standards. Employees of the Environmental Protection Agency are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

Section 6401.102 Prohibited Financial Interests

5 CFR 2635.403(a) authorizes agencies, by supplemental regulation, to prohibit or restrict the acquisition or holding of financial interests or classes of financial interests by agency employees based on the determination that the acquisition or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which agency programs are administered. As under 5 CFR 2635.802(a), this authority may be used to prohibit compensated outside employment relationships.

In developing its supplemental regulation, EPA has determined that the financial holdings of employees in manufacturers and others impacted directly by the work of three EPA program offices would cause reasonable persons to question the impartiality and objectivity with which those program offices carry out their responsibilities. Thus, EPA restricts certain outside employment and financial interests of employees of the Office of Mobile Sources, the Office of Pesticide Programs, and the Office of Information Resources Management. These restrictions will help (1) To ensure public confidence in the impartiality and objectivity with which these offices administer their programs; (2) eliminate any reason for affected entities to be concerned that information they provide to the three offices might be used for private gain; and (3) avoid the disqualification of employees from official matters to an extent that might result in the offices' inability to administer their programs.

Section 6401.102(a)(1) prohibits employees in the Office of Mobile Sources from having compensated employment relationships with or holding stocks or other financial interests in automobile manufacturers and manufacturers of mobile source pollution control equipment. Most of those employees participate in matters that directly affect the production and profitability of automobile manufacturers and manufacturers of mobile source pollution control equipment.

Section 6401.102(a)(2) prohibits employees in the Office of Pesticide Programs from having outside employment with or holding stocks or other financial interests in companies that manufacture or provide wholesale distribution of pesticides. This office is primarily involved in the regulation of the pesticide industry. The prohibition is not limited to employment with or other financial interests in a company that itself engages in the manufacturing or wholesale distribution of pesticides, but extends to employment with or financial interests in any parent company of which that manufacturer or distributor is a subsidiary. The regulation specifies, by way of clarification, that the prohibition does not extend to employment with or financial interests in any company or other entity simply because it engages in the retail distribution of pesticides.

Section 6401.102(a)(3) prohibits employees in the Office of Information Resources Management who are involved in contracting for data management or computer-related services from having employment with or holding stocks or other financial interests in data management, computer, or information processing firms.

As reflected in 5 CFR 2635.403, certain prohibitions on outside employment and financial interests are statutory. Section 6401.102(a)(4) reflects the provision of the Surface Mining Control and Reclamation Act (SMCRA) at 15 U.S.C. 2603(e) which prohibits a Federal employee who performs any function or duty under SMCRA from holding any ''direct or indirect'' interest in underground or surface coal mining.

The Office of Government Ethics has no authority to interpret SMCRA and has concurred in § 6401.102(a)(4) only to the extent of incorporating a reference to and information about SMCRA to provide affected EPA employees notice of the statutory prohibition to which they are subject. The Office of Government Ethics' concurrence in this final rule does not indicate its concurrence or other participation in any language of proposed § 6401.102(a)(4) that may appear to involve interpretation or implementation of SMCRA.

Section 6401.102(a)(5) reflects the statutory prohibition which, under the Toxic Substances Control Act (TSCA) at 15 U.S.C. 2603(e), applies to members of the Interagency Testing Committee. Committee members are prohibited from holding stocks, bonds, or other substantial pecuniary interests in any person, including any corporation, engaged in the manufacture, processing, or distribution in commerce of any substance or mixture subject to any rule or order under the Act. The regulation makes it clear that compensated outside employment of any such person is encompassed by the prohibition on substantial pecuniary interests. For one year after their service on the Committee has ceased, members are subject to an additional statutory prohibition on accepting employment or compensation from any person subject to any requirement of the TSCA. Because these restrictions are imposed by a statute for which OGE has no interpretative or other authority, OGE's concurrence in proposed § 6401.102(a)(5) does not extend to any language which might be viewed as an interpretation of TSCA. It reflects only OGE's concurrence in EPA's determination that these employment and financial interest prohibitions should be reflected in EPA's supplemental regulations to provide notice to affected employees.

Section 6401.102(b) permits the EPA Designated Agency Ethics Official or the employee's Deputy Ethics Official, upon making the appropriate determination, to waive in writing the prohibitions in § 6401.102 (a)(1)–(a)(3) precluding certain outside employment for employees in the Office of Mobile Sources, employees in the Office of Pesticide Programs, and employees in the Office of Information Resources Management.

Section 6401.103 Outside Employment

The requirement for prior written approval is made pursuant to 5 CFR 2635.803 of the Executive Branch-wide Standards. EPA has determined that in order to effectively avoid conflicts arising from outside employment and activities, employees considering certain types of employment or activities outside of the EPA must obtain written approval before engaging in such employment or activities. Given the breadth of the Agency's responsibilities, requiring prior written approval of certain outside employment and activities provides a necessary control to ensure that employees do not engage in outside employment or activities in violation of applicable laws and regulations.

Section 6401.103(a) listing the types of outside employment for which the written approval of the employee's Deputy Ethics Official is required is similar to those found in existing 40 CFR 3.508 that EPA is hereby revoking. Employment requiring advance approval from the employee's Deputy Ethics Official is listed in § 6401.103(a) and includes (1) consulting services; (2) the practice of a profession as defined in 5 CFR 2636.305(b)(1); (3) holding State or local public office; (4) employment regarding subject matter that deals in significant part with EPA policies, programs, or operations to which the employee is assigned or has been assigned during the previous one-year period; and (5) the provision of services to an EPA contractor, to a holder of an EPA assistant agreement, or to a firm regulated by the EPA office in which the employee serves. Prior approval is required for these activities because, by their nature, such activities tend to raise questions under the Standards of Ethical Conduct. Section 6401.103(b) prescribes the content of the request for approval. Section 6401.103(c) makes clear that section 6401 is not itself authority to deny permission to engage in any outside employment activity; that approval for outside employment will be granted unless the prospective outside employment is likely to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this supplemental regulation. To assure the integrity of the approval process, § 6401.103(d) requires that requests for approval be updated if there is a change in the outside duties, or services performed, or the nature of the employee's business. New approval also must be requested when the employee transfers to an organization within the Agency for which a different Deputy Ethics Official has responsibility and unless the employee's Deputy Ethics Official specifies a longer period after five years. Section 6401.103(e) broadly defines ''employment'' to cover any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation, including personal services and writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization unless such activities are for compensation other than reimbursement for expenses.

III. Revocation of Superseded Portions of the EPA's Responsibilities and Conduct Regulations

This final rule revokes those portions of EPA's employee responsibility and conduct regulations at 40 CFR 3.100 through 3.605 now superseded. Some of those regulations were superseded when the confidential financial disclosure provisions of the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634 took effect on October 5, 1992 and many others were superseded when the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 became effective on February 3, 1993. Those regulations at 40 CFR 2.304 and 3.305 which reflect statutory prohibitions on financial interests are also superseded by this supplemental regulation, as is EPA's requirement at 40 CFR 3.508 for prior approval of outside employment which, as extended by 59 FR 4779–4780 and 60 FR 6390–6391, remains in effect until no later than January 3, 1996.

Of its responsibilities and conduct regulations in 40 CFR 3.100–3.508, the rule at new § 3.101 retains only EPA's regulatory conflict of interest waivers at existing 40 CFR 3.301(b), which remain in effect under 5 CFR 2635.402(d)(1) until OGE has issued superseding regulatory waivers under 18 U.S.C. 208(b)(2). In that regard, see OGE's recent issuances at 60 FR 44706–44709 (August 29, 1995) and 60 FR 47208–47233 (September 11, 1995). This EPA residual standards rule also replaces EPA's revoked regulations with a cross-reference at new § 3.100 to 5 CFR parts 2634, 2635, and 6401.

IV. Matters of Regulatory Procedure

Executive Order 12866

In issuing this rule, EPA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and

Budget under that Executive Order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed ''significant'' thereunder.

Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because the proposed regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Administrative Procedure Act

EPA has found that good cause exists under 5 U.S.C. 553(b)(3) (A), (B) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and revocations. This rulemaking is related solely to EPA's organization, procedure, and practice. Further, the supplemental regulations are essentially a restatement of rules previously contained in EPA's employee responsibilities and conduct regulations, and EPA believes that it is important to a smooth transition from EPA's regulations to the executive branch standards that these rules become effective immediately.

Regulatory Flexibility Act

EPA hereby certifies that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

List of Subjects

5 CFR Part 6401

Conflict of interests, Government employees.

40 CFR Part 3

Conflict of interests, Government employees.

Dated: June 13, 1996.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Approved: July 19, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.Q

For the reasons set forth in the preamble, the Environmental Protection Agency, with the concurrence of the Office of Government Ethics, amends title 5 of the Code of Federal Regulations and Title 40, chapter I, part 3 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LIV, consisting of part 6401, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LIV—ENVIRONMENTAL PROTECTION AGENCY

PART 6401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE ENVIRONMENTAL PROTECTION AGENCY

Sec.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 203(c)(1); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 6401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Environmental Protection Agency and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

§ 6401.102 Prohibited financial interests.

(a) The following employees are prohibited from holding the types of financial interests described in this section:

(1) Employees in the Office of Mobile Sources are prohibited from having outside employment with or holding stock or any other financial interest in manufacturers of automobiles and mobile source pollution control equipment.

(2) Employees in the Office of Pesticide Programs are prohibited from having outside employment with or holding stock or any other financial interest in companies that manufacture or provide wholesale distribution of pesticide products registered by the EPA. These restrictions apply to companies with subsidiaries in these areas but do not include retail distributors to the general public.

(3) Employees in the Office of Information Resources Management involved with data management contracting or computer contracting are prohibited from having outside employment with or holding stock or any other financial interest in data management, computer, or information processing firms.

(4) Employees who perform functions or duties under the Surface Mining Control and Reclamation Act (such as reviewing Environmental Impact Statements of the Office of Surface Mining in the Department of Interior) are prohibited by 30 U.S.C. 1211(f) from holding direct or indirect interests in underground or surface coal mining operations.

(i) Implementing regulations of the Office of Surface Mining at 30 CFR 706.3 define the terms ''direct financial interest'' and ''indirect financial interest'' as follows:

(A) *Direct financial interest* means ownership or part ownership by an employee of land, stocks, bonds, debentures, warrants, a partnership, shares, or other holding and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(B) *Indirect financial interest* means the same financial relationships as for direct ownership but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child or other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor child or other resident relative holds a financial interest.

(ii) Violation of the restrictions in this section is punishable by a fine of up to $2,500 or imprisonment for not more that one year, or both.

(iii) Employees who perform functions or duties under the Surface Mining Control and Reclamation Act are not prohibited thereunder from holding interests in excepted investment funds as defined at 5 CFR 2634.310(c)(2) provided that such funds are widely diversified, that is, hold no more than 5% of the value of their portfolios in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

(5) Members of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act (15 U.S.C. 2603(e)) are prohibited thereunder from holding any stocks or bonds, or having any substantial pecuniary interest, in any person engaged in the manufacture, processing, or distribution in commerce of any substance or mixture subject to any requirement of the Act or any rule or order issued under the Act and, for a period of twelve months after their committee service has ceased, are prohibited thereunder from accepting

employment or compensation from any person subject to any requirement of the Act or to any rule or order issued under the Act.

(i) The statutory prohibitions in this section are enforceable by an action for a court order to restrain violations.

(ii) Members of the Interagency Testing Committee are not prohibited thereunder from holding interests in excepted investment funds as defined at 5 CFR 2634.310(c)(2) provided that such fund are widely diversified, that is, hold no more than 5% of the value of their portfolios in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic sector.

(b) The Designated Agency Ethics Official or the cognizant Deputy Ethics Official may grant a written waiver from the prohibitions in paragraph (a)(1) through (a)(3) of this section based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 6401.103 Prior approval for outside employment.

(a) *Requirement for approval.* An employee shall obtain approval from his or her Deputy Ethics Official before engaging in outside employment, with or without compensation, that involves:

(1) Consulting services;

(2) The practice of a profession as defined in 5 CFR 2636.305(b)(1);

(3) Holding State or local public office;

(4) Subject matter that deals in significant part with the policies, programs or operations of EPA or any matter to which the employee presently is assigned or to which the employee has been assigned during the previous one-year period; or

(5) The provision of services to or for:

(i) An EPA contractor or subcontractor;

(ii) The holder of an EPA assistance agreement or subagreement; or

(iii) A firm regulated by the EPA office or Region in which the employee serves.

(b) *Form and content of request.* The employee's request for approval of outside employment shall be submitted in writing to his or her Deputy Ethics Official. The request shall be sent through the employee's immediate supervisor (for the supervisor's information) and shall include:

(1) Employee's name, title and grade;

(2) Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;

(3) The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);

(4) The estimated time to be devoted to the activity;

(5) Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);

(6) The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

(7) The basis for compensation (e.g., fee, per diem, per annum, etc.);

(8) The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102; and

(9) An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

(c) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and § 6401.102. The decision must be in writing.

(d) *Keeping the record up-to-date.* If there is a change in the nature or scope of the duties or services performed or the nature of the employee's business, the employee must submit a revised request for approval. Where an employee transfers to an organization for which a different Deputy Ethics Official has responsibility, the employee must obtain approval from the new Deputy Ethics Official. In addition, each approved request is valid only for five years unless the employee's Deputy Ethics Official specifies a longer time period.

(e) *Definition of employment.* For purposes of this section, ''employment'' means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, whether or not for compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organizations, unless such activities are for compensation other than reimbursement for expenses.

TITLE 40—PROTECTION OF ENVIRONMENT

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

Part 3 of 40 CFR chapter I is revised to read as follows:

PART 3—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

Authority: 5 U.S.C. 7301 and 18 U.S.C. 208(b)(2).

§ 3.100 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Environmental Protection Agency (EPA) should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the EPA regulations at 5 CFR part 6401 that supplement those standards, and the Executive Branch financial disclosure regulations at 5 CFR part 2634.

§ 3.101 Waiver of certain financial interests.

(a) The prohibition of 18 U.S.C. 208(a) may be waived by general regulation. Financial interests derived from the following have been determined to be too remote or too inconsequential to affect the integrity of employee's services, and employees may participate in matters affecting them:

(1) Mutual funds (including tax-exempt bond funds), except those which concentrate their investments in particular industries;

(2) Life insurance, variable annuity, or guaranteed investment contracts issued by insurance companies;

(3) Deposits in a bank, savings and loan association, credit union, or similar financial institution;

(4) Real property used solely as the personal residence of an employee;

(5) Bonds or other securities issued by the U.S. Government or its agencies.

(b) This provision will be superseded when the Office of Government Ethics publishes its Executive Branch-wide exemptions and EPA will publish a document in the Federal Register revoking it at that time.

[FR Doc. 96–19704 Filed 8–1–96; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

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