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Federal Register

Wednesday
October 2, 1996

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

WASHINGTON, DC

WHEN: October 22, 1996 at 9:00 a.m.

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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.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 90, 91, 92, 93, 94, 95, 96, 97, and 98

[Docket Number S&TD–96–004]

Removal of Selected Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends laboratory support functions and responsibilities administered by the Agricultural Marketing Services covering testing services for agricultural food commodities. These sections which were originally enacted to administer specific programs have been found to be obsolete or duplicative. Also, amendments in this rule would clarify and remove sections from the Code of Federal Regulations (CFR) thus reducing recurrent printing costs as well as streamline the operation of Agricultural Marketing Service's (AMS) commodity programs.

EFFECTIVE DATE: October 3, 1996.

FOR FURTHER INFORMATION CONTACT: James V. Falk, 202–690–4089.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the Administration's National Performance Review Program and Regulatory Reinvention Initiative to eliminate unnecessary regulations and improve the public understanding of those that remain in force.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have preemptive effect. This rule will not preempt any State or local laws, regulation, 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 this rule or the application of its provisions.

Regulatory Impact Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of 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 disproportionally burdened. The Administrator of AMS determined that this action will not have a significant economic impact on a substantial number of small entities because the changes remove unnecessary, obsolete and duplicative material from the text of the regulations. This action also updates and corrects information contained in certain sections of the regulations.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in the provisions to be updated have been previously approved by the Office of Management and Budget.

No additional recordkeeping requirements are imposed as a result of this rule.

Background

The Secretary of Agriculture is authorized under various statutes to develop and establish efficient marketing methods and practices concerning agricultural commodities. This has usually been accomplished by promulgating and codifying regulations in the CFR.

Rapid changes in consumer preferences, together with associated changes in commodity characteristics, and analytical services have created a need to amend and modify the regulations. In addition, industry and the marketplace have been in some instances burdened with outdated and unnecessary regulatory language.

The President issued a directive in March 1995 to Federal agencies concerning their responsibilities under the Regulatory Reinvention Initiative, which is part of the National Performance Review. The initiative has provided an impetus to develop new approaches to meet more effectively the needs of U.S. food and fiber industries, government agencies, and consumers, and still reduce the regulatory burden. To meet this initiative, regulatory text in the CFR such as voluntary grading or testing standards or other related provisions have been removed from the CFR. Name changes which better clarify and identify existing programs are also being implemented and placed in the CFR. Additionally, any regulations which are deemed outdated or obsolete will be removed. Updates and corrections are also made in certain sections of the regulations. This rule eliminates regulatory text which encompasses approximately 4 pages of the CFR.

The regulations at 7 CFR section 90.1 paragraphs (i) (j) and (m) describe laboratory support functions and responsibilities of the Science and Technology Division (S&TD) of AMS. These paragraphs will be eliminated to conform with parallel 7 CFR parts 99, 100 and 101 removed in AMS's rule in the Federal Register (60 FR 62974) on December 7, 1995. The regulations at part 99, Statistical Science Program; part 100, National Laboratory Accreditation Program concerning laboratory services, statistical science support; and part 101, Pesticide Data Program were removed because they are either reserved or contain only informational non-regulatory text.

The listing of the SD Aflatoxin Laboratory at Camilla, Georgia is removed at 7 CFR section 91.5 paragraph (a)(2)(vi) and 7 CFR part 93. The Camilla Laboratory has been closed due to the consolidation of laboratory operations.

The regulations at 7 CFR part 93, subpart B (§§ 93.10–93.14), Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products; and 7 CFR part 95, Processed Dairy Products, are being revised and removed respectively. These provisions describe tests or determinations for grade or quality attributes of processed food products that are handled by the Dairy Division or Fruit and Vegetable Division and their designates. The Midwestern Laboratory of the Science and Technology Division (S&TD) is

sometimes chosen to provide such testing services. However, these AMS Commodity Divisions often perform the tests and determinations on processed products themselves. The duplication of testing services provided by separate AMS divisions could be confusing to the public. The necessary information can best be disseminated through AMS directives or guidelines.

The name ''Science Division'' is being replaced with the name ''Science and Technology Division'' in 7 CFR parts 90, 91, 92, 93, 94, 96, 97, and 98. On October 1, 1995 the Information Resources Management Division (IRMD) merged with the Science Division to form the Science and Technology Division (S&TD). This merger of two AMS Divisions is a result of the momentum to reinvent Government by eliminating or restructuring agencies and programs of the Department. By careful sorting out of the responsibilities of the different divisions within AMS, the Science and Technology Division came into being. S&TD represents an excellent union of Agency Divisions, since advanced communications and information technology improves not only Agency commodity program support but also various laboratory programs needs. In addition, the public benefits from the increased assistance given to locate and access all kinds of technical information.

Pursuant to the provisions in 5 U.S.C. 553 (b)(B), it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in farther public procedures prior to putting this rule into effect. Accordingly, good cause exists for not postponing for 30 days the effective date of this action in the Federal Register for the following reasons: (1) The sections being removed are either duplicative, obsolete, or do not need to be in the CFR, and removal will not alter any aspect of an existing program; (2) the amendments consist of updates and corrections of information contained in the regulations; and (3) no useful purpose would be served by a delay of the effective date.

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7 CFR Part 90

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 92

Agricultural commodities, Laboratories, Pesticides and pests, Tobacco.

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Agricultural commodities, Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables.

7 CFR Part 94

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7 CFR Part 95

Agricultural commodities, Dairy products, Laboratories.

7 CFR Part 96

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 97

Administrative practice and procedure, Labeling, Laboratories, Plants, Reporting and recordkeeping requirements, Seeds.

7 CFR Part 98

Agricultural commodities, Laboratories, Meat and meat products.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 1621–1627, 7 CFR chapter I is amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Part 90 is amended by removing the words ''Science Division'', ''Science Division's'', and ''(SD)'' and adding in their place the words ''Science and Technology Division'', ''Science and Technology Division's'', and ''S&TD'' respectively, everywhere they appear.

§ 90.1 [Amended]

3. In § 90.1, paragraphs (i), (j), and (m) are removed and paragraphs (k), (l), (n), and (o) are redesignated as paragraphs (i), (j), (k), and (l) respectively.

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Part 91 is amended by removing the words ''Science Division'' and ''SD'' and adding in their place the words ''Science and Technology Division'' and ''S&TD'' respectively, everywhere they appear.

3. In § 91.5, paragraph (a)(2) is revised to read as follows:

§ 91.5 Where services are offered.

* * * * *

(a) * * *

(2) *Science and Technology Division aflatoxin laboratories.* The specialty laboratories performing aflatoxin testing on peanuts, peanut products, tree nuts and other commodities are located as follows:

(i) USDA, AMS, S&TD, 1557 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302.

(ii) USDA, AMS, S&TD, c/o Golden Peanut Company, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714.

(iii) USDA, AMS, S&TD, 1211 Schley Avenue, Albany, GA 31707.

(iv) USDA, AMS, S&TD, c/o Golden Peanut Company, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805.

(v) USDA, AMS, S&TD, 610 North Main Street, Blakely, GA 31723.

(vi) USDA, AMS, S&TD, 107 South Fourth Street, Madill, OK 73446.

(vii) USDA, AMS, S&TD, c/o Steven Industries, Cargill, Inc., 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742.

(viii) USDA, AMS, S&TD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434.

* * * * *

4. In § 91.23, paragraphs (e) and (f) are revised to read as follows:

§ 91.23 Analytical methods.

* * * * *

(e) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(f) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

* * * * *

PART 92—[AMENDED]

1. The authority citation for part 92 is revised to read as follows:

Authority: 7 U.S.C. 511m, 511r.

2. Part 92 is amended by removing the words ''Science Division'' and ''Science Division's'' and adding in their place the words ''Science and Technology Division'' and ''Science and Technology's'' respectively, everywhere they appear.

1. Part 93 is revised to read as follows:

PART 93—PROCESSED FRUITS AND VEGETABLES

Subpart A—Citrus Juices and Certain Citrus Products

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93.1 General.
93.2 Definitions.
93.3 Analyses available and location of laboratory.
93.4 Analytical methods.
93.5 Fees for citrus product analyses set by cooperative agreement.

Subpart B—Peanuts, Tree Nuts, Corn and Other Oilseeds

93.10 General.
93.11 Definitions.
93.12 Analyses available and locations of laboratories.
93.13 Analytical methods.
93.14 Fees for aflatoxin testing.
93.15 Fees for analytical testing of oilseeds.

Authority: 7 U.S.C. 1622, 1624.

Subpart A—Citrus Juices and Certain Citrus Products

§ 93.1 General.

Domestic and imported citrus products are tested to determine whether quality and grade standards are satisfied as set forth in the Florida Citrus Code.

§ 93.2 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Acid. The grams of total acidity, calculated as anhydrous citric acid, per 100 grams of juice or citrus product. Total acidity is determined by titration with standard sodium hydroxide solution, using phenolphthalein as indicator.

Brix or degrees Brix. The percent by weight total soluble solids of the juice or citrus product when tested with a Brix hydrometer calibrated at 20° C (68° F) and to which any applicable temperature correction has been made. The Brix or degrees Brix may be determined by any other method which gives equivalent results.

Brix value. The refractometric sucrose value of the juice or citrus product determined in accordance with the ''International Scale of Refractive Indices of Sucrose Solutions'' and to which the applicable correction for acid is added. The Brix value is determined in accordance with the refractometric method outlined in the Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

Brix value/acid ratio. The ratio of the Brix value of the juice or citrus product, in degrees Brix, to the grams of anhydrous citric acid per 100 grams of juice or citrus product.

Brix/acid ratio. The ratio of the degrees Brix of the juice to the grams of anhydrous citric acid per 100 grams of the juice.

Citrus. All plants, edible parts and commodity products thereof, including pulp and juice of any orange, lemon, lime, grapefruit, mandarin, tangerine, kumquat or other tree or shrub in the genera *Citrus, Fortunella,* or *Poncirus* of the plant family Rutaceae.

Recoverable oil. The percent of oil by volume, determined by the Bromate titration method as described in the current edition of the AOAC INTERNATIONAL.

§ 93.3 Analyses available and location of laboratory.

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science and Technology Division location: Science and Technology Division Citrus Laboratory, 98 Third Street, SW, Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to Chapter 601). Such analyses include tests for acid as anhydrous citric acid, Brix, Brix-acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Florida Division of Fruit and Vegetable Inspection may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) Additional laboratory tests are available upon request at the Science and Technology Division Citrus Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, *Salmonella,* protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

§ 93.4 Analytical methods.

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of AOAC INTERNATIONAL.

(b) Other analytical methods for citrus products may be used as approved by the Director, Science and Technology Division.

§ 93.5 Fees for citrus product analyses set by cooperative agreement.

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the Director, Science and Technology Division. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science and Technology Division and the State of Florida, regarding the set hourly rate and the costs to perform individual tests on Florida citrus products, for the State.

Subpart B—Peanuts, Tree Nuts, Corn and Other Oilseeds

§ 93.10 General.

Chemical analyses are performed to detect the presence of aflatoxin in lots of shelled peanuts and peanut products, as well as in other nuts and agricultural products. In addition, proximate chemical analyses for quality determination are performed on oilseeds.

§ 93.11 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Aflatoxin. A toxic metabolite produced by the molds *Aspergillus* flavus and *Aspergillus* parasiticus. The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin B_1 and derivatives with a blue fluorescence, aflatoxin B_2 with a blue-violet fluorescence, aflatoxin G_1 with a green fluorescence, aflatoxin G_2 with a green-blue fluorescence, aflatoxin M_1 with a blue-violet fluorescence, and aflatoxin M_2 with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B_1, B_2, G_1, G_2, M_1, M_2, GM_1, B_{2a}, G_{2a}, R_0, B_3, $1–OCH_3B_2$, and $1CH_3G_2$.

Peanut Administrative Committee (PAC). The committee established under the U.S. Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers.

Peanut Marketing Agreement. The agreement concerning the regulations and instructions set forth since July 12, 1965, by the Peanut Administrative Committee for the marketing of peanuts entered into by handlers of domestically

produced peanuts under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Peanuts. The seeds of the legume *Arachis* hypogaea, and includes both inshell and shelled nuts.

Seed. Any vegetable or other agricultural plant ovule having an embryo that is capable of germinating to produce a plant.

§ 93.12 Analyses available and locations of laboratories.

(a) Aflatoxin testing services. The aflatoxin analyses for peanuts, other nuts, corn, and other oilseed products are performed at the following 8 locations for Science and Technology Division (S&TD) Aflatoxin Laboratories:

(1) USDA, AMS, S&TD, 1557 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302.
(2) USDA, AMS, S&TD, 1211 Schley Avenue, Albany, GA 31707.
(3) USDA, AMS, S&TD, 610 North Main Street, Blakely, GA 31723.
(4) USDA, AMS, S&TD, 107 South Fourth Street, Madill, OK 73446.
(5) USDA, AMS, S&TD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434.
(6) USDA, AMS, S&TD, c/o Golden Peanut Company, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714.
(7) USDA, AMS, S&TD, c/o Golden Peanut Company, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805.
(8) USDA, AMS, S&TD, c/o Stevens Industries, Cargill, Inc., 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742.

(b) Peanuts, peanut products, and oilseed testing services. (1) The Science and Technology Division Aflatoxin Laboratories at Dothan, Alabama and Albany and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in paragraph (b)(1) of this section performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in 7 CFR 91.37(b).

(c) Vegetable oil testing services. The analyses for vegetable oils are performed at the Science and Technology Division Midwestern Laboratory, 3570 North Avondale Ave., Chicago, IL 60618. The analyses for vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the schedules of charges in 7 CFR 91.37(a).

§ 93.13 Analytical methods.

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals:

(a) Analyst's Instruction for Aflatoxin (August 1994), S&TD Instruction No. 1, USDA, Agricultural Marketing Service, Science and Technology Division, South Agriculture Building, 14th & Independence Avenue, SW, P.O. Box 96456, Washington, DC 20090–6456.

(b) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(c) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

(d) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), Suite 1120, 1100 Connecticut Avenue, NW, Washington, DC 20036.

§ 93.14 Fees for aflatoxin testing.

(a) The fee charged for any single laboratory analysis for aflatoxins shall be obtained from the schedules of charges in 7 CFR 91.37(a).

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science and Technology Division.

(c) The charge for any requested laboratory analysis for aflatoxins not listed shall be based on the standard hourly rate specified in 7 CFR 91.37(b).

§ 93.15 Fees for analytical testing of oilseeds.

(a) The fee charged for any single laboratory analysis for oilseeds shall be obtained from the schedules of charges in 7 CFR 91.37(a).

(b) The charge for any requested laboratory analysis for oilseeds not listed shall be based on the standard hourly rate specified in 7 CFR 91.37(b).

PART 94—[AMENDED]

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

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056), Agricultural Marketing Act of 1946, Secs. 202–208 as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Part 94 is amended by removing the words ''Science Division'' and ''Science Division's'' and adding in their place the words ''Science and Technology Division'' and ''Science and Technology Division's'' respectively, everywhere they appear.

3. In § 94.4, paragraph (c) is revised to read as follows:

§ 94.4 Analytical methods.

* * * * *

(c) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

* * * * *

4. § 94.303 is revised to read as follows:

§ 94.303 Analytical methods.

The analytical methods used by the USDA laboratories to perform analyses for processed poultry products are found in the latest edition of the Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

PART 95—[REMOVED AND RESERVED]

1. Part 95 is removed and reserved.

PART 96—[AMENDED]

1. The authority citation for part 96 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 96, the words ''Science Division'' are revised to read ''Science and Technology Division'' everywhere they appear.

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 43, 56, 57, 91(c), Plant Variety Protection Act, as amended; 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402b, 2403, 2426, 2427, 2501(c); Sec. 14, Plant Variety Protection Act amendments of 1994; 7 U.S.C. 2401 note; 29 FR 16210, as amended, 37 FR 6327, 6505.

2. In part 97, the words ''Science Division'' are revised to read ''Science and Technology Division'' everywhere they appear.

PART 98—[AMENDED]

1. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In part 98, the words ''Science Division'' and ''SD'' are revised to read ''Science and Technology Division'' and ''S&TD'' respectively, everywhere they appear.

3. In § 98.4, paragraph (a)(1) is revised to read as follows:

§ 98.4 Analytical methods.

(a) * * *

(1) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

* * * * *

Dated: September 20, 1996.

Jon E. McNeal,

Acting Director, Science and Technology Division.

[FR Doc. 96–24664 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 929

[Docket No. FV96–929–3 FIR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; 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 establishing an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–1509, FAX# (202) 720–5698, or Tershirra Yeager, Program Assistant, 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. 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 Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The marketing order is 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 of Agriculture (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, cranberry 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 cranberries beginning September 1, 1996, and continuing until amended, suspended, 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 1,050 producers of cranberries in the production area and approximately 30 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 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 cranberry producers and handlers may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The cranberry 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 cranberries. They are familiar with the Committee's needs and 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 March 4, 1996, and recommended by a 7 to 1 vote an assessment rate of $0.04 per barrel of cranberries. A mail vote was conducted by the Committee regarding the budget, requiring responses by June 20, 1996. Seven out of eight responses were received in favor of the proposed budget. The 1996–97 recommended

expenditures are $192,980. In comparison, last year's budgeted expenditures were $201,336. The assessment rate of $0.04 is $0.01 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $63,764 for administrative expenses, and $66,732 for compensation.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Cranberry shipments for the year are estimated at 4,737,000 barrels which should provide $189,480 in assessment income. Income derived from handler assessments, along with interest income, 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 August 12, 1996, issue of the Federal Register (61 FR 41729). That rule provided 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. Further rulemaking will be undertaken as necessary. 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 action 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 September 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable cranberries 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, providing a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRY MARKETING COMMITTEE

Accordingly, the interim final rule amending 7 CFR part 929 which was published at 61 FR 41729 on August 12, 1996, is adopted as a final rule without change.

Dated: September 26, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–25201 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 945

[Docket No. FV96–945–1 FIR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; 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 Idaho-Eastern Oregon Potato Committee (Committee) under Marketing Order No. 945 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; FAX 202–720–5698, or Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724; FAX 503–326–7440. 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 2525–S, Washington, DC 20090–6456, telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is 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, Idaho-Eastern Oregon potato 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 potatoes beginning August 1, 1996, and continuing until amended, suspended, 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 2,100 producers of Idaho-Eastern Oregon potatoes in the production area and approximately 61 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 Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The Idaho-Eastern Oregon potato 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 Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of 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 June 4, 1996, and unanimously recommended 1996–97 expenditures of $122,046 and an assessment rate of $0.0026 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $111,732. The assessment rate of $0.0026 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $63,896 for salaries, $7,000 for the manager's travel, $5,500 for Federal payroll taxes, and $15,000 for reserve/auto purchase. Budgeted expenses for these items in 1995–96 were $63,232, $6,000, $5,300, and $9,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon potatoes. Potato shipments for the year are estimated at 34,000,000 hundredweight, which should provide $88,400 in assessment income. Income derived from handler assessments, along with funds from interest income and 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 July 29, 1996, issue of the Federal Register (61 FR 39270). That interim final rule added § 945.249 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through August 28, 1996. 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. Further rulemaking will be undertaken as necessary. 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 August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes 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, and no comments were received.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR part 945 which was published at 61 FR 39270 on July 29,

1996, is adopted as a final rule without change.

Dated: September 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–25103 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 993

[Docket No. FV96–993–1 FIR]

Dried Prunes Produced in California; 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 establishing an assessment rate for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes produced in California. Authorization to assess prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, Marketing Order Administration Branch, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901; FAX 209–487–5906, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918; 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 2525–S, Washington, DC 20090–6456, telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is 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, California prune 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 prunes beginning August 1, 1996, and continuing until amended, suspended, 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 1,400 producers of dried prunes in the production area and approximately 21 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 California dried prune producers and handlers may be classified as small entities.

The California prune 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 California dried prunes. They are familiar with the Committee's needs and with the costs of 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 June 27, 1996, and unanimously recommended 1996–97 expenditures of $283,500 and an assessment rate of $1.50 per salable ton of dried prunes. In comparison, last year's budgeted expenditures were $275,280. The assessment rate of $1.50 per salable ton is $0.05 lower than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 crop year include $142,120 for salaries and wages, $30,000 for research and development, $22,000 for office rent, $20,000 for travel, $11,000 for an acreage survey, $8,430 for the reserve for contingency, and $6,500 each for office supplies and data processing. Budgeted expenses for these items in 1995–96 were $131,320, $30,000, $22,000, $20,000, $10,500, $19,310, $5,000, and $3,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dried prunes. Dried prune shipments for the year are estimated at 189,000 salable tons which should provide $283,500 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

An interim final rule regarding this action was published in the July 31, 1996, issue of the Federal Register (61 FR 39842). That interim final rule added § 993.347 to establish an assessment rate for the Committee. That rule provided

that interested persons could file comments through August 30, 1996. No comments were received.

This action will reduce the assessment obligation imposed on handlers. 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 from 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 crop year 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. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent crop years 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 crop year began August 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (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 which provided a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

Note: This section will appear in the Code of Federal Regulations.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 993 which was published at 61 FR 39842 on July 31, 1996, is adopted as a final rule without change.

Dated: September 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–25102 Filed 10–01–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–83–AD; Amendment 39–9773; AD 96–20–07]

RIN 2120–AA64

Airworthiness Directives; JanAero Devices B-Series Combustion Heaters, Models B1500, B2030, B3040, and B4050 (formerly owned by Janitrol, C&D, FL Aerospace, and Midland-Ross Corporation)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 82–07–03, which currently requires repetitively testing (pressure decay) the combustion tube of JanAero Devices B-Series combustion heaters, Models B1500, B2030, B3040, and B4050, that are installed on aircraft, and overhauling any heater that does not pass one of these pressure decay tests. This action retains the pressure decay test and possible heater overhaul requirements of AD 82–07–03; and requires repetitive operational testing of the combustion air pressure switch, and replacing any combustion pressure switch that does not pass one of these tests. Two occurrences of failure of the affected heaters prompted this action. In one case, an explosion resulted and the baggage compartment door was blown off the airplane. In the other case, a fire occurred in the baggage compartment while the airplane was in flight. The actions specified by this AD are intended to prevent an airplane fire or explosion caused by failure of the heater combustion tube assembly or combustion air pressure switch.

DATES: Effective November 14, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 14, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from JanAero Devices, Airport Complex, P.O. Box 273, Fort Deposit, Alabama 36032; telephone (334) 227–8306; facsimile (334) 227–8596. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–83–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Haynes, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7377; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Events Leading to This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JanAero Devices B-Series combustion heaters, Models B1500, B2030, B3040, and B4050, that are installed on aircraft was published in the Federal Register on March 15, 1996 (61 FR 10703). The action proposed to supersede AD 82–07–03 with a new AD that would (1) retain the requirements of repetitively testing (pressure decay) the combustion tubes of the heaters, and overhauling any heater that does not pass one of these pressure decay tests; (2) require repetitive operational testing of the combustion air pressure switch, and replacing any combustion pressure switch that does not pass one of these tests; and (3) provide the option of installing a combustion air pressure

switch of improved design as terminating action for the repetitive operational tests. Accomplishment of the proposed actions as specified in the notice of proposed rulemaking (NPRM) are as follows:

—The pressure decay tests, combustion air pressure switch operational tests, and possible heater overhaul in accordance with the Overhaul and Maintenance Manual; and

—The improved design combustion air pressure switch installation in accordance with JanAero Devices Service Bulletin (SB) # A–102, dated September 1994.

The proposal was the result of two occurrences of heater failure. In one case, an explosion resulted and the baggage compartment door was blown off the airplane. In the other case, a fire occurred in the baggage compartment while the airplane was in flight.

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

Comment Issue No. 1: New Ceramic Coated Combustion Tubes Should Require Pressure Decay Tests

Four commenters state that the new ceramic coated combustion tubes, when installed, should still require repetitive pressure decay tests. These commenters feel that more failures occur in the areas of the cross-over passages, exhaust or outermost layer, end cap, and the third layer; the cross-over passage, exhaust layer, and end cap failing because of cracks or metal fatigue separation, and the third layer because of cracks caused by heat warping. These commenters further state that the JanAero ceramic coated tube does not reduce failures in these areas in that an improved fourth layer and inner cone does not increase the longevity of a combustion tube.

The FAA does not concur that repetitive pressure decay tests should be required on the new ceramic coated combustion tubes. The FAA approved the ceramic combustion tube based on the coating being able to withstand high temperatures and because testing results of the heater assembly exceed FAA Technical Standard Order (TSO) requirements. The FAA believes that, with proper maintenance as specified within the Janitrol Maintenance and Overhaul Manual, the ceramic coated combustion tube will operate safely without a repetitive inspection requirement. No changes to the AD have been made as a result of these comments.

Comment Issue No. 2: New Part Number (P/N) 94E42 Series Combustion Air Pressure Switch Should Require Repetitive Checks

Four commenters state the ''improved'' JanAero Devices P/N 94E42 switch utilizes the exact same principle as the old switch; that is, the spring pressure regulates the air pressure required to close the micro switch. These commenters express the following:

This spring pressure can be adjusted during periodic maintenance. When power is supplied to the heater, both switches are closed (spring is in compression). In both of the switch operations, if the switch fail opens, the heater will not operate. However, if the switch fails in the closed position, it would go undetected until the switch is properly inspected. If the defective switch then remained in service until the combustion air source failed, fuel and spark in the combustion tube (with no combustion air) could result in an explosion. Periodic adjustments to the switch is a necessity because of reduced spring constant. As the spring is compressed over time, less force is needed to close the circuit.

One of these four commenters went on to express the following:

The new air switch (P/N 94E42) is slightly more tamper-proof, but the internal construction is similar to the original and subject to the same failures; that is a microswitch against a diaphragm with an adjustment screw. The new switch can be field adjusted just like the old switch, with design the only major difference. The new switch cannot be adjusted to the point where it closes with no air pressure on the diaphragm. In time, the spring inside these pressure switches will sag under load, which will cause a decrease in the switch setting and result in the switch contacting at an earlier point than when new.

The FAA does not concur. The new air switch, P/N 94E42, is forward spring biased; that is, any extreme or over adjustments will cause the device to fail in a normal open position, thereby preventing any fuel introduction or ignition with an improperly adjusted switch. The adjusting screw housing is potted after factory adjustment to prevent accidental movement during field readjustment. The intent of this AD is to prevent failure of the switch. The FAA believes that, with proper maintenance as called for in the Janitrol Maintenance and Overhaul Manual, the combustion air pressure switch will not fail and will operate safely. No changes to the AD have been made as a result of these comments.

Comment Issue No. 3: Change The AD Applicability to Include All Combustion Heaters

One commenter suggests the AD cover all combustion heaters because of aging and lack of maintenance or periodic checks. Another commenter states that, since all combustion heaters are subject to the same operation and conditions, all have the same failure capacity and subsequent failure results.

The FAA does not concur. AD actions provide corrective action for products where an unsafe condition has been identified, either through documented service problems or scientific testing, knowledge, etc. AD's are not used to mandate routine maintenance, in this case as outlined in the Janitrol Maintenance and Overhaul Manual. The FAA has no data for which to issue an AD against all combustion heaters; only for those that are affected by this action. The FAA will consider future rulemaking action against other combustion heaters if data indicates that an unsafe condition exists as a result of conditions other than aircraft owners/operators not accomplishing routine maintenance actions. No changes have been made to the AD as a result of these comments.

Comment Issue No. 4: Change the Applicability of the AD

One commenter suggests that the FAA clarify the AD by changing the Applicability section of the AD to read as follows:

Applicability: B-Series Combustion Heaters, Models B1500, B2030, B3040, and B4050, marked as meeting the standards of TSO–320 and are installed on, but not limited to, the following aircraft (all serial numbers), certificated in any category:

Note: Superseding new B-Series combustion heaters, Models 2500, B3500, and B4500 incorporate a ceramic coated combustion tube and new combustion air pressure switch, P/N 94E42, are exempt from the AD (see JanAero Devices Service Letter # A–101 for superseding data).

The FAA partially concurs. The only difference that the FAA has found between the wording currently in the proposal and what the commenter has suggested is the addition of the note to clarify that certain combustion heater models incorporate the P/N 94E42 combustion tube and air pressure switch and are exempt from the AD. The FAA will add a similar note to the AD for clarification purposes.

Comment Issue No. 5: Assure the Correct Service Bulletin Is Called Out in the AD

One commenter states that in the preamble to the NPRM, reference to

JanAero Devices SB # A–102 was incorrectly referenced as JanAero SB NZ A–102. The commenter requests that all subsequent references to the service bulletin accurately reflect the title.

The FAA concurs that all reference to the service bulletin should reflect the correct title, and will assure that reference is correct in the final rule. In addition, JanAero Devices has superseded JanAero SB #A– 102 with JanAero SB # A–103, dated September 1995. All reference to JanAero Devices SB # A–102 will be changed to JanAero Devices SB # A–103.

Comment Issue No. 6: Change the Wording of the AD for Clarification

One commenter requests that the FAA clarify the AD by combining and rewording paragraphs (a)(1) and (a)(2) of the AD to read as follows:

If any heater does not pass any of the repetitive combustion tube pressure decay tests required by this AD, prior to further flight, overhaul the heater and replace the combustion tube with a serviceable tube or replace the heater assembly and revert to the initial 500 hours accumulated time-in-service (TIS) to begin repetitive testing per this AD.

Note: Replacement with a new or rebuilt superseding Heater Model (B2500, B3500, or B4500) that incorporates a ceramic coated combustion tube exempts the heater from this AD.

The FAA does not concur. The only difference that the FAA has found between the wording currently in the proposal and what the commenter has suggested is the addition of the note to clarify that certain combustion heater models incorporate the P/N 94E42 combustion tube and air pressure switch and are exempt from the AD. However, this note has already been added after the Applicability section of the AD so the only thing this note would add is duplication. No changes have been made to the AD as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the clarification note, the change in service information, and minor editorial corrections. The FAA has determined that the addition, change, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Times of This Action

The compliance times of this AD are presented in both hours time-in-service and calendar time (with the prevalent one being whichever occurs first). The reason for the dual compliance time is that the affected combustion heaters are susceptible to corrosion (occurs regardless of whether the airplane is in flight or on the ground) as well as being affected by thermodynamic and pressure cycles accumulated through regular airplane usage.

Cost Impact

The FAA estimates that 25,700 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per aircraft to accomplish the required initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,542,000 or $60 per aircraft. This figure does not take into account the number of repetitive inspections each aircraft owner/operator will incur over the life of the aircraft, or the number of aircraft that have an improved design combustion air pressure switch installed. The FAA has no way of determining the number of repetitive inspection each owner/operator would incur over the life of the airplane. The FAA is not aware of any affected airplane owner/operator that has incorporated the new design parts as of the issuance of this AD.

AD 82–03–07 currently requires the pressure decay tests on aircraft with the affected heaters installed. This action maintains these inspections; so the only cost impact of the required action is that of the combustion air pressure switch operational tests.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 amended by removing Airworthiness Directive (AD) 82–07–03, Amendment 39–4354, and by adding a new AD to read as follows:

96–20–07 Janaero Devices (formerly Janitrol, C&D, FL Aerospace, and Midland-Ross Corporation): Amendment 39–9773; Docket No. 95–CE–83–AD; Supersedes AD 82–07–03, Amendment 39–4354.

Applicability: B-Series combustion heaters, Models B1500, B2030, B3040, and B4050, marked as meeting the standards of TSO–C20, that do not incorporate a ceramic combustion tube and a part number (P/N) 94E42 combustion air pressure switch, and are installed on, but not limited to, the following aircraft (all serial numbers), certificated in any category:

Manufacturer	Models and series model airplanes
Beech	Models 95–B55 Series, 58, 58TC, 58P, 60, A60, and 76.
Canadair	Models CL–215, CL–215T, and CLT–415.
Cessna	Models 208, 303, 310F, 310G, 310H, 310I, 310J, 310K, 310L, 310M, 310N, 310O, 310P, 320C, 320D, 320E, 320F, 337 series, 340, 340A, 414, 414A, 421, 421A, 421B, and 421C.

Note 1: B-Series combustion heaters, Models 2500, B3500, and B4500, incorporate a ceramic-coated combustion tube and new combustion air pressure switch, P/N 94E42. This AD does not apply to this configuration.

Note 2: This AD applies to each aircraft identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as follows, as applicable:

—For aircraft with 450 or more heater hours time-in-service (TIS) (see Note 3 for information on how to determine heater hours TIS) accumulated on an installed heater since the last overhaul or new installation, within the next 50 heater hours TIS or 12 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished, and thereafter at intervals not to exceed 100 heater hours TIS or 24 calendar months, whichever occurs first;

—For aircraft with less than 450 heater hours TIS accumulated on an installed heater since the last overhaul or new installation, upon accumulating 500 heater hours TIS on the new or overhauled heater or within the next 12 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished, and thereafter at intervals not to exceed 100 heater hours TIS or 24 calendar months, whichever occurs first; and

—Upon installing one of the affected heaters, and thereafter at intervals not to exceed 100 heater hours TIS or 24 calendar months, whichever occurs first.

Note 3: A heater hour meter may be used to determine heater hours TIS. Also, aircraft hours TIS may be divided in half to come up with heater hours TIS.

To prevent an airplane fire or explosion caused by failure of the heater combustion tube assembly or combustion air pressure switch, accomplish the following:

(a) Test (pressure decay test) the combustion tube of the heater and conduct an operational test of the combustion air pressure switch in accordance with Section III, paragraph 3.3.1 through 3.3.13 (pressure decay test) and Section IV, paragraph 4.9c (operational switch test), of the Janitrol Maintenance and Overhaul Manual, part number (P/N) 24E25–1, dated October 1981.

(1) If any heater does not pass any of the repetitive combustion tube pressure decay tests required by this AD, prior to further flight, overhaul the heater and replace the combustion tube with a serviceable tube or replace the heater assembly. If the new or rebuilt heater assembly incorporates a ceramic combustion tube, then the repetitive pressure decay tests are no longer required.

(2) If any heater does not pass any of the repetitive combustion air pressure switch operational tests required by this AD, prior to further flight, replace the switch with one of the same design or with a P/N 94E42 switch in accordance with JanAero Devices Service Bulletin # A–103, dated September 1995. Replacing the combustion air pressure switch with a P/N 94E42 switch eliminates the repetitive operational testing requirement of this AD.

(b) As an alternative method of compliance to the requirements of this AD, the heater may be disabled by accomplishing the following:

(1) Cap the fuel supply line;

(2) Disconnect the electrical power and ensure that the connections are properly secured to reduce the possibility of electrical spark or structural damage;

(3) Inspect and test to ensure that the cabin heater system is disabled;

(4) Ensure that no other aircraft system is affected by this action;

(5) Ensure there are no fuel leaks; and

(6) Fabricate a placard with the words: ''System Inoperative''. Install this placard at the heater control valve within the pilot's clear view.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO. Alternative methods of compliance for the combustion tube repetitive inspections required by this AD that are approved in accordance with AD 82–07–03 (superseded by this action) are approved as alternative methods of compliance with the applicable portion of paragraph (a) of this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) The possible switch replacement required by this AD shall be done in accordance with JanAero Devices Service Bulletin # A–103, dated September 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from JanAero Devices, Airport Complex, P.O. Box 273, Fort Deposit, Alabama 36032. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9773) supersedes AD 82–07–03, Amendment 39–4354.

(g) This amendment (39–9773) becomes effective on November 14, 1996.

Issued in Kansas City, Missouri, on September 20, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–24885 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ASO–21]

Amendment of Class D Airspace; Jacksonville, Craig Municipal Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment modifies the Jacksonville, Craig Municipal Airport, FL, Class D airspace area from continuous to part time. Since August 31, 1996, when the operation of the airport control tower was transferred from the FAA to a contractor, the control tower no longer operates 24 hours a day. When the tower is not in operation, the airspace below 700 feet AGL becomes Class G, uncontrolled airspace.

DATES: *Effective Date.* 0901 UTC, December 5, 1996.

Comment Date: Comments must be received on or before November 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–21, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves modifying the Class D airspace at the Jacksonville, Craig Municipal Airport, FL, from continuous to part time, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of

any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and in determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace at the Jacksonville, Craig Municipal Airport, FL, from continuous to part time.

This action lessens the impact on users of this airspace. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class D airspace designation listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that there is an immediate need to modify the Class D airspace at the Jacksonville, Craig Municipal Airport, FL, from continuous to part time, to ensure that users of this airspace will be able to comply with appropriate federal regulations governing non-controlled airspace. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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 Federal Aviation Administration 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; EO 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Jacksonville Craig Municipal Airport, FL [Revised]

Jacksonville, Craig Municipal Airport, FL
(Lat. 30°20′11″ N, Long. 81°30′52″ W)
Mayport NAS, FL
(Lat. 30°23′31″ N, Long. 81°25′25″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Craig Municipal Airport; excluding the portion northeast of a line connecting the 2 points of intersection with a 4.2-mile radius circle centered on Mayport NAS, FL. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on September 24, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–25211 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–7]

Amendment to Class E Airspace, Russell, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule amends the Class E airspace area at Russell Municipal Airport, Russell, KS. The effect of this rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at Russell Municipal Airport and departing aircraft to transition into controlled airspace.

EFFECTIVE DATES: 0901 UTC October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on July 17, 1996 (61 FR 37205). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 10, 1996. No adverse comments were received, and thus, this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on August 21, 1996.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–25126 Filed 10–01–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ACE–9]

Establishment of Class E Airspace; Mosby, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at the new Clay County Regional Airport, Mosby, MO, with a projected opening in late 1996. The FAA has developed Standard Instrument Approach Procedures (SIAP) to accommodate a planned Global Positioning System (GPS) and a Non-directional Radio Beacon (NDB) at the new Clay County Regional Airport. This action will provide for controlled airspace necessary for aircraft executing the SIAPs at the new airport.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On August 2, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at the new Clay County Regional Airport, Mosby, MO (61 FR 40365). The proposed action would provide controlled airspace to accommodate the new SIAP to Clay County Regional Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this documented will be published subsequently in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes the Class E airspace area at Mosby, MO, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending 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 of 7.9 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on September 12, 1996.

Jack L. Skelton,

Acting, Manager, Air Traffic Division, Central Region.

[FR Doc. 96–25127 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–8]

Amendment to Class E Airspace, McCook, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule amends the Class E airspace area at McCook Municipal Airport, McCook, NE. The effect of this rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at McCook Municipal Airport and departing aircraft to transition into controlled airspace.

EFFECTIVE DATES: 0901 UTC October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on July 17, 1996 (61 FR 37204). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 10, 1996. No adverse comments were received, and thus, this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on August 21, 1996.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–25125 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–10]

Amendment to Class E Airspace, Seward, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This rule amends the Class E airspace area at Seward Airport, Seward, Nebraska. The effect of this rule is to provide additional controlled airspace for aircraft executing the new Standard Instrument Approach Procedure (SIAP) at Seward Airport and departing aircraft to transition into controlled airspace.

EFFECTIVE DATE: 0901 UTC October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on August 6, 1996 (61 FR 40718). The FAA uses the direct final

rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 25, 1996. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, MO, on September 16, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–25128 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 96–68]

Customs Service Field Organization—Corpus Christi, Freeport and Port Lavaca-Point Comfort, Texas as Ports of Entry

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

ACTION: Final rule; technical correction.

SUMMARY: This document corrects an error in the Customs Regulations regarding the listing of ports of entry in the State of Texas as the listing does not reflect the proper status of Corpus Christi, Freeport and Port Lavaca-Point Comfort as separate ports of entry. This technical correction has no operational impact, since all three of these locations have consistently operated as separate ports of entry, notwithstanding the technical error in the Customs Regulations.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, Resource Management Division, (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

It has come to the attention of the Customs Service that the listing of the ports of entry in the State of Texas in § 101.3, Customs Regulations (19 CFR 101.3) does not reflect the proper status of Corpus Christi, Freeport and Port Lavaca-Point Comfort as separate ports of entry.

When Customs amended its regulations in T.D. 95–77, published in the Federal Register (60 FR 50008) on September 27, 1995, to reflect Customs new organizational structure, the listing of Customs ports of entry in § 101.3 was redrafted, for ease of reference, to list the ports of entry by State. Previously, the listing of ports was organized by districts and regions. Districts and regions were eliminated in Customs new organizational structure set forth in T.D. 95–77.

Despite the fact that the port description of the Houston-Galveston consolidated port in T.D. 95–77 merely reiterated a previously published description of the port (with minor editorial changes), the new method of listing the ports of entry in § 101.3 set forth in T.D. 95–77 first brought to the attention of certain readers of the Customs Regulations that Corpus Christi, Freeport and Port Lavaca-Point Comfort, Texas, were not listed as separate ports of entry, but were included within the consolidated port of entry of Houston-Galveston. Corpus Christi, Freeport and Port Lavaca-Point Comfort have consistently operated as separate ports, with separate port codes.

Research reveals that the incorrect description of the Houston-Galveston port stems from an earlier punctuation error—periods were inadvertently converted to commas—in the regulations by T.D. 83–209, published in the Federal Register (48 FR 45538) on October 6, 1983. This typographical error has been carried forward in each volume of the regulations since that date. T.D. 83–209, the purpose of which was to reflect a 1983 reorganization of Customs field organization, was intended to have no effect on services provided by Customs. However, because of the punctuation errors, Corpus Christi, Freeport and Port Lavaca-Point Comfort appeared as part of the description of the Houston-Galveston port of entry rather than as separate port of entry listings under the Houston-Galveston district.

Further research reveals that this listing was in error because when the districts and ports of Galveston and Houston were consolidated in 1981 pursuant to T.D. 81–160, the port limits of the consolidated port of entry of Houston and Galveston were set forth to encompass Galveston, including Port Bolivar and Texas City, Texas, and the area within the present Houston, Texas limits including territory described in T.D. 54409. Corpus Christi, Freeport and Port Lavaca-Point Comfort were listed as separate ports of entry in the Houston-Galveston consolidated district in T.D. 81–160. It is noted that the port limits of the consolidated port of Houston-Galveston were later amended by T.D. 82–15, but that change also did not affect Corpus Christi, Freeport or Port Lavaca-Point Comfort.

In accordance with the above discussion, in this document, Customs is correcting the listing of the ports of entry in the State of Texas in § 101.3 of the Customs Regulations to accurately reflect that Corpus Christi, Freeport and Port Lavaca-Point Comfort, which have consistently operated as separate ports of entry with separate port codes, are indeed separate ports of entry, outside the Houston-Galveston consolidated port of entry.

Regulatory Flexibility Act, Executive Order 12866, Inapplicability of Public Notice and Comment Requirements, and Delayed Effective Date Requirements

Inasmuch as this document relates to agency management, merely corrects a typographical error and has no operational impact, it is not subject to the notice and public procedure requirements or the delayed effective date requirements of 5 U.S.C. 553. Because the document relates to agency management and organization and is not subject to notice and public comment, the document is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Agency organization matters such as this are exempt from Executive Order 12866.

List of Subjects in Part 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

Amendments to the Regulations

For the reasons set forth in the preamble, part 101 of the Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

2. In the table under § 101.3(b)(1), the listings for the State of Texas are amended by revising the entry for Houston—Galveston and adding in appropriate alphabetical order entries

for Corpus Christi, Freeport, and Port Lavaca-Point Comfort to read as follows:

§ 101.3 Customs service ports and ports of entry.

* * * * *

(b) *List of Ports of Entry and Service Ports.* * * *

(1) *Customs ports of entry.* * * *

Ports of entry	Limits of port
* *	* * *
Texas	
* *	* * *
Corpus Christi	E.O. 8288, Nov. 22, 1939 (4 FR 4691), and territory described in T.D. 78–130.
* *	* * *
Freeport	E.O. 7632, June 15, 1937 (2 FR 1245).
* *	* * *
+ Houston-Galveston.	Consolidated port includes territory lying within corporate limits of both Houston and Galveston, and remaining territory in Harris and Galveston Counties, T.D.s 81–160 and 82–15.
* *	* * *
Port Lavaca-Point Comfort.	T.D. 56115.
* *	* * *

+ Indicates Drawback unit/office.

George J. Weise,

Commissioner of Customs.

Approved: September 4, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–25151 Filed 10–1–96; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 91F–0289]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of methyl methacrylate/butyl acrylate-grafted polypropylene copolymer containing methyl methacrylate/butyl acrylate-grafted polypropylene, methyl methacrylate/butyl acrylate copolymer, methyl methacrylate homopolymer, and polypropylene, resulting from the reaction of a mixture of methyl methacrylate and butyl acrylate with polypropylene, as a component of food-contact materials. This action is in response to a food additive petition filed by Rohm and Haas Co.

DATES: Effective October 2, 1996; written objections and requests for a hearing by November 1, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in 21 CFR 177.1520(b), effective October 2, 1996.

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

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 23, 1991 (56 FR 41850), FDA announced that a food additive petition (FAP 1B4272) had been filed by Rohm and Haas Co., c/o 1150 17th St. NW., Washington, DC 20036 (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of methyl methacrylate/butyl acrylate-grafted polypropylene as a component of propylene homopolymer and copolymer food-contact materials.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that § 177.1520 should be amended as set forth below. The agency further concludes that methyl methacrylate/butyl acrylate-grafted polypropylene copolymer containing methyl methacrylate/butyl acrylate-grafted polypropylene, methyl methacrylate/butyl acrylate copolymer, methyl methacrylate homopolymer, and polypropylene, resulting from the reaction of a mixture of methyl methacrylate and butyl acrylate with polypropylene, is a more accurate and descriptive name for the food additive than the name given in the petition. Therefore, FDA is using this name to identify the additive in the final rule.

In accordance with § 171.1(h) (21 CFR 171.1(h)), 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 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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.

Any person who will be adversely affected by this regulation may at any time on or before November 1, 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 regulation. 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.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings ''Substance'' and ''Limitations'' to read as follow:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substance	Limitations
* * *	* * * *
Methyl methacrylate/butyl acrylate-grafted polypropylene copolymer containing methyl methacrylate/butyl acrylate-grafted polypropylene (CAS Reg. No. 121510–09–6), methyl methacrylate/butyl acrylate copolymer (CAS Reg. No. 25852–37–3), methyl methacrylate homopolymer (CAS Reg. No. 9011–14–7), and polypropylene (CAS Reg. No. 9003–07–0), resulting from the reaction of a mixture of methyl methacrylate and butyl acrylate with polypropylene. The finished product contains no more than 55 percent by weight of polymer units derived from methyl methacrylate and butyl acrylate as determined by a method entitled, ''Determination of the Total Acrylic in PP–MMA/BA Polymers,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 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.	For use only at levels not to exceed 6 percent by weight of olefin polymers complying with paragraph (c) of this section, items 1.1, 3.1a, 3.2a, and 3.2b, where the copolymers complying with items 3.1a, 3.2a, and 3.2b contain not less than 85 weight-percent of polymer units derived from propylene.
* * *	* * * *

* * * * *

Dated: September 23, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–25122 Filed 10–1–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 86

[FRL–5618–2]

Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document contains technical amendments to regulations controlling air pollution from new and in-use motor vehicles and motor vehicle engines. This final rule removes regulations that are obsolete.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Dick Nash, Office of Mobile Sources, Vehicle Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105, 313–668–4412.

SUPPLEMENTARY INFORMATION:

Background

The Agency has reviewed the regulations currently contained in Title 40, Part 86 of the Code of Federal Regulations (CFR) and has determined that a number of sections have become obsolete or redundant. By this action the agency is removing them from the CFR.

By issuing these technical amendments directly as a final rule, EPA is foregoing the issuance of a Notice of Proposed Rulemaking (NPRM) and the opportunity for public comment. Such a curtailed procedure is permitted by 5 U.S.C. 553(b) and § 307(d) of the Clean Air Act when issuance of a proposal and public comments would be impracticable, unnecessary, or contrary to the public interest. The Agency is publishing this action without prior proposal because these are non-controversial changes that delete sections of the regulations that are obsolete because they do not regulate future conduct concerning existing motor vehicles or any motor vehicles which may be certified in the future. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of an NPRM is unnecessary.

Today's action does not create any new regulatory requirements. For this reason, EPA finds that good cause exists to provide for an immediate effective date.

The Agency has determined that this action does not meet any of the criteria for classification as a significant rule under Executive Order 12866. Therefore, no Regulatory Impact Analysis is required.

This action does not include any new information collection requirements. The Paperwork Reduction Act is not applicable to this action as these changes to the regulations at 40 part CFR part 86 will not impose any information collection requirements on affected parties.

The Environmental Protection Agency has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The Agency has determined that the action adopted today will not have a significant impact on small entities;

this action is limited to deleting obsolete regulatory provisions.

Description of Changes

The following paragraphs describe the individual revisions that are being adopted in this rule.

1. Part 9 is amended by removing references to any sections which are being removed from part 86.

2. Part 86 is being amended by removing certain sections which are obsolete because they do not regulate future conduct but only apply to prior conduct, affecting prior model year motor vehicles and engines. However, any conduct or actions involving such vehicles or engines occurring prior to the deletion of these provisions will be controlled by the provisions in effect when the action or conduct occurred.

3. Section 86.113 is being amended by deleting paragraphs (g)(1)(iii), (g)(1)(iv), and (g)(1)(v). This action eliminates the calculation that adjusts the payment of a nonconformance penalty to the federal government based on payment of a nonconformance penalty to the state of California. California does not collect nonconformance penalties. This action makes clear that the penalty will be paid in full to the Federal Government. Additionally, paragraph(g)(1)(ii) is being amended to eliminate references to the subparagraphs deleted.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: September 23, 1996.

Mary Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set forth in the preamble, title 40, chapter I, parts 9 and 86 of the Code of Federal Regulations are amended as set forth below:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735 38 FR 21243, 3 CFR 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. Section 9.1 is amended by removing from the table entries for 86.1003–88, 86.1005–88, 86.1008–88.

PART 86—[AMENDED]

3. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

§§ 86.610–84, 86.1003–88, 86.1005–88, 86.1008–88, 86.1010–84 [Removed]

4. Part 86 is amended by removing §§ 86.610–84, 86.1003–88, 86.1005–88, 86.1008–88, 86.1010–84.

5. Section 86.1113–87 is amended by revising paragraph (g)(1)(ii) and by removing paragraphs (g)(1)(iii), (g)(1)(iv) and (g)(1)(v) to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

* * * * *

(g) * * *

(1) * * *

(ii) The penalty shall be payable to U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251.

* * * * *

[FR Doc. 96–25232 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KS 008–1008(a); FRL–5556–8]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives full approval to the State Implementation Plan (SIP) submitted by the state of Kansas for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151. Additionally, the EPA is approving in the SIP revisions to the state's open burning rules. SIP approval of revised state rules ensures that the SIP is current and permits Federal enforceability of the state rules.

DATES: This action is effective December 2, 1996 unless by November 1, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

General Conformity

Section 176(c) of the Clean Air Act (CAA), as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and Part D of the Act. Conformity to a SIP is defined in the Act as meaning conformity to an SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards, and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. On November 30, 1993, the EPA promulgated the final rule (hereafter referred to as the General Conformity rule), which establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The General Conformity rule also establishes the criteria for the EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in the EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and nonfederal entities (section 51.851(b)).

On June 23, 1992, the EPA promulgated the Kansas City ozone redesignation and maintenance plan for Wyandotte and Johnson counties in Kansas, and three adjoining counties in Missouri. Section 51.851 and section

93.151 of the General Conformity rule require that states submit a SIP revision containing the criteria and procedures for assessing the conformity of Federal actions to the applicable SIP, within 12 months after November 30, 1993. As the rule applies to all nonattainment areas and maintenance areas, a SIP revision which addresses the requirements of the General Conformity rule became due on November 30, 1994.

On June 6, 1996, the state of Kansas submitted a SIP revision meeting the requirements of sections 51.851 and 93.151 of the General Conformity rule. The submission adopts by reference 40 CFR 93, subpart B, except 40 CFR 93.151. The omitted section contains the criteria for the EPA approval of General Conformity SIP revisions, and also states the effect of the EPA approval of a SIP revision. It is not a necessary component of the state's substantive rules governing general conformity determinations.

The Kansas rule also does not adopt paragraph 40 CFR 93.160(f), which states that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled. However, these requirements are contained in paragraph 93.160(b), which the state did adopt, so its omission is not significant.

This SIP revision was adopted by the Secretary of the Kansas Department of Health and Environment on February 21, 1996, and became effective on March 15, 1996.

Because the Kansas rule adopts the substantive requirements of the EPA's rule by reference, it meets the criteria in sections 51.851 and 93.151 for approval of General Conformity SIP revisions.

Open Burning Rules

The state revised its open burning regulations by revoking old rules and adopting similar renumbered, revised rules. One significant change was separating out the requirements for agricultural open burning as a separate rule in K.A.R. 28–19–648. Substantative change to the agricultural open burning rule includes more stringent conditions under which open burning can be approved by local authorities, and authorizing local authorities to adopt additional restrictions or requirements deemed appropriate. The state retains the authority to enforce the rule. The revisions provide added health and environmental protection.

EPA ACTION: By this action the EPA grants full approval of Kansas' June 6, 1996, submittal. This SIP revision meets all of the requirements set forth in 40 CFR 51.851 and 93.151, and Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule, based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds *(Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that these rules result in no additional costs to tribal government.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 section 804(2) of the APA as amended.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 2, 1996.

William Rice,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart CC—Kansas

2. Section 52.870 is amended by adding paragraph (c)(32) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(32) A Plan revision was submitted by the Kansas Department of Health and Environment (KDHE) on June 6, 1996, which incorporates by reference the EPA's regulations relating to determining conformity of general Federal actions to State or Federal Implementation Plans, and which revokes old and adopts new open burning regulations.

(i) Incorporation by reference.

(A) Regulation K.A.R. 28–19–800, adopted by the Secretary of the KDHE on February 21, 1996, effective March 15, 1996.

(B) Regulations K.A.R. 28–19–645 to K.A.R. 28–19–648, adopted by the Secretary of KDHE on February 6, 1996, effective March 1, 1996.

(C) Regulations K.A.R. 28–19–45 to K.A.R. 28–19–47, revoked by the Secretary of KDHE on February 6, 1996, effective March 1, 1996.

[FR Doc. 96–24528 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5612–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Vermont for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: November 1, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Ida Gagnon, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On May 24, 1996, EPA proposed interim approval of the operating permits program for the State of Vermont. See 61 FR 26145. The EPA received comments from the State of Vermont on the proposal. In this document EPA is taking final action to promulgate interim approval of the operating permits program for the State of Vermont.

II. Response to Comments

The comments received on the May 24, 1996 proposed rulemaking in the Federal Register proposing interim approval of the Vermont Program and EPA's response to those comments are as follows:

Comment: Vermont believes that EPA should grant Vermont ''full approval until, at a minimum, all relevant litigation pertaining to Part 70 is finalized and a static set of requirements to judge the approvability of Vermont's program is in place.'' Specifically, Vermont comments that ''EPA's interpretation of Section 502(b)(10) is currently the subject of litigation and is likely to change.'' In addition, Vermont asserts that its emissions trading requirements are more stringent than the requirements of the Act and therefore, are not preempted by federal law.

Response: Vermont's rule currently provides the State with the authority to prohibit emissions trades under an emissions cap and does not require that emissions be quantifiable as a precondition to allowing such trades when a permit does contain an emissions cap. In addition, Vermont's rule does not provide for ''Section 502(b)(10) changes.''

To address the emissions trading issue, EPA is requiring Vermont to adopt regulatory language *requiring* the State to include, upon request by a source, emission trading provisions in a title V permit for the purpose of complying with an emissions cap established in the permit, provided that the emissions involved in such trades are quantifiable. Vermont retains the option to include language in its regulation that would require all such trades to be consistent with State requirements as well as applicable requirements, and therefore EPA is not attempting to supersede more stringent State law. EPA is also requiring Vermont to adopt regulatory provisions to implement ''Section 502(b)(10) changes'' as defined in Part 70 so that both aspects of Part 70's operational flexibility requirement are met.

EPA understands Vermont's concerns about the pending litigation, but EPA is obligated to evaluate the State's program based on the Part 70 rules promulgated on July 21, 1992. Specifically, Part 70 currently requires both ''Section 502(b)(10) changes'' and emissions trading under emission caps established in a title V permit as mechanisms to implement operational flexibility. In an August 29, 1994 (FR 44572) rulemaking

proposal, EPA proposed to eliminate Section 502(b)(10) changes as a mechanism for implementing operational flexibility. When the proposed changes to Part 70 are finalized, EPA and the State will revisit this matter and address it consistent with the program transition provisions of the revised Part 70 regulations.

Comment: Vermont does not agree that it must include language in its regulations *requiring* it to reopen and reissue operating permits ''for cause'' as defined by Part 70. Vermont feels that by mandating such actions in its regulations, it imposes a regulatory burden on itself that could be interpreted to limit its ability to reopen a permit for reasons not specifically enumerated in its regulation.

Response: It is not EPA's intent to limit Vermont's ability to reopen a permit for any reason the State believes is appropriate. EPA's interim approval condition is intended to ensure that Vermont's regulation requires permit reopening under the conditions required by 40 CFR 70.7(f)(1). Vermont is free to add to the list of conditions in 40 CFR 70.7(f)(1) requiring reopening, or to provide the Commissioner with the discretion to reopen permits for reasons in addition to those specified in 40 CFR 70.7(f)(1).

Comment: Vermont objects to EPA's position that Vermont's regulations must list the terms and conditions that must appear in every permit. Vermont believes the intent of the Act is for Vermont to demonstrate that it has legal authority to include the necessary terms and conditions, ''not to unnecessarily clutter its regulations with a detailed list of all permit terms and conditions.'' Furthermore, Vermont objects to promulgating regulations which it claims impose requirements upon itself rather than the regulated community.

Response: Forty CFR 70.6 requires that a permitting authority commit in the program regulations to incorporate critical permit elements including prompt reporting of deviations, recordkeeping of different operating scenarios, and separating permit terms which are enforceable only by the State from those that are enforceable by both the State and EPA. The State must also indicate the origin and authority of all permit terms and conditions as well as identify any difference in form as compared to the applicable requirement. It is this regulatory commitment that makes the permitting authority accountable not only to EPA but also to citizens and the regulated community.

III. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Vermont on April 28, 1995. The State must make the changes specified in the proposed rulemaking, under II.B., Proposed Action, in order to be granted full approval.

The scope of the State of Vermont's Part 70 program approved in this document applies to all Part 70 sources (as defined in the approved program) within the State of Vermont, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval extends until November 2, 1998. During this interim approval period, the State of Vermont is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Vermont. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Vermont fails to submit a complete corrective program for full approval by May 4, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State of Vermont then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Vermont has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of Vermont still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Vermont's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Vermont has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of Vermont has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State of Vermont has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the State of Vermont program by the expiration of this interim approval, since the expiration would occur after November 15, 1995, EPA would be required to promulgate, administer and enforce a Federal permits program for the State of Vermont upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Vermont submitted a supplemental letter dated March 6, 1996 addressing the 112(l)(5) requirements for area/minor sources. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the Part 70 program as well as area/minor sources. See 61 FR 26145 for a fuller discussion of Section 112(l)(5) delegations.

IV. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including comments received by the State of Vermont and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information

submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

C. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

D. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

E. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Environmental Protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 8, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to Part 70 is amended by adding the entry for Vermont in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Vermont

(a) *Department of Environmental Conservation:* submitted on April 28, 1995; interim approval effective on November 1, 1996; interim approval expires November 2, 1998.

(b) (Reserved)

* * * * *

[FR Doc. 96–25233 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5619–4]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of New Hampshire for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: November 1, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On August 14, 1996, EPA proposed interim approval of the operating permits program for the State of New Hampshire. See 61 FR 42222. The

August 14, 1996 document also proposed approval of New Hampshire's mechanism for implementing section 112(g) and for delegation of section 112 standards as promulgated. EPA did not receive any comments on the proposal. In this document EPA is taking final action to promulgate interim approval of the operating permits program, and approving the section 112(g) and section 112(l) mechanisms noted above for the State of New Hampshire.

II. Final Action and Implications

A. Final Action

The EPA is promulgating interim approval of the operating permits program submitted to EPA for the State of New Hampshire on October 26, 1995. Among other things, New Hampshire has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR Part 70. The State must make the changes specified in the proposed rulemaking, under II.B., Proposed Action, in order to be granted full approval.

This interim approval extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period under the Act for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The scope of the New Hampshire Part 70 program applies to all Part 70 sources (as defined in the approved program) within the State of New Hampshire, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

EPA is approving New Hampshire's authority to implement and enforce section 112 standards at Part 70 sources. Requirements for operating permit program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, the EPA has also granted approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

D. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

E. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 23, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to Part 70 is amended by adding the entry for New Hampshire in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

New Hampshire

(a) Department of Environmental Services: submitted on October 26, 1995; interim approval effective on November 1, 1996.

(b) (Reserved)

* * * * *

[FR Doc. 96–25231 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4F4327/R2253A; FRL–5393–8]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerance, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule, correction.

SUMMARY: EPA is correcting its rule published on July 31, 1996, which established tolerances for residues of the insecticide/miticide fenpropathrin, a synthetic pyrethroid, in or on the raw agricultural commodities (RACs) peanuts and peanut hay, and increases tolerances in meat, meat byproduct and fat of cattle, goats, hogs, horses and sheep and poultry; eggs; and milkfat.

EFFECTIVE DATE: This regulation becomes effective October 2, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a rule in the Federal Register of July 31, 1996 (FRL–5385–1) which amended 40 CFR 180.466 by establishing tolerances for residues of the insecticide fenpropathrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RACs) peanuts, vines and peanuts, hay (dried) at 20 parts per million (ppm); milkfat at 2.0 ppm (reflecting 0.08 ppm in whole milk); fat (cattle, goats, hogs, horses, and sheep) at 1.0 ppm; peanut hulls at 0.3 ppm; meat and meat byproducts (mbyp) (cattle, goats, horses, and sheep) at 0.1 ppm; poultry meat, fat, mbyp and eggs at 0.05 ppm; and peanut nut meat at 0.01 ppm.

In this rule EPA inadvertently left out of the preamble certain information relevant to the conditional registration for fenpropathrin and did not include the expiration date for these new tolerances, which were established as time-limited tolerances that would expire on November 15, 1997.

In addition, EPA inadvertently omitted from the table the new tolerance levels for sheep, fat, sheep, mbyp and sheep, meat. These oversight are corrected below.

Accordingly, FR Doc. 96-19330, published in the Federal Register of July 31, 1996 at page 39887, is corrected as follows:

1. On page 39888, at the bottom of the first column, insert the following two paragraphs.

''The Agency issued a conditional registration for fenpropathrin for use on cotton with an expiration date of November 15, 1993 (see the Federal Register of April 14, 1993 (58 FR 19357)). The conditional registration was subsequently amended and extended to November 15, 1996 (see the Federal Register dated February 22, 1995 (60 FR 9783)). The registrations were amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of the pyrethroids on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. Due to the conditional status of the registration, tolerances have been established for fenpropathrin on a temporary basis, (until November 15, 1997) on cottonseed, meat, fat and meat-byproducts of hogs, horses, cattle, goats, sheep, poultry, eggs and milk to cover residues expected to be present from use during the period of conditional registration. To be consistent with the conditional registration status of fenpropathrin on cotton the Agency is establishing these tolerances with an expiration date of November 15, 1997.

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

2. On page 39889, the table to § 180.466 is corrected by revising the entry for cattle, fat and by adding entries alphabetically for sheep, fat, sheep, mbyp and sheep, meat, to read as follows:

Commodity	Parts per million	Expiration date
Cattle, fat	1.0	Nov. 15, 1997
* * * *	* * *	
Sheep, fat	1.0	Do.
Sheep, mbyp	0.1	Do.
Sheep, meat	0.1	Do.
* * * *	* * *	

List of Subjects in 40 CFR Part 180

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

Dated: September 23, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–24994 Filed 10–01–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5619–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the AMP site in Glen Rock, in York County, Pennsylvania, from the National Priorities List.

SUMMARY: The Environmental Protection Agency (''EPA'') announces the deletion of the AMP Site (''Site''), located in Glen Rock, York County, Pennsylvania, from the National Priorities List (''NPL''). The NPL, a list of sites EPA evaluates for priority cleanup of hazardous wastes, is found in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, Appendix B. EPA promulgated the NCP pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'').

EPA announces this deletion under the terms of a policy published in the Federal Register on March 20, 1995. In this policy EPA announced that, consistent with NCP criteria for deletion of sites from the NPL, the Agency would delete sites if corrective action was proceeding pursuant to the Resource Conservation and Recovery Act (''RCRA''). EPA has determined that this deferral to RCRA authorities is appropriate. EPA has received the following concurrence from Commonwealth of Pennsylvania Department of Environmental Protection: ''The Commonwealth of Pennsylvania concurs in the decision to delete the site from the NPL, but reserves all of its rights, abilities and authorities to address contamination at the site and to pursue responsible parties regarding this contamination.''

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Vavra, Remedial Project Manager, Superfund Branch—3HW22, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, (215) 566–3221.

SUPPLEMENTARY INFORMATION: A Notice of Intent to Delete this Site was published on July 26, 1996 in the Federal Register (56 FR 39104). The closing date for comments on the Notice of Intent to Delete was August 26, 1996. EPA did not receive any comments on the proposed deletion.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site AMP Inc., Glen Rock, Pennsylvania.

Dated: September 17, 1996.

Alvin R. Morris,

Acting Regional Administrator, U.S. EPA Region 3.

[FR Doc. 96–24996 Filed 10–01–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 501

[APD 2800.12A, CHGE 73]

RIN 3090–AG09

General Services Administration Acquisition Regulation; Authorizing Deviations From the FAR and GSAR

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise Subpart 501.4 to modify the policy on GSA contracting activities deviating from the Federal Acquisition Regulation (FAR) and GSAR and to lower the approval levels for both individual and class deviations from the regulations.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Al Matera, GSA Acquisition Policy Division, (202) 501–1224.

SUPPLEMENTARY INFORMATION: .

A. Executive Order 12866

This rule is not a significant rule as defined in Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because it does not have an impact beyond the internal operations of GSA and is not required to be published for public comment.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under 5 U.S.C. 804. This rule was submitted to Congress and GAO under 5 U.S.C. 804.

List of Subjects in 48 CFR Part 501

Government procurement.

Accordingly, 48 CFR 501 is amended as follows:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR 501 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Subpart 501.4 is revised to read as follows:

Subpart 501.4—Deviations From the FAR and GSAR

501.402 Policy.

(a) Uniformity is an objective of the GSA Acquisition Regulatory System. However, the desire for consistency of action by GSA contracting activities must not restrict or discourage development and testing of new procedures and techniques. Similarly, the desire for consistency must not prevent GSA contracting activities from adopting alternate procedures determined to be in the Government's interest based on unique programmatic or managerial considerations.

(b) A contracting activity may deviate from a regulatory provision which implements a statutory requirement only to the extent that the deviation does not violate the underlying statute.

(c) Deviations must not be used to defeat the FAR and GSAR approval requirements.

501.403 Individual deviations.

Individual deviations from the GSAR or the FAR must be approved by the Contracting Director. A copy must be submitted to GSA's Senior Procurement Executive (MV).

501.404 Class deviations.

(a) Class deviations from the FAR or the GSAR must be approved by the head of the contracting activity (HCA). A copy must be submitted to GSA's Senior Procurement Executive (MV).

(b) Requests for class deviations must be supported by statements that disclose the need for and the nature of the deviation.

(c) Class deviations from the GSAR will expire in 12 months if not extended. They may be rescinded earlier by the Senior Procurement Executive or the HCA without prejudice to any action previously taken.

Dated: September 26, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 96–25174 Filed 10–1–96; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 062596B]

RIN 0648–AH68

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 38; Pacific Ocean Perch

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

ACTION: Approval of a fishery management plan amendment.

SUMMARY: NMFS announces approval of Amendment 38 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 38 provides the flexibility for the North Pacific Fishery Management Council (Council) to recommend a total allowable catch (TAC) amount for Pacific ocean perch (POP) below the level currently established in the FMP. This action is necessary to improve the conservation and management of POP and is intended to further the goals and objectives of the FMP.

EFFECTIVE DATE: September 25, 1996.

ADDRESSES: Copies of Amendment 38, the environmental assessment, and the economic analysis prepared for the amendment are available from the Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: Decline of the POP stock since the early period of the foreign fishery (mid-1960's) prompted the Council to recommend a rebuilding plan for POP. The Pacific Ocean Perch Rebuilding Plan (Rebuilding Plan) was established in Amendment 32 to the FMP. Details of the justification for the Rebuilding Plan can be found in the Notice of Availability for Amendment 32 (59 FR 295, January 4, 1994). The Rebuilding Plan provides a specific rebuilding strategy for POP stocks, based on available biological and economic information. The Rebuilding Plan establishes a formula to determine annually the POP TAC, which is then apportioned among Gulf of Alaska (GOA) regulatory areas based on biomass distribution. However, the amendment does not provide for any flexibility to reduce the TAC below the amount specified by the formula.

Under the current Rebuilding Plan, the potential exists for the calculated TAC to be greater than the acceptable biological catch level, which would be inconsistent with the current management practice for other groundfish stocks. The Council also has expressed concern that it does not have the flexibility to lower the POP TAC under the Rebuilding Plan to accommodate other resource conservation concerns. Therefore, at its December 1995 meeting, the Council adopted Amendment 38 to the FMP for review by NMFS under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 38 does not prescribe a TAC lower than that specified by the formula; however, it allows the Council the flexibility to recommend a TAC below the level of the specified formula in one or more GOA regulatory areas or districts.

The FMP amendment gives the Council the alternative of recommending a lower POP TAC in the annual specifications process only for the purpose of addressing biological or resource conservation concerns that are not addressed under the Rebuilding Plan or Stock Assessment and Fishery Evaluation reports. If socioeconomic concerns exist with respect to the management of the POP fishery, particularly in the Eastern GOA, the Council would need to consider a separate amendment to address these issues.

A Notice of Availability of Amendment 38, which described the proposed action and solicited comments from the public until August 30, 1996, was published in the Federal Register on July 5, 1996 (61 FR 35174). No written comments were received during the 60-day comment period. After review under the Magnuson Act, NMFS determined that Amendment 38 is consistent with the Magnuson Act and other applicable laws and approved Amendment 38 on September 25, 1996. Additional information on this action is contained in the Notice of Availability.

No regulatory changes are necessary to implement this FMP amendment. Any recommendation that the Council may make for the POP TAC as a result of this amendment will take place during the annual groundfish TAC specification process under regulations at § 679.20(a)(2).

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

Dated: September 26, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–25207 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 192
Wednesday, October 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. 96–061–1]

Interstate Movements of Imported Plants and Plant Parts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a new domestic quarantine notice. This domestic quarantine notice would provide that, subsequent to their importation, plants and plant parts prohibited under foreign quarantine notices from being imported into certain States or areas are also prohibited from being moved interstate into those States or areas. This action would strengthen our ability to enforce restrictions on the movement in commerce of plants and plant parts that present a risk of introducing foreign plant pests and diseases. In conjunction with this action, we also propose to remove a domestic quarantine notice that prohibits certain interstate movements of Unshu oranges subsequent to their importation into the United States, because the proposed domestic quarantine notice would make a specific one for Unshu oranges unnecessary.

DATES: Consideration will be given only to comments received on or before November 18, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–061–1, 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. 96–061–1. 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. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj), and the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–165, and 167), were enacted to protect U.S. plant resources from exotic, injurious plant pests and diseases. Pursuant to these statutes, the Animal and Plant Health Inspection Service (APHIS) has promulgated the regulations at title 7, parts 301 and 319, of the Code of Federal Regulations (CFR). Part 301 contains domestic quarantine notices designed to prevent the spread of certain plant pests and diseases through the interstate movement of regulated articles. Part 319 contains foreign quarantine notices designed to prevent the introduction of foreign plant pests and diseases through the importation of regulated articles.

According to 7 U.S.C. 161, the Secretary of Agriculture is authorized and directed to quarantine any portion of the United States he deems necessary to prevent the spread of a dangerous plant disease or insect infestation that is new to or not widely prevalent within the United States. Further, 7 U.S.C. 161 prohibits the interstate movement of any plants, plant parts, or other articles capable of carrying the disease or insect pest from any quarantined portion of the United States into or through any other part of the United States, except as prescribed by the Secretary of Agriculture. Accordingly, we regulate the importation and subsequent interstate movement of Unshu oranges grown in Japan or on Cheju Island, Republic of Korea, to prevent the introduction and spread of citrus canker disease into citrus-producing areas of the United States. Under the foreign quarantine notice ''Subpart—Citrus Fruit,'' contained in 7 CFR 319.28, these Unshu oranges may be imported under permit and under certain conditions into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. The domestic quarantine notice ''Subpart—Unshu Oranges,'' contained in 7 CFR 301.83, quarantines all areas of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, with respect to imported Unshu oranges, and prohibits the subsequent interstate movement of imported Unshu oranges into or through any area of the United States not so quarantined.

The purpose of ''Subpart—Unshu Oranges'' is to reinforce the destination restrictions specified in ''Subpart—Citrus Fruit.'' ''Subpart—Unshu Oranges'' is the only domestic quarantine notice that plays such a direct companion role to a foreign quarantine notice. No other domestic quarantine notice prohibits the subsequent movement of an imported plant or plant part into or through certain portions of the United States based on importation restrictions specified in a foreign quarantine notice.

The foreign quarantine notices, however, prescribe destination restrictions for many other plants or plant parts that, like Unshu oranges, are eligible for importation into the United States but not into specified States or areas. Like the importation restrictions on Unshu oranges, these specific prohibitions by State or area were established because the imported plants or plant parts would present an unacceptable plant pest or disease risk if moved into those States or areas. For example, under 7 CFR 319.56–2t, ginger root imported from the Cook Islands is prohibited entry into Puerto Rico, the Virgin Islands, and Guam to prevent possible establishment of the ginger weevil in those areas. We allow ginger root from the Cook Islands to be imported into the continental United States because the ginger weevil is unlikely to become established in the continental United States, and into Hawaii because the pest is already established there. The foreign quarantine notice pertaining to the importation of ginger root from the Cook Islands is intended to prevent such ginger root from ever entering Puerto

Rico, the Virgin Islands, or Guam. However, no domestic quarantine notice specifically prohibits the interstate movement of ginger root imported from the Cook Islands into those areas.

We believe it would be helpful for part 301 of the regulations to include a notice of a general domestic quarantine and prohibition on interstate movement to cover all plants and plant parts, like ginger root from the Cook Islands, that, according to a foreign quarantine notice, may be imported only into specified areas of the United States. Such a notice would serve two important purposes. First, it would clarify and strengthen APHIS' ability to enforce destination restrictions on imported plants and plant parts. Second, it would assist the public by logically placing quarantine notices restricting the interstate movement of imported plants and plant parts in the domestic quarantine notices in part 301, instead of in the foreign quarantine notices in part 319.

Accordingly, we are proposing to establish a new generic domestic quarantine notice to restrict the interstate movement of imported plants and plant parts that present a risk of introducing a foreign plant pest or disease. This domestic quarantine notice would quarantine all parts of the United States other than those listed in a foreign quarantine notice as a prohibited area for the importation of a specified type of plant or plant part (in other words, it would quarantine those areas into which the plant or plant part *may* be imported). Additionally, this domestic quarantine notice would prohibit the subsequent interstate movement of such imported plants or plant parts into or through areas of the United States not so quarantined. In the case of ginger root from the Cook Islands, for example, this proposed domestic quarantine notice would quarantine all areas of the United States except for Puerto Rico, the Virgin Islands, and Guam, and would prohibit the subsequent interstate movement of imported ginger root from the Cook Islands into or through any nonquarantined area of the United States (i.e., Puerto Rico, the Virgin Islands, and Guam). This proposed domestic quarantine notice is intended to cover any plants or plant parts currently in, or subsequently added to, part 319 that have destination restrictions.

In conjunction with the action just described, we propose to remove the domestic quarantine notice, ''Subpart—Unshu Oranges,'' contained in § 301.83. As stated previously, that subpart serves to reinforce the destination restrictions for imported Unshu oranges specified in the foreign quarantine notice ''Subpart—Citrus Fruit.'' ''Subpart—Unshu Oranges'' would no longer be necessary if we establish a new domestic quarantine notice as described above because the generic domestic quarantine would prohibit the interstate movement of Unshu oranges grown in Japan or Cheju Island into any nonquarantined area.

Executive Order 12866 and Regulatory Flexibility Act

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

We do not anticipate that this action would have a significant economic impact on any small entities. Imported plants and plant parts, including fruits and vegetables, that are prohibited from being imported into specified States or areas under our foreign quarantine notices are, under those same notices, prohibited from being distributed in those States or areas. This action would clarify and strengthen the agency's ability to enforce these restrictions.

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

Executive Order 12372

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

Paperwork Reduction Act

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

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 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 would be amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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. A new subpart Subpart—Imported Plants and Plant Parts, would be added to read as follows:

Subpart—Imported Plants and Plant Parts

§ 301.10 Definitions.

Moved (move, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other legal entity.

State. Any State, territory, district, or possession of the United States.

§ 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

Whenever part 319 of this chapter allows the importation of a plant or plant part into certain States or areas of the United States, but prohibits the plant or plant part from being imported into, entered into, or distributed within any other State or area of the United States, the States or areas of the United States into which the plant or plant part may be imported are quarantined with respect to that plant or plant part. No person may move interstate any such plant or plant part from any State or area quarantined with respect to that plant or plant part into or through any State or area of the United States not quarantined with respect to that plant or plant part.

Subpart—Unshu Oranges [Removed and Reserved]

3. Subpart—Unshu Oranges consisting of § 301.83, would be removed and reserved.

Done in Washington, DC, this 25th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–25101 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1214

[FV–96–705PR]

Proposed Kiwifruit Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (Department) is seeking comments on an industry-funded research, promotion and consumer information program for fresh kiwifruit. An Order for the proposed program—the Kiwifruit Research, Promotion, and Consumer Information Order—was submitted to the Department by the California Kiwifruit Commission. In addition, the New Zealand Kiwifruit Marketing Board submitted a partial proposal. Under the proposed Order, producers and importers would pay an assessment not to exceed 10 cents per 7-pound tray of kiwifruit to the proposed National Kiwifruit Board. Composed of producers and importers or exporters, the Board would use the assessments collected to conduct a generic program of research, promotion, and consumer information to maintain, expand, and develop markets for kiwifruit. In addition, in accordance with the Paperwork Reduction Act of 1995, this proposed rule specifies the public reporting burden for the collection of information involved in reporting the necessary information to administer the program.

DATES: Comments must be received by December 2, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456, fax (202) 205–2800. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Also, pursuant to the Paperwork Reduction Act, send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9916 or (1)(888) 720–9917.

SUPPLEMENTARY INFORMATION: This proposed Order is issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, Subtitle V of the Federal Agricultural Improvement and Reform Act of 1996 [Pub. L. 104–127], enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would 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 § 558 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Agency is required to examine the impact of the proposed rule on small entities.

The kiwifruit industry initiated this program asking the U.S. Congress (Congress) to pass legislation to create a generic program of promotion and research for kiwifruit. Congress found that this program is vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit.

This program is intended to: develop and finance an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit; strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and to treat domestically produced kiwifruit and imported kiwifruit equitably.

The industry support for the program will be determined during a referendum to be conducted by the USDA before the program is implemented.

This program was initiated by industry, industry must approve the program in a referendum in advance of its implementation, and industry members would serve on the promotion board that would administer the program under the Department's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the order or any provision is not in accordance with law and requesting a modification of the order or an exemption from the order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, handlers would be required to collect assessments from producers, file reports, and submit assessments to the promotion board. Importers would be required to remit to the promotion board assessments not collected by the U.S. Customs Service and to file reports with the promotion board. In addition, exempt producers and importers would be required to file an exemption application. While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. The estimated cost in providing information to the promotion board by the 760 respondents would be $7,842.50 or $10.32 per respondent per year.

The Department would oversee the program operations and, if the program is implemented, every 6 years would conduct a referendum to determine whether the kiwifruit industry supports continuation of the program.

There are approximately 650 producers, 45 importers, and 65

handlers of kiwifruit that would be covered by the program. Small agricultural service firms, which would include the handlers and importers who would be covered under the Order, have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those whose annual receipts are less than $5 million and small agricultural producers, those who would be required to pay assessments, as those having annual receipts of $500,000. Only one handler has been identified to have $5 million in annual sales. In addition, there are 10 producers at or over the $500,000 annual sales receipts threshold. The Department does not have specific information regarding the size of importers. However, it could be concluded that the majority of kiwifruit producers and importers may be classified as small entities.

The Department is aware of kiwifruit producers in California, Oregon, Pennsylvania, South Carolina, and importers that import kiwifruit from Chile, New Zealand, and Italy. The Department believes that these individuals would include majority of the producers and importers that would be covered under the program.

California is the source for practically all of the kiwifruit produced in the United States. The California kiwifruit industry consists of approximately 600 producers and 65 handlers. Production rose by 119 percent between 1984 and 1994, increasing from 18,000 tons to 34,800 tons. In the same period, the value of production increased by only 4 percent.

Most U.S. kiwifruit is utilized fresh. Fresh utilization increased by 219 percent between 1984 and 1994, growing from 11,700 tons to 37,500 tons. The season average price during the same period fell by 54 percent, declining from $1,000 per ton to $491 per ton. Exports accounted for about 29 percent of U.S. fresh utilization during that period.

Between 1992 and 1994, the average annual production per producer, including kiwifruit for processing, was 22,365 7-pound trays of kiwifruit. The average price was $376 per ton, giving an average return of about $29,000 per producer per year. The average value of total production (fresh and processed) per year was $16.3 million. A typical f.o.b. price during this period was $7.78 per tray, and the average amount shipped per handler was about 190,176 trays, yielding an average annual revenue per handler of $1.5 million. U.S. importers handled an average of 172,163 trays per year per importer. During this period, the average value of total imports per year was $17.1 million (f.o.b. country of origin). The majority of kiwifruit came from Chile, with the remaining coming from New Zealand and Italy.

The proposed kiwifruit Order would authorize assessment fees on producers (to be collected by first handlers) and on importers (collected by the U.S. Customs Service) of up to 10 cents per 7-pound tray. The board, which will be composed of kiwifruit producer, importers, and possibly, exporters, must recommend the assessment rate, which is subject to oversight by the Secretary, as are the other rules and regulations. At the maximum rate of assessment, the promotion board would collect $2.1 million to administer the program. Assessments on domestic production are expected to represent 60 percent of the income under the program.

The effect of the assessments will depend on the actual rate recommended by the promotion board. At the maximum rate, it is expected that the effect on producers would be approximately 8 percent of their average return. However, this rule exempts producers of less than 500 pounds of kiwifruit a year, importers of less than 10,000 pounds a year, and kiwifruit sold for processing and sold directly to consumers. Furthermore, under the proposed program, the promotion board could authorize different reporting schedules based on different marketing practices. This could be of benefit specially to small businesses who could have a less frequent reporting period diminishing the reporting burden for those businesses.

The Department would keep all these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. In addition, trade associations and related industry media would receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information would be available through e-mail.

If the program is implemented, the promotion board would develop guidelines for compliance with the program.

In addition, the kiwifruit industry would nominate individuals to serve as members of the promotion board. These individuals would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. The USDA would ensure that the nominees represent the kiwifruit industry as specified in the Act.

There is a federal marketing order program for kiwifruit in California which is administered by the Kiwifruit Administrative Committee (KAC), under USDA supervision. KAC is composed of California producers. The marketing order regulations for grade, size, maturity, and containers are designed to assure consumers consistently good quality California kiwifruit. The marketing order and its regulations allow small farmers to compete effectively in an increasingly competitive marketplace. Under the marketing order handlers are required to submit information pertaining to and pay assessments on kiwifruit shipments. The assessment rate recommended by the KAC is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the KAC's expected expenses. The 1995–96 assessment rate was set at 1.5 cents per tray or tray equivalent of kiwifruit. The 1994–95 rate of assessment was 1.0 cent per tray or tray equivalent of kiwifruit. Each handler pays an average of $2,000 per year in assessments. The estimated reporting burden per year on individual handlers is estimated at 4.2 hours or $42.00 per handler under the marketing order.

The California Kiwifruit Commission (CKC) administers a California state program for kiwifruit. The CKC is composed of kiwifruit producers, packers, and handlers. In 1995–96 it is estimated that producers would pay $1,407,000 in assessments at a rate of 17 cents per kiwifruit tray or tray equivalent. Handlers collect the assessments and remit the money to the CKC.

The collection of information required under the proposed order for the research and promotion program would be similar to the marketing order program. However, the KAC and the promotion board would keep their information separate to comply with confidentiality requirements under the programs. Furthermore, using the same source of information will reduce the burden on producers and handlers of all sizes.

The CKC is currently participating in a voluntary promotional program with Chilean kiwifruit growers to jointly advertise kiwifruit in the United States. The CKC is authorized under California state law. This program, however, does not provide enough resources to be as effective as a national generic program could be. In addition, other importing countries and private companies spend considerable amounts of resources in

kiwifruit advertising. The purpose of this proposed program is not to restrict the individual promotions but to add a generic promotion program for kiwifruit where industry segments pull together resources for the benefit of the whole industry.

The absence of a generic program for kiwifruit may have a negative impact on the industry because other commodity groups, specifically for competing fruits, conduct promotion activities to maintain and expand their markets. The kiwifruit industry would be at a disadvantage because individual producers, handlers, and importers would not be able to implement and finance such a program without cooperative action. In addition, Agricultural Issues Forum, a group of 15 California commodity organizations, conducted a study in mid-1995 and reported in early 1996 that consumers strongly support the concept of farmers working together to promote their products, conduct product research, engage in consumer education programs, and set quality standards and inspect products. Consumers said that they benefited from these activities and were more inclined to buy those products. Eighty-one percent of the farmers surveyed said that mandated programs were either very important or important in promoting products. The survey was conducted among farmers, public policy leaders, consumers, retailers, and allied industries.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities, in order to have all the data necessary for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed by this order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB review.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The proposed Order's provisions have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already maintained by handlers under the federal marketing order program in California and the California Kiwifruit Commission. The information needed would be taken from financial reports or sales receipts already maintained.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly coincides with normal business practices. Collecting information less frequently would hinder the promotion board from effectively carrying out the provisions of its program. Requiring reports less frequently than monthly would impose additional recordkeeping requirements by requiring information from several months to be consolidated prior to filling out the form rather than just copying end-of-month figures already available onto the forms. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and handlers who are subject to or exempted from the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

The estimated cost in providing information to the promotion board by the 760 respondents would be $7,842.50 or $10.32 per respondent. This total has been estimated by multiplying 784.25 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Information collection requirements that are included in this proposal include:

(1) *A periodic report by each handler who handles kiwifruit.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per each handler reporting on kiwifruit handled.

Respondents: Handlers.

Estimated Number of Respondents: 65.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 390 hours.

(2) *A periodic report by each importer who imports kiwifruit.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per each importer reporting on kiwifruit imported.

Respondents: Importers.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 135 hours.

(3) *An exemption application for producers and importers of kiwifruit producing less than 500 pounds and importing less than 10,000 pounds of kiwifruit a year respectively, persons which sell directly to consumers or sell kiwifruit for processing who will be exempt from assessments and reporting requirements.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt producer and importer.

Respondents: Exempt producers and importers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours.

(4) *A referendum ballot to be used to determine whether producers and importers covered by the Order favor implementation or continuance of the Order.*

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average .25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 1 every 6 years (.16).

Estimated Total Annual Burden on Respondents: 28 hours.

(5) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Producers and importers.

Estimated number of Respondents: 700.

Estimated Number of Responses per Respondent: 1 every 3 years (.33).

Estimated Total Annual Burden on Respondents: 115.5 hours.

(6) *A request for refund of assessments collected by Customs for exempt importers.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each exempt importer requesting a refund of assessments collected by Customs.

Respondents: Exempt importers.

Estimated number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.25 hours.

(7) *A background questionnaire for nominees.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response for each producer, importer, and public member nominated to the Board.

Respondents: Producers, importers, and public member

Estimated Number of Respondents: 22 for the initial nominations to the Board and approximately 12 respondents annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22 hours for the initial nominations to the Board and 12 hours annually thereafter.

(8) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average .5 hours per recordkeeper maintaining such records.

Recordkeepers: Handlers and importers.

Estimated number of Recordkeepers: 160.

Estimated Total Recordkeeping Hours: 80 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the Federal Register. Comments should be sent to Sonia N. Jimenez at the address listed above by December 2, 1996. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Kiwifruit Research, Promotion, and Consumer Information Act (Act) authorizes the Secretary of Agriculture (Secretary) to establish a national kiwifruit research, promotion, and consumer information program. The program would be funded by an assessment levied on producers and importers not to exceed 10 cents per 7-pound tray of kiwifruit. Kiwifruit sold directly to a consumer by a producer for a purpose other than resale and domestic and imported kiwifruit for processing are exempt from assessments.

Assessments would be used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

The first handler would be responsible for the collection of assessments from the producer and payment to the Board. Handlers would be required to maintain records for each producer for whom kiwifruit is handled, including kiwifruit produced by the handler. In addition, handlers would be required to file reports regarding the collection, payment, or remittance of the assessments. All information obtained through handler reports would be kept confidential.

The U.S. Customs Service (Customs) would collect assessments on imported kiwifruit and would remit those assessments to the Board for a fee.

The Act requires the Department to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually would vote in the referendum to determine whether they favor the Order's implementation. The proposed Order must be approved by a majority of eligible producers and importers voting in the referendum, and producers and importers favoring approval must produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum. Subsequent referenda would be conducted every 6 years after the program is in effect or when requested by 30 percent of kiwifruit producers and importers covered by the Order.

The Act provides for the submission of proposals for a kiwifruit research, promotion, and consumer information Order by industry organizations or any other interested person affected by the Act. The Act requires that such a proposed Order provide for the establishment of a National Kiwifruit Board. The Board would be composed of 11 voting members: 6 producers, 4 importers or exporters, and 1 public member. Each member shall have an alternate. Members will serve a three-year term of office. No member may serve more than two consecutive three-year terms.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order or any of its provisions is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The individual would be given the opportunity to a hearing on the petition.

The Department issued a news release on May 6, 1996, requesting proposals for an initial Order or portions of an initial Order by May 17, 1996. A second news release, extending the deadline for submission of proposals to June 3, 1996, was issued on May 24, 1996.

An entire proposed Order was submitted by the California Kiwifruit Commission (Commission). The Commission is an industry group created by the State of California to promote California kiwifruit. In

addition, a partial proposal was submitted by the New Zealand Kiwifruit Marketing Board (NZKMB). The NZKMB represents all New Zealand exporters of kiwifruit into the United States.

In addition to minor editorial changes, the Department modified the Commission's proposed text by: adding the power and duty to investigate violations of the Act and Order; deleting a definition for industry information because it is not authorized under the Act; revising definitions to make them in accordance with the Act; clarifying that the collection of assessments from imports would be performed through the U.S. Customs Service only; clarifying that the promotion board would have complete control over voluntary contributions made to the promotion board; clarifying that the assessment rate may only be changed prior to a fiscal year; clarifying that the assessment rate may only be changed by regulation rather than in the budget; and adding a provision regarding federal debt collection procedures. The Commission also submitted referendum procedures. The referendum procedures will be published separately as a proposed rule in the Federal Register.

The proposed Order submitted by the Commission is summarized as follows:

Sections 1214.1 through 1214.19 of the proposed Order define certain terms, such as kiwifruit, handler, producer, and importer, which are used in the proposed Order.

Sections 1214.30 through 1214.39 include provisions relating to the establishment, adjustment, and membership; nominations; appointment; terms of office; vacancies; reimbursement; powers; and duties of the Board.

The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about kiwifruit, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1214.40 and 1214.50 provide information on these activities.

Sections 1214.51 through 1214.53 would authorize the collection of assessments, specify who pays them and how, and specifies persons who would be exempt from paying the assessment. In addition, it would prohibit use of funds to influence government policy or action.

The assessment rate may not exceed 10 cents per 7-pound tray of kiwifruit. The actual rate would be recommended by the Board and approved by the Secretary through regulation. Direct sales to consumers by a producer and kiwifruit for processing are exempt from assessments.

The assessment sections also outline the procedures to be followed by handlers and importers for remitting assessments; establish a 1.5 percent per month interest charge for unpaid or late assessments; and provide for refunds of assessments paid by importers who import less than 10,000 pounds of kiwifruit a year.

Sections 1214.60 through 1214.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1214.70 through 1214.73 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1214.74 through 1214.77 are miscellaneous provisions including the provisions involving personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to the Order; and separability of Order provisions.

The proposal from the NZKMB addresses importer and exporter representation on the Board and the use of assessments to fund export activities that would directly compete with exporting countries promotional activities.

The NZKMB proposed that the Secretary ensure that at least two of the four importer/exporter member seats be selected from nominees nominated by importers and/or exporters of New Zealand kiwifruit. As an alternative it proposed that the Secretary include as a primary consideration in the allocation of four importer/exporter member seats, the relative expenditure on promotion and marketing of kiwifruit in the United States over 10 years by the kiwifruit importer/exporters of the various countries of origin of the imported kiwifruit.

In addition, the NZKMB proposed that the Secretary ensure that all programs developed and implemented by the Board be intended to promote kiwifruit consumption in the U.S. domestic market only and no assessments be used to promote kiwifruit in competing foreign markets.

In addition to these proposals, the Department has received letters from three interested parties regarding the implementation of the Order. Since these letters do not include proposals for a program, they will be considered during the comment period of this proposed rule.

The Department will analyze all written views received to date as well as written comments on the two proposals published below before issuing a final Order.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

The proposals set forth below have not received the approval of the Secretary.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

Proposal I

1. Part 1214 is added to read as follows:

PART 1214—KIWIFRUIT RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order

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National Kiwifruit Board

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Promotion, Research, and Consumer Information and Industry Information

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1214.110 Nominations.
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1214.125 Reports.

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1214.130 OMB control numbers.

Authority: 7 U.S.C. 7461–7473.

Subpart A—Kiwifruit, Research, Promotion, and Consumer Information Order

Definitions

§ 1214.1 Act.

Act means the National Kiwifruit Research, Promotion, and Consumer Information Act, subtitle D of title V of the Federal Agricultural Improvement and Reform Act of 1996, Public Law 104–127, 7 U.S.C. 7461–7473, and any amendments thereto.

§ 1214.2 Consumer information.

Consumer information means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of kiwifruit.

§ 1214.3 Department.

Department means the United States Department of Agriculture.

§ 1214.4 Exporter.

The term *exporter* means any person outside the United States who exports kiwifruit into the United States.

§ 1214.5 Fiscal year.

Fiscal year means the 12-month period from October 1 to September 30 each year, or such other period as recommended by the Promotion Board and approved by the Secretary.

§ 1214.6 Handler.

Handler means any person, excluding a common carrier, engaged in the business of buying and selling, packaging, marketing, or distributing kiwifruit as specified in the Order.

§ 1214.7 Importer.

Importer means any person who imports kiwifruit into the United States.

§ 1214.8 Kiwifruit.

Kiwifruit means all varieties of fresh kiwifruit grown in or imported into the United States.

§ 1214.9 Marketing.

Marketing means to sell or otherwise dispose of kiwifruit into interstate, foreign, or intrastate commerce by buying, marketing, distribution, or otherwise placing kiwifruit into commerce.

§ 1214.10 Part and subpart.

Part means this kiwifruit research, promotion, and consumer information order and all rules and regulations and supplemental orders issued thereunder, and the term subpart means the kiwifruit research, promotion, and consumer information order.

§ 1214.11 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or other legal entity.

§ 1214.12 Processing.

Processing means kiwifruit that are commercially canned, fermented, distilled, extracted, preserved, ground, crushed or processed in such manner as the Promotion Board, with the approval of the Secretary, may determine.

§ 1214.13 Producer.

Producer means any person who grows kiwifruit in the United States for sale in commerce.

§ 1214.14 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, and consumer information plans, studies, projects, or programs conducted pursuant to this part.

§ 1214.15 Promotion.

Promotion means any action taken under this Order including paid advertising, to present a favorable image for kiwifruit to the general public for the purpose of improving the competitive position of kiwifruit and stimulating the sale of kiwifruit.

§ 1214.16 Promotion Board.

Promotion Board means the administrative body referred to as the National Kiwifruit Board or otherwise named Kiwifruit Promotion Board or Promotion Board established under § 1214.30.

§ 1214.17 Research.

Research means any type of research relating to the use, nutritional value, and marketing of kiwifruit conducted for the purpose of advancing the image, desirability, marketability, or quality of kiwifruit.

§ 1214.18 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom the authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1214.19 United States.

United States means the 50 states of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

National Kiwifruit Board

§ 1214.30 Establishment, adjustment, and membership.

(a) *Establishment of National Kiwifruit Board.* There is hereby established a National Kiwifruit Board of 11 members appointed by the Secretary as follows:

(1) Six members who are producers (or their representatives) and who are not exempt from an assessment.

(2) Four members who are importers (or their representatives) and who are not exempt from an assessment, or are exporters (or their representatives).

(3) One member appointed from the general public.

(b) *Adjustment of membership.*

(1) Subject to the 11 member limit, the Secretary may adjust membership on the Promotion Board to accommodate changes in production and import levels of kiwifruit, so long as producers comprise not less than 51 percent of the membership of the Board.

(2) At least every five years, and not more than every three years, the Promotion Board shall review changes in the volume of domestic and imported

kiwifruit production. If the annual kiwifruit production and imports over the preceding four years, indicate that such changes in production and import levels have occurred warranting reapportionment, the Promotion Board shall recommend to the Secretary reapportionment of Board membership subject to the 51 percent requirement.

(3) In determining the volume of kiwifruit produced in the United States or imported into the United States for purposes of this section, the Promotion Board and the Secretary shall:

(i) Only consider kiwifruit produced or imported by producers and importers, respectively, as those terms are defined in § 1214.13 and 1214.7; and

(ii) Use the information received by the Promotion Board under § 1214.60, and data published by the California Kiwifruit Commission, U.S. Department of Commerce import statistics and other government kiwifruit production data.

(c) *Appointment and nomination—*

(1) *Appointment.* The Secretary shall appoint the members of the Promotion Board from nominations submitted in accordance with this section.

(i) Producers shall be appointed from individuals nominated by producers.

(ii) Importers and exporters shall be appointed from individuals nominated by importers and/or exporters.

(iii) The public representative shall be appointed from nominations submitted by the Promotion Board.

(iv) If producers, importers, or exporters fail to nominate individuals for appointment, the Secretary shall appoint members in the manner specified in § 1214.31. If the Promotion Board fails to nominate a public representative, such member may be appointed by the Secretary without a nomination.

(2) The Secretary shall appoint an alternate for each member of the Promotion Board. Alternates shall:

(i) Be appointed in the same manner for whom such individual is an alternate; and

(ii) Serve on the Promotion Board as a voting member if such member is absent or disqualified.

(3) For purposes of the provisions of this section relating to the appointment of producers and importers or exporters to serve on the Promotion Board, the term producer, importer, or exporter refers to any person who is a producer, importer, or exporter, respectively, or if the producer, importer, or exporter is an entity other than an individual, an individual who is an officer or employee of such producer, importer, or exporter. Persons who qualify to serve as either a producer member or an importer member must select the industry group that they want to represent.

§ 1214.31 Nominations.

All nominations for appointments to the Promotion Board under § 1214.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Promotion Board shall be obtained from producers and importers or exporters by the Secretary. In any subsequent year in which an appointment to the Promotion Board is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers or exporters, and certified by the Promotion Board and submitted to the Secretary by May 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made through mail ballot in accordance with procedures prescribed in this section.

(c) Except for initial Promotion Board members, whose nomination process will be initiated by the Secretary, the Promotion Board shall issue a call for nominations by March 1 of each year in which nominations for an appointment to the Promotion Board is to be made. The call shall include, at a minimum, the following information:

(1) A list by importer/exporter and producer category of the vacancies for which nominee may be submitted.

(2) The date by which the names of nominees shall be submitted for consideration to be in compliance with paragraph (a) of this section.

(3) Nominations for each position shall be made by mail. Nomination forms shall be mailed to all known producers, importers in the United States, and kiwifruit exporters and/or exporter organizations where possible. The nomination form shall have attached to it the requirements of the position, term, eligibility requirements, and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Promotion Board, publicizing the nomination process and vacant positions shall be the responsibility of the Promotion Board.

(4) All producers, importers within the United States, and exporters may participate in the nomination process. However, if a producer is engaged in the production of kiwifruit and is also an importer, such person's participation shall be limited to one vote. The following nomination process shall be followed:

(i) Nomination forms shall be sent to all known producers, importers, or exporters. The Promotion Board shall determine the eligibility and willingness to serve of all names of the individuals listed on the nomination forms returned to the Promotion Board. The names of the individuals who are eligible and willing to serve will be listed on a selection ballot. The selection ballot will be sent to all known producers and importers for final selection of the nominees to be sent to the Secretary. Exporters will not be sent a selection ballot.

(ii) Each nominee shall meet the qualifications set forth in this part.

(iii) If a producer nominee is engaged in the production of kiwifruit and is also an importer, such individual shall participate within the category that such individual so elects in writing to the Promotion Board and such election shall remain controlling until revoked in writing to the Promotion Board.

(d) When producers or importers are voting for nominees to the Promotion Board the following provisions shall apply:

(1) Voting for any open position shall be on the basis of one vote per eligible voter.

(2) Producers will vote for producer positions and importers will vote for importer and exporter positions only.

(3) Whenever the producers or importers are choosing nominees for one open position on the Promotion Board, the proposed nominee with the highest and second highest number of votes cast shall be the nominees submitted to the Secretary.

(4) Each open position will be a separate position. Alternate and member selections will also be held as separate positions. A person shall only be nominated for one open member or alternate position.

(5) Voters shall certify on their ballots as to their eligibility. Such certification may be subject to verification.

(e) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Promotion Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(f) Whenever producers or importers fail to nominate individuals for an open position on the Promotion Board under the preceding provisions of this section the Secretary may appoint members in such manner as the Secretary determines appropriate.

§ 1214.32 Acceptance.

Each individual nominated for membership on the Promotion Board

shall qualify by filing a written acceptance with the Secretary at the time of nomination. Such acceptance shall represent the nominee's willingness to serve if selected and to operate in accordance with the provisions of this part.

§ 1214.33 Appointment.

From the nominations made pursuant to this subsection, the Secretary shall appoint the members and alternates.

§ 1214.34 Term of office.

(a) The members and alternates of the Promotion Board shall serve for terms of three years, except that five members and their alternates appointed to the initial Promotion Board shall be appointed for a term of two years and six members and their alternates shall be appointed for a term of three years.

(b)(1) Except with respect to terms of office of the initial Promotion Board, the term of office for each member and alternate of the Promotion Board shall begin on July 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Promotion Board shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following July 1, or such other date that is the generally applicable beginning date for terms under paragraph (b)(1) of this section approved by the Secretary, shall not count toward the tenure limitation of office.

(c) Promotion Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (d)(2) of this section and § 1214.35(b)(1). Members serving two consecutive three-year terms are eligible to serve as alternates, and alternates serving two consecutive three-year terms are eligible to serve two three-year terms as members.

(2) Those members serving initial terms of two years may serve one successive three-year term.

§ 1214.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Promotion Board, the alternate of that member shall automatically assume the position of said member. If an alternate member position becomes vacant, the Secretary shall appoint an alternate member in the manner specified in § 1214.31. Each successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Promotion Board, except as provided in paragraph (b)(2)(ii) of this section.

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Promotion Board consistently refuses to perform the duties of a member of the Promotion Board, or if a member of the Promotion Board is engaged in acts of dishonesty or willful misconduct, the Promotion Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Promotion Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Promotion Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1214.36 Procedure.

(a) At a properly convened meeting of the Promotion Board, a majority of the members shall constitute a quorum.

(b) Each member of the Promotion Board will be entitled to one vote on any matter put to the Promotion Board. At assembled meetings of the Promotion Board, all votes will be cast in person.

(1) A motion, except a motion to set an assessment rate, will carry if supported by a simple majority of those voting.

(2) Motions to establish an assessment rate shall require a two-thirds vote of a quorum of the Promotion Board for passage.

(c) Meetings of the Promotion Board may be conducted by other means of communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(d) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Promotion Board such action is considered necessary, the Promotion Board may take action upon the concurring votes of a majority of its members by mail, telephone, electronic mail, facsimile, or any other means of communication, and, if appropriate, confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Promotion Board. All votes shall be recorded in Promotion Board minutes.

(e) The organization of the Promotion Board and the procedures for conducting meetings of the Promotion Board shall be in accordance with its bylaws, which shall be established by the Promotion Board and approved by the Secretary.

§ 1214.37 Compensation and reimbursement.

The members and alternate members of the Promotion Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses or a reasonable per diem allowance, as approved by the Promotion Board and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1214.38 Powers.

The Promotion Board shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of kiwifruit, as well as proposed programs, plans, or projects for research and consumer information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals. The Board shall seek, to the extent possible, to employ or contract with personnel who are already associated with state chartered organizations involved in promoting kiwifruit;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To establish committees and subcommittees of Promotion Board members, including an executive committee whose powers and

membership shall be determined by the Promotion Board, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(g) To establish committees which may include individuals other than Promotion Board members, and pay the necessary and reasonable expenses and fees for the members of such committees;

(h) To recommend to the Secretary amendments to this subpart;

(i) With the approval of the Secretary, to enter into contracts or agreements for the development and conduct of programs, plans, or projects authorized under § 1214.40 and for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Promotion Board shall not contract with any person covered by the program or serving on the promotion board for the purpose of kiwifruit programs, plans, or projects. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Promotion Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Promotion Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Promotion Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Promotion Board contractor and who receives or otherwise uses funds allocated by the Promotion Board shall be subject to the same provisions as the contractor;

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1214.51, and any other funds received by the Promotion Board in, and only in, obligations of the United States or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(k) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(l) Such other powers as may be approved by the Secretary.

§ 1214.39 Duties.

The Promotion Board shall have the following duties:

(a) To meet not less than two times per year, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, and consumer information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart and a marketing plan with all the programs, plans, and projects as provided in §§ 1214.40 and 1214.50.

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Promotion Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Promotion Board. Minutes of each Board meeting shall be promptly reported to the Secretary.

(j) To act as intermediary between the Secretary and any industry member;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation and industry information designed to strengthen the kiwifruit industry's position in the marketplace, maintain and expand existing markets and uses for kiwifruit, develop new markets and uses for kiwifruit, and to carry out programs, plans, and projects designed to provide maximum benefits to the kiwifruit industry.

(m) To conduct periodic review or evaluation of each program, plan, or project to ensure that it contributes to an effective program of research, promotion, and consumer information.

(n) Not less than every 5 years, authorize and fund, from funds otherwise available to the Promotion Board, an independent evaluation of the effectiveness of the programs conducted by the Promotion Board. The Promotion Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

(o) To investigate violations of the Order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Order.

Promotion, Research, and Consumer Information

§ 1214.40 Programs, plans, and projects.

(a) The Promotion Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and consumer information with respect to kiwifruit; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing, of kiwifruit and kiwifruit products, and the creation of new products thereof, to the end that marketing and use of kiwifruit may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of kiwifruit.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Promotion Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Promotion Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Promotion Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Promotion Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of kiwifruit or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Kiwifruit of all origins shall be treated equally. All promotions shall be generic in nature.

Expenses and Assessments

§ 1214.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Promotion Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(2) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (f) of this section.

(3)(i) Subject to paragraph (a)(3)(ii) of this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Promotion Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Promotion Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Promotion Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Promotion Board.

(c) The Promotion Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Promotion Board shall retain complete control of their use.

(d) The Promotion Board shall reimburse the Secretary, from funds received by the Promotion Board, for administrative costs incurred by the Secretary in implementing and administering this subpart, including the salaries of Department employees and costs incurred in conducting referenda.

(e) The Promotion Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established. Such reserve funds may be used to defray any expenses authorized under this subpart.

(f) With the approval of the Secretary, the Promotion Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Promotion Board. This provision is limited to the first year of operation of the Promotion Board.

§ 1214.51 Assessments.

(a) Any handler initially purchasing, or otherwise placing into interstate, foreign, or intrastate commerce, kiwifruit produced in the United States shall, in the manner as prescribed by the Promotion Board and approved by the Secretary, collect an assessment based upon the number of pounds of kiwifruit marketed in the United States for the account of the producer, and remit the assessment to the Promotion Board.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment shall not exceed $0.10 per seven pound tray of kiwifruit or the equivalent thereof.

(2) The rate of assessment for a fiscal year may be changed at the beginning of the fiscal year only and by regulation as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraph (b)(1) of this section.

(c) Any person marketing kiwifruit of that person's own production into the channels of commerce in the United States, through retail or wholesale outlets, shall be considered a handler and shall remit to the Promotion Board an assessment on such kiwifruit at the rate then in effect, at such time and in such form and manner prescribed by the Promotion Board, with the approval of the Secretary.

(d)(1) Each importer of kiwifruit shall pay an assessment to the Promotion Board on kiwifruit imported for marketing in the United States, through the U.S. Customs Service. A person acting as a principal or as an agent, broker, or consignee for any person who produces kiwifruit outside the United States shall be considered an importer.

(2) The assessment rate for imported kiwifruit shall be the same or equivalent to the rate provided for kiwifruit produced in the United States.

(3) The import assessment shall be uniformly applied to imported kiwifruit that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh kiwifruit.

(4) The assessments due on imported kiwifruit shall be paid when the kiwifruit are entered or withdrawn for consumption in the United States.

(5) Only one assessment shall be paid on each unit of kiwifruit imported.

(e)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (f) of this section, and importers if the U.S. Customs Service fails to collect the assessment, shall remit the assessments due to the Promotion Board on a monthly basis no later than the fifteenth day of the month following the month in which the kiwifruit were marketed, in such manner as prescribed by the Promotion Board.

(2)(i) The Promotion Board shall impose a late payment charge on any person that fails to remit to the Promotion Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) The Promotion Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to

submit a report to the Promotion Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall be applicable.

(4) Persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(f) The Promotion Board, with the approval of the Secretary, may enter into agreements authorizing other state mandated organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Promotion Board for collection purposes. Any reimbursement by the Promotion Board for such services shall be based on reasonable charges for services rendered.

(g) The Promotion Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Promotion Board shall not be obligated to pay interest on any advance payment.

(h) Except for the first year of operation of the promotion board, expenses for the administration, maintenance, and functioning of the board may not exceed 30 percent of the budget for a year.

§ 1214.52 Exemption from assessment.

(a) Producers who produce less than 500 pounds of kiwifruit annually shall be exempted from assessment.

(b) Importers who import less than 10,000 pounds of kiwifruit per year shall be exempted from assessment.

(c) Sales of kiwifruit made directly from the producer to a consumer for a purpose other than resale are exempt from assessment.

(d) Domestic and imported kiwifruit used for processing are exempt from assessment. The Promotion Board shall develop a list of approved processors.

(e) To claim an exemption, a producer or importer shall submit an application to the Promotion Board stating the basis on which the person claims the exemption for such year.

(f) If, after a person claims an exemption from assessments for any year under this paragraph, and such person no longer meets the requirements of this paragraph for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on all the kiwifruit produced or imported by such person during the year for which the person claimed the exemption.

(g) Exempted individuals are subject to such safeguards as prescribed in rules and regulations in this part to prevent improper use of this exemption.

§ 1214.53 Influencing governmental action.

No funds received by the Promotion Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

Reports, Books, and Records

§ 1214.60 Reports.

(a) Each producer marketing kiwifruit of that person's own production for resale, and each handler responsible for the collection of assessments under § 1214.51(a) shall be required to report monthly to the Promotion Board, on a form provided by the Promotion Board, such information as may be required under this subpart or any rules and regulations issued in this part. Such information shall include, but not be limited to, the following:

(1) The handler's name, address, telephone number, and social security number or Employer Identification Number;

(2) Date of report, which is also the date of payment to the Promotion Board;

(3) Period covered by the report; and

(4) The number of kiwifruit containers, weight, size, and type purchased, initially transferred or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under § 1214.52 from those who claim such exemptions;

(b) If determined necessary by the Promotion Board and approved by the Secretary, each importer shall file with the Promotion Board periodic reports, on a form provided by the Promotion Board, containing at least the following information:

(1) The importer's name, address, telephone number, and social security number or Employer Identification Number;

(2) The quantity of kiwifruit entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) For persons who have an exemption from assessments under § 1214.52, such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted kiwifruit.

§ 1214.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Promotion Board staff or the Secretary such books and records as are deemed necessary by the Promotion Board, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued in this part, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1214.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued in this part shall be kept confidential by all persons, including all employees and former employees of the Promotion Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Promotion Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only by judicial order in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1214.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and

prepared by the Promotion Board shall be submitted to the Secretary for approval.

§ 1214.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared purpose of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b)(1) Six years after the date on which this subpart becomes effective, and at the end of every six-year period thereafter; the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) The Secretary shall also hold a referendum:

(i) At the request of the Promotion Board; or

(ii) If not less than 30 percent of the kiwifruit producers and importers subject to assessments under the Order submit a petition requesting a referendum be held.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the kiwifruit producers and importers voting in a referendum under paragraphs (b) (1) or (2) of this section who, during a representative period determined by the Secretary, have been engaged in producing and importing kiwifruit and who, on average, annually produced and imported more than 50 percent of the volume of kiwifruit produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1214.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Promotion Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Promotion Board. Such persons, upon designation by the Secretary, shall become trustees for all the funds and property owned, in the possession of, or under the control of the Promotion Board, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Promotion Board under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Promotion Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Promotion Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Promotion Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1214.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued in this part, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any rules or regulations issued in this part

(b) Release or extinguish any violation of this subpart or any such rules or regulations issued in this part; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1214.74 Personal liability.

No member or employee of the Promotion Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1214.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Promotion Board under this subpart shall be the property of the United States Government as represented by the Promotion Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Promotion Board. Upon termination of certain provisions in this subpart, § 1214.72 shall apply to determine disposition of all such property.

§ 1214.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Promotion Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1214.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—Rules and Regulations

Definitions

§ 1214.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order of this part.

Nomination Procedures

§ 1214.110 Nominations.

Nominations shall be made by mail ballot in accordance with the procedures prescribed in § 1214.31. Each mail ballot shall be scheduled so as to ensure that the nominations for each position that will be open at the beginning of the following year are received by the Secretary by May 1, or such other date approved by the Secretary.

§ 1214.111 Mail balloting.

(a) The Promotion Board shall conduct nominations of individuals as candidates for appointment to the Promotion Board by mail nomination form.

(b)(1) Notice of mail balloting to nominate candidates for a position on the Promotion Board shall be publicized by the Promotion Board to producers, importers, kiwifruit exporter organizations and to the Secretary, by March 1 of each year.

(2) Nomination forms will be used to collect names of individuals to be placed on a ballot to be sent to producers and importers to select the individuals for the Secretary's appointment. Completed nomination forms must be returned to the Promotion Board prior to March 30.

(c) Once proposed nominations have been submitted, the Promotion Board shall cause each proposed nomination, if the individual qualifies, to be placed on the producer or importer ballot. The Promotion Board then shall mail a ballot to each known producer or importer.

(d) Each producer or importer shall cast a ballot for each open position on the Promotion Board assigned to the producers or importers/exporters in accordance with the procedures prescribed in § 1214.31. The completed ballot must be returned to the Promotion Board or its designee within 30 days after the ballot is issued.

(e) Within 45 days after a mail ballot is issued, the Promotion Board shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the top two vote getters for each open position on the Promotion Board.

(f) The Promotion Board shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Promotion Board and asked to forward such completed documentation to the Promotion Board within 14 days of such notification.

§ 1214.112 Appointment.

If an employee, partner, officer, or shareholder of a producer, importer or exporter is a current member of the Promotion Board, no nominee who is also an employee, partner, officer, or shareholder of such producer, importer, or exporter shall be appointed to the Promotion Board. A Promotion Board member shall be disqualified from serving on the Promotion Board if such individual ceases to be affiliated with a producer, importer, or exporter the Promotion Board member represents.

General

§ 1214.115 Financial Statements.

(a) As requested by the Secretary, the Promotion Board shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Promotion Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

Assessments

§ 1214.120 Payment of assessments.

(a) Each handler responsible for collecting assessments on domestic kiwifruit shall collect the amounts assessed and remit such amounts to the Promotion Board on a monthly basis not later than the fifteenth day of the month following the month in which the kiwifruit were marketed to or through the handler, whatever comes first.

(b) A state mandated organization may collect producer assessments from handlers then remit the funds to the Promotion Board on a monthly basis. The state mandated program collecting the assessments must provide access to records for the purpose of periodic audit.

(c) Each producer who is also a handler responsible for paying any assessment amount on the producer's own kiwifruit shall complete a shipment data form to the Promotion Board not later than the fifteenth day of the month following the month in which the kiwifruit were marketed by the producer. An invoice will be sent to the producer for the amount owed.

(d) Each importer shall be responsible for remittance to the Promotion Board of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Promotion Board on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports kiwifruit, as principal or as an agent, broker, or consignee for any person who produces kiwifruit outside the United States shall be considered an importer.

(e) Remittance shall be by check, draft, or money order payable to the National Kiwifruit Board or Kiwifruit Promotion Board, and shall be accompanied by a report, on a form provided by the Promotion Board.

(f) The Promotion Board shall impose a late payment charge on any handler or importer who fails to make timely remittance to the Promotion Board of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the kiwifruit involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(g) In addition to the late payment charge, the Promotion Board shall charge interest at a rate of 1.5 percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the Kiwifruit involved were marketed. However, handlers paying their assessments, in accordance with paragraph (i)(2) of this section, will not be subject to the 1.5 percent per month interest under this paragraph until the last day of the second month after such assessments were due under paragraph (i)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Promotion Board.

(h) Any assessment determined by the Promotion Board at a date later than prescribed by this section, because of a person's failure to submit a report to the Promotion Board when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (f) and (g) of this section.

(i) In lieu of the monthly assessment payment and reporting requirements of §§ 1214.125 and 1214.60, the Promotion Board may permit a handler to make advance payment of the total estimated assessment amount due to the Promotion Board for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable kiwifruit.

(j) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Promotion Board shall not, in any case, be obligated to pay interest on any advance payment.

§ 1214.121 Exemption procedures.

(a) Any producer who produces less than 500 pounds of kiwifruit annually or who produces kiwifruit for processing and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 shall apply to the Promotion Board, on a form provided by the Promotion Board, for a certificate of exemption. Such producer shall certify that their production of kiwifruit shall be less than 500 pounds, for the fiscal year for which the exemption is claimed. Any importer who imports less than 10,000 pounds of kiwifruit annually or who imports kiwifruit for processing and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 of this part shall apply to the Promotion Board, on a form provided by the Promotion Board, for a certificate of exemption. Such importer shall certify that their importation of kiwifruit shall not exceed 10,000 pounds, for the fiscal year for which the exemption is claimed.

(b) On receipt of an application, the Promotion Board shall determine whether an exemption may be granted. The Promotion Board then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on kiwifruit. Handlers and importers, except as otherwise authorized by the Promotion Board, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Promotion Board.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Promotion Board for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service and determined to be exempt at a later time. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the year the kiwifruit were actually imported.

(d) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Promotion Board, on a form provided by the Promotion Board, for a certificate of exemption.

(e) The Promotion Board may require persons receiving an exemption from assessments to provide to the Promotion Board reports on the disposition of exempt kiwifruit and, in the case of importers, proof of payment of assessments.

Reports

§ 1214.125 Reports.

Each handler or producer that is also a handler shall be required to report monthly to the Promotion Board such information as may be required under § 1214.60. In addition, each handler may be required to provide the farm identification number or social security number of each producer the handler has dealt with during the time period covered by the report.

Miscellaneous

§ 1214.130 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, is OMB control number 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

Proposal II

2. Part 1214 is added as set forth in Proposal I with the exception that paragraph (c)(4) would be added to § 1214.30 and paragraph (e) would be added to § 1214.40 to read as follows:

§ 1214.30 Establishment, adjustment, and membership.

* * * * *

(c) * * *

(4) For the purpose of nominating and appointing members of the Board, the Secretary will ensure that at least two of the persons appointed to and serving on the Board are selected from nominees nominated by importers and/or exporters of New Zealand kiwifruit.

§ 1214.40 Programs, plans, and projects.

* * * * *

(e) The Secretary shall ensure that all programs developed and implemented by the Board are intended to promote kiwifruit consumption in the U.S. domestic market. No program shall be implemented by the Board the purpose or major effect of which is the promotion of exports of U.S.—produced kiwifruit in foreign markets.

Proposal III

3. Part 1214 is added as set forth in Proposal I with the exception that paragraph (c)(4) would be added to § 1214.30 to read as follows:

§ 1214.30 Establishment, adjustment, and membership.

* * * * *

(c) * * *

(4) For the purposes of nominating and appointing members of the Board, the Secretary will include as a primary consideration in the allocation of the four importer/exporter seats on the Board, the relative expenditure on promotion and marketing of kiwifruit in the United States that has been made over the previous 10 years by the kiwifruit importer/exporters of the various countries of origin of the kiwifruit imported.

Dated: September 23, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–24844 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1214

[FV–96–708PR]

Kiwifruit Research, Promotion, and Consumer Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to provide procedures which the Department of Agriculture (Department) will use in conducting the referendum to determine whether the issuance of the proposed Kiwifruit Research, Promotion, and Consumer Information Order (Order) is approved by a majority of the producers and importers voting in the referendum and that the producers and importers favoring approval produce and import 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

DATES: Comments must be received by November 1, 1996. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by December 2, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, fax (202) 205–2800. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Also, pursuant to the Paperwork Reduction Act, send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9916 or (888) 720–9917.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473), hereinafter referred to as the Act.

This rule provides the procedures under which the referendum would be conducted.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would 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 558 of the Act, after an Order is implemented, a person subject to the Order may file a petition with the Secretary stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency is required to examine the impact of the proposed rule on small entities.

Legislation to create a generic program of promotion and research for kiwifruit became effective on April 4, 1996.

Section 561 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum during the 60-day period immediately preceding the proposed effective date of an Order to determine whether the issuance of an Order is favored by a majority of the producers and importers voting in the referendum. Paragraph (a)(2) of Section 561 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum and that the producers and importers favoring approval produce and import 50 percent or more of the volume of kiwifruit produced and imported by persons voting in the referendum.

There are approximately 650 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. Small agricultural service firms, which would include the handlers and importers who would be covered under the Order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5 million and small agricultural producers, those who would be required to pay assessments, as those having annual receipts of $500,000. Only one handler has been identified to have $5 million in annual sales. In addition, there are 10 producers at or over the $500,000 annual sales receipts threshold. The Department does not have specific information regarding the size of importers. However, it could be concluded that the majority of kiwifruit producers and importers may be classified as small entities.

The Department is aware of kiwifruit producers in California, Oregon, Pennsylvania, South Carolina, and importers that import kiwifruit from Chile, New Zealand, and Italy. The Department believes that these individuals would include the majority of the producers and importers that would be covered under the program.

California is the source for practically all of the kiwifruit produced in the United States. The California kiwifruit industry consists of approximately 600 producers and 65 handlers. Production rose by 119 percent between 1984 and 1994, increasing from 18,000 tons to 34,800 tons. In the same period, the value of production increased by 4 percent.

Most U.S. kiwifruit is utilized fresh. Fresh utilization increased by 219 percent between 1984 and 1994, growing from 11,700 tons to 37,500 tons. The season average price during the same period fell by 54 percent, declining from $1,000 per ton to $491 per ton. Exports accounted for about 29 percent of U.S. fresh utilization during that period.

Between 1992 and 1994, the average annual production per producer, including kiwifruit for processing, was 22,365 7-pound trays of kiwifruit. The average price was $376 per ton, giving an average return of about $29,000 per producer per year. The average value of total production (fresh and processed) per year was $16.3 million. A typical f.o.b. price during this period was $7.78 per tray, and the average amount shipped per handler was about 190,176 trays, yielding an average annual revenue per handler of $1.5 million. U.S. importers handled an average of 172,163 trays per year per importer. During this period, the average value of total imports per year was $17.1 million (f.o.b. country of origin). The majority of kiwifruit came from Chile, with the remaining coming from New Zealand and Italy.

This proposed rule provides the procedures under which kiwifruit producers and importers may vote on whether they want the kiwifruit research and promotion program to be implemented. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually can vote in the referendum. There are approximately 700 eligible voters.

The Department would keep all these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. In addition, trade associations and related industry media would receive news releases and other information regarding the implementation and referendum process.

There is a federal marketing order program and a California state program for kiwifruit. The marketing order regulations for grade, size, maturity, and containers are designed to assure consumers of consistently good quality California kiwifruit. The marketing order and its regulations allow small farmers to compete effectively in an increasingly competitive marketplace. The California Kiwifruit Commission (CKC) administers the California state program for kiwifruit. The CKC is composed of kiwifruit producers, packers, and handlers. In 1995–96 it is estimated that producers would pay $1,407,000 in assessments at a rate of 17 cents per kiwifruit tray or tray equivalent. Handlers collect the assessments and remit the money to the CKC.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether they want the program or not.

The Department considered requiring eligible voters to vote in person at various Department offices across the country. However, conducting the referendum from one central location by mail ballot is more cost effective for this program. Also, the Department would provide easy access to information for potential voters through a toll free telephone line.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: October 31, 1997.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 1 every 6 years (.16).

Estimated Total Annual Burden on Respondents: 28 hours.

Because there may be insufficient time for normal clearance procedures, AMS is seeking temporary approval from OMB for the use of the ballot for the referendum. The ballot would be added to the other information collections approved for use under OMB Number 0581–0093.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the Federal Register. Comments should be sent to Sonia N. Jimenez at the address listed above by December 2, 1996. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Background

The Act authorizes the Secretary to establish a national kiwifruit research, promotion, and consumer information program. The program would be funded by an assessment levied on producers and importers not to exceed 10 cents per 7-pound tray of kiwifruit. Producers who produce less than 500 pounds annually, importers who import less than 10,000 pounds annually, and kiwifruit sold directly to a consumer by a producer for a purpose other than resale and domestic and imported kiwifruit for processing are exempt from assessments.

Assessments would be used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 561 of the Act requires that a referendum be conducted among eligible producers and importers of kiwifruit to determine whether they favor implementation of the Order. The Order shall become effective if it is approved by a majority of producers and importers voting in the referendum and the producers and importers favoring approval produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

A proposed rule on the Order is published separately in this issue of the Federal Register.

This proposed rule provides the procedures under which kiwifruit producers and importers may vote on whether they want the kiwifruit research and promotion program to be implemented. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually can vote in the referendum. There are approximately 700 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in the referendum. This subpart would be in effect for the referendum period only and would not be part of the Code of Federal Regulations. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified herein will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the kiwifruit industry.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, chapter XI of the Code of Federal Regulations be amended as follows:

1. Subpart C is added to proposed Part 1214 to read as follows:

PART 1214—KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

* * * * *

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

Sec.
1214.200 General.
1214.201 Definitions.
1214.202 Voting.
1214.203 Instructions.
1214.204 Subagents.
1214.205 Ballots.
1214.206 Referendum report.
1214.207 Confidential information.

Authority: 7 U.S.C. 7461–7473.

Subpart C—Procedure for the Conduct of Referenda in Connection With the Kiwifruit Research, Promotion, and Consumer Information Order

§ 1214.200 General.

A referendum to determine whether eligible producers and importers favor the issuance of the proposed Kiwifruit Research, Promotion, and Consumer Information Order shall be conducted in accordance with these procedures.

§ 1214.201 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Kiwifruit Research, Promotion, and Consumer Information Order.

(c) *Referendum agent* or agent means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, kiwifruit production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called ''joint ventures'', wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of kiwifruit and the authority to transfer title to the kiwifruit so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who produced 500 pounds or more of kiwifruit during the representative period and who:

(1) Owns or shares in the ownership of kiwifruit production facilities and equipment resulting in the ownership of the kiwifruit produced;

(2) Rents kiwifruit production facilities and equipment resulting in the ownership of all or a portion of the kiwifruit produced;

(3) Owns kiwifruit production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the kiwifruit produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit who share the risk of loss and receive a share of the kiwifruit produced. No other acquisition of legal title to kiwifruit shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imported 10,000 pounds or more during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced kiwifruit immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of kiwifruit from the U.S. Customs Service when such kiwifruit are entered or withdrawn for consumption in the United States.

§ 1214.202 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce kiwifruit, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail.

§ 1214.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of kiwifruit produced by the voting producer during the representative period; and

(3) The total volume of kiwifruit imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in

presence of an agent of the Office of Inspector General.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1214.204 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1214.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1214.206 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1214.207 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: September 23, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–24843 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 440

[Docket No. 28635; Notice 96–8A]

RIN 2120–AF98

Financial Responsibility Requirements for Licensed Launch Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopen comment period.

SUMMARY: This document announces that the comment period for the NPRM on financial responsibility requirements for licensed launch activities is reopened. The initial comment period closed September 23, 1996. In response to industry requests that more time be provided for comment development, the comment period is reopened October 2, 1996 through December 2, 1996.

DATES: The comment period is being reopened from October 2, 1996 through December 2, 1996.

ADDRESSES: Comments on this NPRM should be mailed in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), 800 Independence Avenue, SW, Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmts@mail.faa.gov. All comments must be marked Docket No. 28635. Comments may be examined Monday through Friday, except Federal holidays, between the hours of 8:30 a.m. and 5:00 p.m. in Room 915G.

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation, (202) 366–9305.

SUPPLEMENTARY INFORMATION: Notice No. 96–8 was published on July 25, 1996 [61 FR 38992]. This Notice, as published, provided a 60 day comment period which closed September 23, 1996.

Background

The Associate Administrator for Commercial Space Transportation currently prescribes financial responsibility requirements for licensees authorized to conduct commercial space launch activities on a case-by-base basis, after analyzing the risks associated with licensed activities. The proposed rulemaking would codify the Associate Administrator's approach to implementing these requirements in rules of general applicability. Specifically, the proposed regulations would establish how certain risks are allocated and addressed among the various launch participants through financial responsibility requirements, including statutorily based reciprocal waivers of claims. The proposed regulations would also address eligibility for payment by the United States Government of certain third party claims. The Notice requested comments on appropriate means of implementing this obligation. The FAA is undertaking this rulemaking initiative to implement financial responsibility requirements under the Commercial Space Launch Act of 1984, as amended, codified at 49 U.S.C. Subtitle IX, ch. 701, Commercial Space Launch Activities.

On September 19, 1996, Orbital Sciences Corporation (OSC), as well as several other major U.S. commercial space launch industry participants, (i.e., Lockheed Martin, McDonnell Douglas, and Rockwell International Corporations) requested that the comment period be extended 60 days beyond September 23, 1996, to allow interested parties to respond adequately to the complex issues in the Notice. OSC states that in light of the detail needed to respond accurately and in a costly fashion, an extension is needed.

Reopen Comment Period

The comment period closed on September 23, 1996, which prevented an extension. In order to allow industry additional time for a more thorough review of applicable issues and drafting of responsive comments, the FAA finds that it is in the public interest to reopen the comment period. Accordingly, the comment period is being reopened from October 2, 1996 through December 2, 1996.

Issued in Washington, DC, on September 27, 1996.

Patti Grace Smith,

Acting Associate Administrator for Commercial Space Transportation, Federal Aviation Administration.

[FR Doc. 96–25187 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Ch. VII

[Docket No. 950920234–6268–02]

RIN 0694–XX02

Request for Comments on Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing

foreign policy-based export controls have affected exporters and the general public.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), foreign policy controls expire one year after imposition unless they are extended. The EAA requires a report to Congress whenever foreign policy-based export controls are extended. Although the EAA expired on August 20, 1994, the President, invoking the International Emergency Powers Act (IEEPA), continued in effect the export control system in place under the provisions of the Act and the Export Administration Regulations, to the extent permitted by law (Executive Order 12924 of August 19, 1994 and Notices of August 15, 1995 and August 14, 1996). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls and requesting comments on such controls. Foreign Policy controls need to be extended in January 1997.

DATES: Comments must be received by November 1, 1996 to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

ADDRESSES: Written comments (three copies) should be sent to Patricia Muldonian, Regulatory Policy Division (Room 2096), Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Anita McNamee, Foreign Policy Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4252. Copies of the current 1996 Annual Foreign Policy Report to the Congress can also be requested.

SUPPLEMENTARY INFORMATION: The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), Parts 742 and 776A (Special Commodity Policies and Provisions), 744 and 778A (Proliferation Controls), and 742 and 785A (Special Country Policies and Provisions). These controls apply to: high performance computers (§§ 742.12 and 776A.11); crime control and detection commodities (§§ 742.7 and 776A.14); specially designed implements of torture (§§ 742.11 and 776A.19); regional stability commodities and equipment (§§ 742.6 and 776A.16); equipment and related technical data used in the design, development, production, or use of missiles capable of delivering nuclear weapons (§§ 744.3 and 778A.7); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 744.4 and 778A.8); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§§ 744.6 and 778A.9); embargoed countries (Part 746 and § 785A.1); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, 746.7 and 785A.4(d)); and, Libya (§§ 744.8, 746.4, and 785A.7). Attention is also given in this context to the controls on nuclear-related commodities and technical data (§§ 744.2 and 778A.2), which principally implement the Nuclear Non Proliferation Act and are not foreign policy-based controls in the exact sense.

Effective January 21, 1996, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term ''Confidential Information.'' BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Information about inspection and copying of records at this facility may be obtained from Henry Gaston, BXA Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Dated: September 27, 1996.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 96–25237 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–33–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Play Facilities; Notice of Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the times and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet on:

Saturday, October 26, 1996, 1:00 p.m. to 5:00 p.m.

Sunday, October 27, 1996, 9:00 a.m. to 5:00 p.m.

Monday, October 28, 1996, 9:00 a.m. to 4:00 p.m.

Committee work groups may hold additional meetings, as needed, on:

Sunday, October 27, 1996, 7:00 p.m. to 10:00 p.m.

Tuesday, October 29, 1996, 9:00 a.m. to 4:00 p.m.

ADDRESSES: The committee will meet at the Westin Crown Center, One Pershing Road, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC. 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: In February 1996, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. (61 FR 5723, February 14, 1996). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by October 15, 1996, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–25192 Filed 10–1–96; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 008–1008(b); FRL–5556–7]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151. In addition, the EPA proposes to approve a SIP revision submitted by the state pertaining to revision of the state's open burning rules.

In the final rules section of the Federal Register, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by November 1, 1996.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Dated: August 2, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–24527 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 261, 271, and 302

[SWH–FRL–5628–7]

Extension of Comment Period for the Proposed Identification and Listing of Hazardous Waste/Solvents

AGENCY: U.S. Envirnomental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed listing determination for spent solvents, which appeared in the Federal Register on August 14, 1996 (61 FR 42318). The public comment period for this proposed rule was to end on October 15, 1996. The purpose of this notice is to extend the comment period to end on November 14, 1996.

DATES: EPA will accept public comments on this proposed listing determination until November 14, 1996.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–94–SLDP–FFFFF, RCRA Information Center (5305W), U.S. EPA, 401 M Street, SW., Washington, DC. To hand-deliver comments, or to review docket materials, the address is U.S. EPA, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make

an appointment to review docket materials by calling (703) 603–9230. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Mr. Ron Josephson, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8890.

SUPPLEMENTARY INFORMATION: This proposed rule was issued under Section 3001(b) of RCRA. EPA proposed not to list certain wastes generated from the use of certain chemicals as solvents because current management of these wastes is sufficient to prevent a substantial present or potential risk to human health or the environment. See 61 FR 42318 (August 14, 1996) for a more detailed explanation of the proposed rule.

The comment period for this proposed rule was scheduled to end on October 15, 1996. However, a public commenter has requested that EPA extend the comment period by 30 days. EPA is extending the comment period until November 14, 1996.

Dated: September 25, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 96–25234 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[I.D. 092796B]

Endangered and Threatened Species; Public Hearings on Proposed Status for the West Coast Steelhead

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

ACTION: Public hearings.

SUMMARY: NMFS is announcing dates and locations for public hearings concerning the proposed listing of natural steelhead (*Oncorhynchus mykiss*) populations occurring in California, Oregon, Washington, and Idaho, as threatened or endangered under the Endangered Species Act (ESA). The hearings will provide an opportunity for the public to give comments and will permit an exchange of information and opinion among interested parties.

DATES: The hearings are scheduled for the month of October. See **SUPPLEMENTARY INFORMATION** for dates and times of the public hearings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231-2005; Craig Wingert, (310) 980–4021; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1996, NMFS issued a proposed rule (61 FR 41541) to list 10 of 15 evolutionarily significant units (ESUs) of west coast steelhead (*Oncorhynchus mykiss*) under the ESA. The ESUs proposed as endangered are located in California (Central California Coast, South/Central California Coast, Southern California, and Central Valley) and Washington (Upper Columbia River). The ESUs proposed as threatened are dispersed throughout California, Idaho, Oregon, and Washington and include the Snake River Basin, Lower Columbia River, Oregon Coast, Klamath Mountains Province, and Northern California ESUs. NMFS also designated the Middle Columbia River ESU as a candidate species. There was not sufficient information available at the time of notice to indicate that steelhead in the Middle Columbia River region warranted protection under the ESA, though NMFS identified specific risk factors and concerns that needed to be evaluated before concluding an assessment of the overall health of steelhead in this area.

Department of Commerce ESA implementing regulations state that the Secretary of Commerce ''shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list * * *a species'' (50 CFR 424.16 (c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages your involvement in such ESA matters.

Public Hearings

The public hearings are scheduled as follows:

1. October 7, 1996, 6:30 p.m. to 9:30 p.m., Lewiston, ID
2. October 7, 1996, 7 p.m. to 9 p.m., Rohnert Park, CA
3. October 8, 1996, 6:30 p.m. to 9:30 p.m., Pasco, WA
4. October 8, 1996, 7 p.m. to 9 p.m., Eureka, CA
5. October 9, 1996, 6:30 p.m. to 9:30 p.m., Wenatchee, WA
6. October 10, 1996, 6:30 p.m. to 9:30 p.m., Olympia, WA
7. October 15, 1996, 6:30 p.m. to 9:30 p.m., Gold Beach, OR
8. October 16, 1996, 6:30 p.m. to 9:30 p.m., Roseburg, OR
9. October 16, 1996, 7 p.m. to 9 p.m., Sacramento, CA
10. October 17, 1996, 6:30 p.m. to 9:30 p.m., Newport, OR
11. October 17, 1996, 7 p.m. to 9 p.m., Monterey, CA
12. October 21, 1996, 6:30 p.m. to 9:30 p.m., Portland, OR
13. October 22, 1996, 6:30 p.m. to 9:30 p.m., Boise, ID
14. October 23, 1996, 7 p.m. to 9 p.m., Santa Barbara, CA
15. October 30, 1996, 7 p.m. to 9 p.m., Yreka, CA

The hearings will be held at the following locations:

1. Lewiston—Lewiston Community Center, 1424 Main Street, Lewiston, ID 83501
2. Rohnert Park—Red Lion Hotel, 1 Red Lion Drive, Rohnert Park, CA 94928
3. Pasco—Columbia Basin College, Library Building Rm 102, 2600 North 20th Avenue, Pasco, WA 99301
4. Eureka—The Eureka Inn, 518 7th Street, Eureka, CA 95501
5. Wenatchee—West Coast Wenatchee Center Hotel, Fountain Room, 201 North Wenatchee Avenue, Wenatchee, WA 98801
6. Olympia—Evergreen State College, Lecture Hall 2, 2700 Evergreen Parkway NW, Olympia, WA 98505
7. Gold Beach—Gold Beach City Hall, City Council Chambers, 510 South Ellensburg Avenue, Gold Beach, OR 97444
8. Roseburg—Douglas County Courthouse, Rm. 216, 1036 SE. Douglas Avenue, Roseburg, OR 97470
9. Sacramento—Beverly Garland Hotel, 1780 Tribute, Sacramento, CA 95815
10. Newport—Central Lincoln PUD, Newport Meeting Room, 2129 N. Coast Highway, Newport, OR 97365
11. Monterey—Monterey Beach Hotel, 2600 Sand Dunes Drive, Monterey, CA 93940
12. Portland—Bonneville Power Administration, Complex Auditorium, 911 NE. 11th Avenue, Portland, OR 97232
13. Boise—Interagency Fire Center Auditorium, 3905 Vista Avenue, Boise, ID 83705

14. Santa Barbara—Fess Parker's Red Lion Resort, 633 E. Cabrillo Boulevard, Santa Barbara, CA 93103

15. Yreka—Miner's Inn Convention Center, 122 E. Miner Street, Yreka, CA 96097

Interested parties will have opportunity to provide oral and written testimony at the public hearings. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Matthew Eagleton at (503) 230–5433.

Dated: September 27, 1996.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–25203 Filed 9–27–96; 12:11 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 192
Wednesday, October 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

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of l995, this notice announces the intention of the above-named Agencies to request an extension for the currently approved information collection in support of the servicing of Community and Insured Business Programs Loans and Grants.

DATES: Comments on this notice must be received by December 2, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Sharon R. Douglas, Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, l400 Independence Avenue SW., Washington, DC 20250–3222. Telephone (202) 720–1506

Deanna D. Plauche, Loan Specialist, Water and Waste Disposal Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 3223, 1400 Independence Avenue SW., Washington, DC 20250–3222. Telephone (202) 720–9635.

SUPPLEMENTARY INFORMATION:

Title: Servicing of Community and Insured Business Programs Loans and Grants.

OMB Number: 0575–0066.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The following Community and Insured Business Programs Loans and Grants are serviced by this currently approved regulation (0575–0066): The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

The Economic Opportunity Act of 1964, Title 3 (Pub. L. 88–452), authorizes Economic Cooperative loans to assist incorporated and unincorporated associations provide to low-income rural families essential processing, purchasing, or marketing services, supplies, or facilities.

The Water and Waste Disposal program is authorized by Section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) to provide basic human amenities, alleviate health hazards, and promote the orderly growth of the rural areas of the Nation by meeting the need for new and improved water and waste disposal systems.

The Business and Industry program is authorized by Section 310 B (7 U.S.C. 1932) (Pub. L. 92–419, August 30, 1972) of the Consolidated Farm and Rural Development Act to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control.

The Food Security Act of 1985, Section 1323 (Pub. L. 99–198), authorizes loan guarantees and grants to Nonprofit National Corporations to provide technical and financial assistance to for-profit or nonprofit local businesses in rural areas.

The Powerplant and Industrial Fuel Use Act of 1978, Section 601 (42 U.S.C. 8401), authorizes Energy Impact Assistance Grants to states, councils of local government, and local governments to assist areas impacted by coal or uranium development activities. Assistance is for the purposes of growth management, housing planning, and acquiring and developing sites for housing and public facilities.

The Consolidated Farm and Rural Development Act, Section 310 B(c) (7 U.S.C. 1932 (c)), authorizes Rural Business Enterprise Grants to public bodies and nonprofit corporations to facilitate the development of private businesses in rural areas.

The Consolidated Farm and Rural Development Act, Section 310 B(f)(i) (7 U.S.C. 1932 (c)), authorizes Rural Technology and Cooperative Development Grants to nonprofit institutions for the purpose of enabling such institutions to establish and operate centers for rural technology or cooperative development.

The Farm Ownership loan program is authorized by the Consolidated Farm and Rural Development Act, Pub.L. 91–229, to make insured loans to Indian Tribes or tribal corporations within tribal reservations and Alaskan communities. The Act also gives Farmer Programs the authority to make loans for grazing, other irrigation and drainage projects, and association irrigation and drainage loans.

The purpose of the loan and grant servicing function for the above programs is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect the Government's financial interest. Routine servicing responsibilities include collection of payments, compliance reviews, security inspections, review of financial reports, and supervision activities.

Supervision by the Agencies include, but is not limited to: review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews.

Information will be collected by the field offices from applicants and borrowers. Under the provisions of this regulation, the information collected will be primarily financial data.

Failure to collect information could result in improper servicing of these loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.66 hours per response.

Respondents: State, local or tribal Governments, Not-for-profit institutions.

Estimated Number of Respondents: 110.

Estimated Number of Responses per Respondent: 1.63.

Estimated Total Annual Burden on Respondents: 120 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, (202) 720–9734.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, l400 Independence Avenue SW., Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 29, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

Dated: September 4, 1996.

John Romano,

Acting Administrator, Rural Utilities Service.

Dated: September 17, 1996.

Dayton Watkins,

Administrator Rural Business-Cooperative Service.

Dated: September 19, 1996.

Grant Buntrock,

Administrator, Farm Service Agency.

[FR Doc. 96–25007 Filed 10–1–96; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Capital Expenditures Survey

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before December 2, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles Funk, Bureau of the Census, Room 300–20 Iverson Mall, Washington, DC 20233, Telephone (301) 763–2542.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans the continuing information collection for the 1996 and 1997 Annual Capital Expenditures Survey (ACES) measuring capital investment in new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Major changes from the 1995 collection of ACES data are the annual collection of data from businesses with one to four employees and nonemployers, and a request from employer businesses for data on total company sales and receipts, and sales and receipts for the three ACES industries with the largest sales and receipts.

Actual business spending will be collected from employer and nonemployer businesses. Business spending data are used to evaluate the quality of estimates of gross domestic product, develop monetary policy, analyze business asset depreciation, and improve estimates of capital stock for productivity analysis. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters and/or telephone calls encouraging participation will be directed to respondents that have not responded by the designated time. Computer Assisted Telephone Interviewing (CATI) and Touchtone Data Entry (TDE) will be used on a limited basis with small and middle sized businesses in data collection activities.

III. Data

OMB Number: 0607–0782.

Form Number: ACE–1 (Sent to employer companies reporting payroll to the Internal Revenue Service) and ACE–2 (Sent to nonemployer businesses).

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations, and self-employed individuals.

Estimated Number of Respondents: 46,000 (34,000 employer companies, and 12,000 nonemployer businesses).

Estimated Time Per Response: The average for all respondents is 2.5 hours. For companies completing form ACE–1, the range is 2 to 16 hours, averaging 3 hours. For companies completing form ACE–2, the range is less than 1 hour to 2 hours, averaging 1 hour.

Estimated Total Annual Burden Hours: The total annual burden for fiscal year 1997, and 1998 is 114,000 hours.

Estimated Total Annual Cost: $3,450,000.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 182, 224, and 225.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: September 26, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–25139 Filed 10–1–96; 8:45 a.m.]

BILLING CODE 3510–07–P

Business and Professional Classification Report

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, 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 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)).

DATES: Written comments must be submitted on or before December 2, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instruction(s) should be directed to Carl A. Konschnik, Bureau of the Census, Room 2651–FOB 3, Washington, DC 20233–6500, (301) 457–2675.

SUPPLEMENTARY INFORMATION

I. Abstract

The Bureau of the Census uses Form B–625, ''Business and Professional Classification Report,'' to collect information needed to keep the retail, wholesale, and service samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the death of others, transfer of ownership, mergers, and so forth, four times a year the Bureau of the Census canvasses a different sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service and the Social Security Administration. The completed Form B–625, ''Business and Professional Classification Report,'' provides us with sales, receipts or revenue, company organization, new or refined Standard Industrial Classification (SIC), and other key information needed for sampling to maintain proper coverage of the universe. Based on the collected information, EINs meeting the criteria for inclusion in the Bureau's retail, wholesale or service surveys are subjected to a second sampling. The retail and wholesale EINs selected in this second sampling are placed on a panel to report in our surveys on a monthly basis. The selected service cases are also placed on a panel but report only annually. We are considering revisions to Form B–625 to reflect changing survey conditions. For example, we may drop the request for a list of individual business locations associated with the EIN. We may also make revisions to enable classification coding under the new North American Industry Classification System.

II. Method of Collection

We collect this information by mail, FAX, and by phone for mail nonresponse.

III. Data

OMB Number: 0607–0189.

Form Number: B–625.

Type of Review: Regular Submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 42,000.

Estimated Time Per Response: 13 minutes.

Estimated Annual Burden Hours: 9,101 hours.

Estimated Total Cost: The total cost in fiscal year 1996 for the Business and Professional Classification Report is $785,000, all funded by the Bureau of Census.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

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 burden (including hours and cost) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–25140 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–07–P

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 08/20/96–09/24/96

Firm name	Address	Date petition accepted	Product
Premier Sportswear, Inc	126 Shove Street, Fall River, MA 02724.	08/27/96	Women's pants and skirts of wool, wood blends, cotton and other synthetic material.
New Jersey Machine, Inc	56 Etna Road, Lebanon, NH 03766.	08/28/96	Precision labeling equipment.
Quality Dinettes, Inc	P.O. Box 197, Bethel Road, Arley, AL 35541.	08/29/96	Chairs, dining tables, china hutches of wood and wood products for dining and kitchen use.
Gilbert Mfg. Corp	Route 26, Box 165, Locke Mills, ME 04255.	09/06/96	Wooden kitchenware and cutlery, wood turnings and cut wood—hard and soft of white birch and ash, maple.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 08/20/96–09/24/96—Continued

Firm name	Address	Date petition accepted	Product
UHC, Inc	9640 153rd Avenue, N.E. #B6, Redmond, WA 98052.	09/06/96	Bicycle handlebar parts, billard cue accessories, fishing rod parts and other machined metal parts.
Riley & Geehr, Inc	2205 Lee Street, Evanston, IL 60202.	09/10/96	Flexible plastic stand-up pouches, corrugated containers and misc. raw materials, primarily plastic.
Langenberg Hat Company	320 West Front Street, Washington, MO 63090.	09/10/96	Men's hats.
Kellsport Industries, Inc	140–R Ace Street, Fall River, MA 02720.	09/10/96	T-shirts and sweatshirts.
New Fishscale Belt Corp	10 Kean Street, West Babylon, NY 11704.	09/13/96	Woven belts of stainless steel shaped like fishscales.
Vaccum Tank Manufacturing Corp.	P.O. Box 2350, East Patchogue, NY 11772.	09/13/96	Trunk mounted septic tank pumping equipment.
Duplex Novelty Corp	575 Eighth Avenue, New York, NY 10018.	09/13/96	Button of wood and plastic.
Aero-Fab Corp	1840 North 105th East Avenue, Tulsa, OK 74116.	09/24/96	Airplane parts.
Hollytex Carpet Mills, Inc	505 N.E. 7th Street, Anadarko, OK 73005.	09/24/96	Tufted carpets.
Implant Manufacturing & Testing, Inc. (Bio–Pro).	17 17th Street, Port Huron, MI 48060.	09/24/96	Ceramic hip balls and knee, shoulder and toe implants for arthroplasty, and surgical tables.
Seals Eastern, Inc	134 Pearl Street, Red Bank, NJ 07701.	09/24/96	Molded rubber goods and pressure seals.
W. Silver, Inc	P.O. Box 12904, El Paso, TX 77913.	09/24/96	Hot worked bars and rods of steel.
K–W Manufacturing Company, Inc.	919 Eighth Street, Prague, OK 74864.	09/24/96	Mounted Piezoelectric quartz and crystals.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 26, 1996.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 96–25155 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–24–M

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comments on the potential market impact of proposed disposals of excess commodities currently held in the National Defense Stockpile.

SUMMARY: This notice is to advise the public that the interagency National Defense Stockpile Market Impact Committee is seeking public comment on the potential market impact of Department of Defense proposed material disposals from the National Defense Stockpile under the Fiscal Year (FY) 1998 Annual Materials Plan (AMP) and revisions to the FY 1997 AMP.

DATES: Comments must be received by November 1, 1996.

ADDRESSES: Written comments (10 copies) should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Richard Watkins, International Commodities Division, U.S. Department of State, (202) 647–2871; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h-1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the

Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The Committee will soon begin its consideration of Defense—s proposed material disposals from the National Defense Stockpile under the FY 1998 Annual Materials Plan (AMP) and revisions to the FY 1997 AMP. In order for the Committee to obtain sufficient information to prepare its recommendations to Defense, the Committee requests that interested parties provide comment on the potential market impact of disposals of the commodities identified below.

The proposed maximum disposal quantity for each listed material is included. Please note that these quantities are not sales targets. They are only a statement of the proposed maximum disposal quantity of each material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering. It will also depend on the maximum disposal quantity of each material approved for disposal by the Congress.

PROPOSED FISCAL YEAR 1998 AMP

Material	Units	Current FY 1997 (Effective 10–1–96) Quantity	Proposed FY 1998 Quantity
Aluminum Oxide, Abrasive	ST	6,000	6,000
Aluminum Oxide, Fused Crude	ST	30,000	30,000
Analgesics	AMALB	2,500	2,500
Antimony	ST	3,000	3,000
Asbestos (all types)	ST	20,000	20,000
Bauxite, Metallurgical (Jamaican)	LDT	600,000	600,000
Bauxite, Metallurgical (Surinam)	LDT	300,000	300,000
Bauxite, Refractory	LCT	80,000	80,000
Beryl Ore	ST	2,000	2,000
Bismuth	LB	300,000	300,000
Cadmium	LB	1,200,000	1,200,000
Celestite	SDT	3,600	3,600
Chromite, Chemical	SDT	100,000	100,000
Chromite, Metallurgical	SDT	250,000	250,000
Chromite, Refractory	SDT	100,000	100,000
Chromium, Ferro	ST	25,000	50,000
Diamond, Bort	CT	1,000,000	1,000,000
Diamond Dies, Small PCS	PC	.....	25,473
Diamond Stone	CT	2,000,000	2,000,000
Fluorspar, Acid	SDT	100,000	180,000
Fluorspar, Metallurgical	SDT	150,000	50,000
Graphite, Natural Malagasy	ST	1,220	1,220
Iodine	LB	450,000	450,000
Jewel Bearings	PC	31,000,000	31,000,000
Kyanite	SDT	1,200	1,200
Lead	ST	60,000	60,000
Manganese, Battery Grade Natural	SDT	60,000	20,000
Manganese, Battery Grade Synthetic	SDT	3,011	3,011
Manganese, Chemical Grade	SDT	40,000	40,000
Manganese, Ferro Alloys	ST	50,000	50,000
Manganese, Metal Electrolytic	ST	2,000	2,000
Manganese, Metallurgical Grade	SDT	400,000	250,000
Mercury	FL	20,000	20,000
Mica (All Types)		2,260,000	2,260,000
Mica, Muscovite Block	LB		
Mica, Muscovite Film	LB		
Mica, Muscovite Splittings	LB		
Mica, Phlogopite Splittings	LB		
Nickel	ST	10,000	10,000
Quinidine	Av Oz	200,000	750,000
Quinine	Av Oz	200,000	750,000
Sebacic Acid	LB	1,000,000	1,000,000
Silicon Carbide	ST	4,500	9,000
Silver (for coinage)	Tr Oz	9,000,000	9,000,000
Talc	ST	1,000	1,000
Thorium Nitrate	LB	1,000,000	1,000,000
Tin	MT	12,000	12,000
Vanadium Pentoxide	ST V	200	200
Vegetable Tannin Extract, Chestnut	LT	5,000	7,500
Vegetable Tannin Extract, Quebrac.	LT	5,000	10,000
Vegetable Tannin Extract, Wattle	LT	5,000	10,000
Zinc	ST	50,000	50,000

PROPOSED REVISIONS TO FISCAL YEAR 1997 AMP

Material	Units	Quantity
Chromium, Ferro	SDT	35,000
Diamond Dies, Small PCs.	CT	25,473
Fluorspar, Acid Grade	SDT	180,000
Fluorspar, Metallurgical.	SDT	50,000
Quinidine	Av Oz	750,000
Quinine	Av Oz	750,000
Silicone Carbide	ST	9,000
Vegetable Tannin Extract, Chestnut.	LT	7,500
Vegetable Tannin Extract, Quebrac.	LT	10,000
Vegetable Tannin Extract, Wattle.	LT	10,000

The following list of new materials is presently under consideration by the Congress for disposal authority in both FY 1997 and FY 1998. The Committee is seeking public comment on the potential market impact of the sale of these materials in the event that Congress does grant such disposal authority.

PROPOSED NEW MATERIAL DISPOSAL AUTHORITY FOR FY 1997 AND FY 1998

Material	Units	FY 1997 Quantity	FY 1998 Quantity
Aluminum.	ST	62,881	62,881
Cobalt	LBCO	6,000,000	6,000,000
Columbium, Ferro.	LBCB	60,000	100,000
Germanium.	KG	4,000	4,000
Indium	TROZ	35,000	35,000
Palladium.	TROZ	15,000	15,000
Platinum.	TROZ	10,000	10,000
Rubber	LT	125,000	125,000
Tantalum Carbide Powder.	LBTA	2,000	2,000
Tantalum Minerals.	LBTA	100,000	100,000
Tantalum Oxide.	LBTA	20,000	20,000

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of any commodity in the above three lists. Although comments in response to this Notice must be received by November 1, 1996 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of the AMP commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: September 26, 1996.

John A. Richards,

Deputy Assistant Secretary for Strategic Industries and Economic Security.

[FR Doc. 96–25156 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket 69–96]

Foreign-Trade Zone 147—Reading, PA Request for Manufacturing Authority Precision Components Corporation (Inc.) (Nuclear Fuel Containment Vessels)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Precision Components Corporation (Inc.) (PCC), to manufacture nuclear fuel containment vessels under zone procedures within FTZ 147. It was formally filed on September 24, 1996.

The PPC plant (400,000 sq.ft. on 12 acres) is located at 500 Lincoln Street within a proposed site of FTZ 147 in the International Trade District of York, in the City of York, Pennsylvania (Docket 3–96, 61 FR 2487, 1–26–96). The PPC plant (448 employees) is used to manufacture nuclear fuel containment vessels (HTSUS# 7309.00.0090, duty rate-1.6%) for the transport and storage of spent radioactive nuclear fuel. Components sourced from abroad (from 28 to 70% of finished product value) include forgings and plates of iron or steel, which are classified under the same HTSUS category as the finished nuclear fuel containment vessels. The application indicates that over 50 percent of the plant's shipments are exported.

Zone procedures would exempt PPC from Customs duty payments on the foreign components used in export production. On its domestic sales, PPC would be able to defer duty payments on the foreign components until the finished vessels are processed for Customs entry, and scrap and waste foreign status material would be exempt from Customs duties. The request indicates that the savings from zone procedures would help improve the plant's international competitiveness.

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 three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 2, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 16, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 25, 1996.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 96–25244 Filed 10–1–96; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of the antidumping duty administrative review; aramid fiber formed of poly para-phenylene terephthalamide from the Netherlands.

SUMMARY: On April 9, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid) from the Netherlands. The review covers one manufacturer/exporter and the period December 16, 1993 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: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Little 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.

SUPPLEMENTARY INFORMATION:

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).

Background

The Department published in the Federal Register the antidumping duty order on PPD–T aramid from the Netherlands on June 24, 1994 (59 FR 32678). 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 duty order on PPD–T aramid from the Netherlands covering the period December 16, 1993 through May 31, 1995.

In accordance with 19 CFR 353.22(a)(1), Aramid Products V.o.F. (Aramid) and Akzo Nobel Fibers Inc. (collectively ''Akzo'') and petitioner, E.I. du Pont de Nemours and Company, requested that we conduct an administrative review of Akzo's sales. We published a notice of initiation of this antidumping duty administrative review on July 14, 1995 (60 FR 36260). The Department is conducting this administrative review in accordance with section 751 of the Act.

On April 9, 1996, the Department published the preliminary results in the Federal Register (61 FR 15766). The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are all forms of PPD–T aramid from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber and floc. Tire cord is excluded from the class or kind of merchandise under review. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 5402.10.3020, 5402.10.3040, 5402.10.6000, 5503.10.1000, 5503.10.9000, 5601.30.0000, and 5603.00.9000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of PPD–T aramid, Akzo, and the period December 16, 1993 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 Akzo and petitioner.

Comment 1: The petitioner contends that Akzo's accounting method for goodwill expense resulting from Akzo Nobel N.V.'s (Akzo Nobel's) increased ownership in Aramid significantly understates the amount of these charges included in the company's reported production costs. Most egregious, in petitioner's view, is that Akzo's submission allegedly ignores the normal treatment of goodwill as recorded by Akzo Nobel and, instead, relies on an inappropriate amortization period that is inconsistent with both Dutch generally accepted accounting principles (GAAP) and international accounting standards. According to petitioner, Akzo's submitted amortization period grossly distorts actual costs by artificially extending the useful lives of certain assets.

The petitioner also notes that certain parts of Akzo's goodwill adjustment relate to items appropriately included in the cost of manufacturing rather than in general expenses as Akzo included them for its submitted costs. Thus, the petitioner maintains, the Department should reclassify amounts related to these items from general expenses to cost of manufacturing and recognize the full amount of each item rather than an amortized portion.

Akzo argues that the submitted amortization of goodwill does not distort its reported costs. Akzo contends that Akzo Nobel properly revalued the assets of Aramid to conform to Akzo Nobel's accounting polices and calculated goodwill based on the revalued amount. Akzo maintains that prior Department practice indicates that goodwill should be amortized over a predetermined useful life. Thus, for submission purposes, Akzo amortized the goodwill over a reasonable period in accordance with U.S. GAAP.

Akzo claims that adjustment to the asset values should not be depreciated over the remaining useful lives of the assets as suggested in the Department's July 11, 1996 memorandum because this method does not conform to Aramid's records. Akzo asserts that the most appropriate methodology to account for the revaluation of assets is through Akzo Nobel's goodwill calculation. However, Akzo states that, should the Department decide to adjust production costs for the revalued assets, then it should exclude the entire amount of amortized goodwill from general expenses.

Department's Position: Due to the proprietary nature of this issue, we have addressed this comment in our September 25, 1996 Cost of Production Analysis Memorandum. We note, however, that we adjusted Akzo's submitted costs to account for the revalued assets. Moreover, in making this adjustment, we excluded the entire amount of the goodwill amortization

from general expenses in order to avoid double counting the expense and to recognize that any goodwill remaining after our adjustment to the revalued assets was not a part of Aramid's production costs.

Comment 2: The petitioner argues that the Department should calculate financing costs based on the audited financial statements of the producer, Aramid, rather than on the consolidated financial statements of its parent. According to the petitioner, the Statement of Administrative Action (SAA) indicates that where specific information on the actual financing costs incurred in the production of merchandise under review or investigation is available, then that information must be used to compute financing costs. The petitioner maintains that specific information on the actual financing costs incurred by the producer of the subject merchandise is available through Aramid's financial statements. Thus, the petitioner asserts, the Department should recalculate the interest expense reported in Aramid's financial statements by applying Aramid's unaffiliated 1994 borrowing rate to the full amount of loans reported on Aramid's balance sheet.

Akzo argues that the Department should follow its normal practice and calculate interest expense based on Akzo Nobel's consolidated financial statements. Akzo states that the Department's questionnaire requires a company to calculate interest expense based on the parent company's consolidated financial statements because money is fungible and a corporate parent determines the capital structure of the company. Akzo argues that, in contrast to the petitioner's assertions, the SAA does not include any language explaining a change in the Department's methodology for computing financing expenses. Akzo maintains that, according to the petitioner's interpretation, the Department would use the higher of the producer's or the parent's financing costs in all cases.

Akzo asserts that the Department should disregard petitioner's suggestion of recalculating interest on Aramid's borrowings derived from Akzo Nobel loans because these loans are rolled up into Akzo Nobel's consolidated financial statements. Thus, Akzo maintains, Akzo Nobel has the only actual borrowings for the entire group.

Department's Position: We agree with Akzo. It is the Department's longstanding practice to calculate the respondent's net interest expense based on the financing expenses incurred on behalf of the consolidated group of companies to which the respondent belongs. In general, this practice recognizes the fungible nature of invested capital resources (*i.e.*, debt and equity) within a consolidated group of companies. In *Camargo Correa Metais, S.A.* v. *United States*, Slip Op. 93–163 (CIT August 13, 1993), the Court of International Trade ruled that the Department's practice of allocating interest expense on a consolidated basis due to the fungible nature of debt and equity was reasonable. The Court specifically quoted the following from Final Determination of Sales at Less than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea, 54 Fed. Reg. 53,141, 53149 (1989).

> The Department recognizes the fungible nature of a corporation's invested capital resources, including both debt and equity, and does not allocate corporate finances to individual divisions of a corporation * * *. Instead, [Commerce] allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation.

Also, See Final Determination of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, 60 FR 10552, 10557 (February 27, 1995). The controlling entity within a consolidated group has the ''power'' to determine the capital structure of each member company within the group. In this case, Akzo Nobel maintains a controlling interest in Aramid and includes the company in its consolidated financial statements.

See Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR at 21946 (comment 18) (May 26, 1992).

Furthermore, the SAA and new law do not address any specific change in the Department's practice of calculating interest expense. Therefore, for the final results of review, we have relied on Akzo's submitted financing expense based on Akzo Nobel's consolidated financial statements, and have not imputed interest expense on affiliated party loans as suggested by the petitioner.

Comment 3: The petitioner contends that Akzo may have understated its production costs by manipulating its normal standard costs. According to the petitioner, Akzo may have inappropriately decreased its normal standard costs for certain products sold to the U.S. market and increased the standard costs for other products or for products that the company did not sell in the United States. Therefore, the petitioner asserts, the Department must reject Akzo's reported methodology of allocating its production costs and cost variances based on its standard costs. As an alternative allocation methodology, the petitioner suggests spreading the costs among the products based on relative production quantities.

The petitioner contends that, because the Department rejected its repeated request that Akzo's standard costs from the less-than-fair-value (LTFV) investigation be put on the record of this review, the petitioner was limited in its ability to establish that the unreliability of the standard costs used in the current review.

Akzo argues that the Department should reject petitioner's allegation of cost shifting and rely on the company's submitted costs. Akzo states that the Department rejected this same unsubstantiated claim in the preliminary results of review. Lastly, Akzo asserts that using the petitioner's approach would apply the same per unit costs and cost variances to all products regardless of the differences between products. According to Akzo, this approach is the equivalent of computing the same cost of production for all subject merchandise (*i.e.*, total cost divided by total weight of production).

Akzo maintains that putting the standard costs from the initial investigation on the record of this review would not satisfy the petitioner's doubts concerning cost shifting. Rather, according to Akzo, it would just raise more questions because of the many factors that go into the standard cost build-up for each specific control number (See Akzo's February 28, 1996 letter).

Department's Position: We agree with Akzo that the petitioner has not provided reasonable grounds for rejecting the company's normal standard cost allocation methodology. Akzo's method of allocating production costs and cost variances based on product-specific standard costs is consistent with its normal accounting practices. Moreover, there is no evidence on the record to suggest, as the petitioner does, that the standard costs were developed under methods other than those normally followed by Akzo. We also note that in a similar case involving a different Akzo Group company, the Department accepted the company's methodology of allocating the plant-wide variance based on product-specific standard costs. See High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review, 60 FR 15897 (March 28, 1995).

We believe that requesting the product-specific standard cost data from the initial investigation would merely

serve to confuse and complicate the issue rather than provide sufficient conclusive proof of cost shifting. We know of differences between the investigation and the review that would render such a comparison meaningless. First, in the initial investigation, the Department relied on third country sales and cost data as the basis for fair value. In this review, however, we are relying on Akzo's home market sales as the basis for normal value since the company submitted information showing that the home market was viable. Because of this change in comparison markets, it is highly doubtful that, between the two proceedings, there would be a sufficient number of common non-U.S. products from which to draw any conclusions regarding revisions to standard costs.

Secondly, Akzo grouped together products defined as ''identical'' in accordance with our hierarchy of physical characteristics. Akzo then computed a single weighted-average standard cost for these products based on production quantities. From the investigation to this review, changes in relative production quantities of the various Akzo products within any single product group could significantly change the weighted-average standard costs Akzo submitted. Thus, we determined that conducting a meaningful comparison of cost figures between the two segments would be difficult without first knowing the specific products and production quantities within each reported COP and CV figure. Accordingly, the Department appropriately rejected the petitioner's request to put standard costs from the LTFV investigation on the record in this review.

Comment 4: The petitioner claims Akzo excluded maintenance costs by allocating these costs over a twenty-four month period, seven months of which fall outside the period of review (POR). Since the POR shutdown of Akzo's production operations occurred less than two years after the previous shutdown, the petitioner believes that a twenty-four month amortization period is too long.

Akzo argues that no maintenance costs related to the shutdown in 1995 were excluded from the POR costs. Akzo claims that, under its normal standard cost allocation methodology, a portion of its shutdown maintenance costs are amortized over a twenty-four month period, while another portion is expensed in the month incurred. For submission purposes, Akzo amortized all shutdown maintenance costs over the same twenty-four month period. Accordingly, Akzo asserts that it appropriately excluded the costs attributable to those months outside the cost reporting period. Akzo notes that it used the same twenty-four month amortization period for the same type of shutdown maintenance costs in the original investigation. The only difference is that the shutdown in plant operations occurred before the period of investigation (POI) (*i.e.*, amortized costs from shutdown were recognized in later months during the POI), whereas in this review the shutdown took place during the POR, resulting in a portion of amortized costs being carried outside the POR.

Department's Position: We agree with Akzo that its submitted methodology for reporting shutdown maintenance costs reasonably reflects the company's costs during the POR and follows the method used in the original investigation. Approximately every two years, the company shuts down its plants to perform maintenance on its plant and equipment. In the LTFV investigation, Akzo recognized amortized costs during the POI that related to a shutdown that occurred before the POI. We consider it reasonable to amortize the same types of costs over a time period consistent with the methodology that we accepted during the LTFV investigation even though, in the instant review, this methodology results in allocating costs incurred during the POR to months outside the POR.

Comment 5: The petitioner contends that Akzo's goodwill amortization expense failed to account for certain proprietary expenses incurred by the company that should be included in its production costs for the POR. According to the petitioner, if the Department does not recalculate goodwill to include these expenses, then it should reduce constructed export price (CEP) by the amount of these expenses.

Akzo claims its goodwill calculation includes all necessary adjustments to cost. However, Akzo contends that, if the Department adopts the alternative approach set forth in its July 11, 1996 memo, then this issue is moot.

Department's Position: We agree with Akzo. Since we utilized the alternative approach discussed in Comment 1, this issue is moot. Due to the proprietary nature of this issue, we have addressed this comment in our September 25, 1996 Cost of Production Analysis Memorandum.

Comment 6: According to the petitioner, the Department should exclude Akzo's reported insurance credit because it does not relate to costs incurred during the POR.

Akzo argues that the insurance credit is properly included in its reported general expenses. According to Akzo, the insurance credit relates to its unexpected operational problem. Akzo claims its situation is similar to the circumstances in the LTFV investigation of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol from Thailand, 60 FR 22557, 22561 (May 8, 1995) (Furfuryl Alcohol from Thailand), where the Department allowed the respondent to offset its submitted COP by the insurance proceeds received due to an unexpected equipment failure.

Department's Position: We agree with Akzo that it should be allowed to reduce its POR production costs for the insurance proceeds. During the POR, the company incurred higher-than-normal per unit costs due to an operational problem at its Emmen production facility. Akzo maintained an insurance policy under which it was reimbursed for cost overruns incurred as a result of such problems. Thus, the insurance credit Akzo received related directly to the higher-than-normal per unit production costs incurred by the company. Accordingly, we consider it appropriate for Akzo to include the insurance reimbursement as a reduction to its submitted costs. See Furfuryl Alcohol from Thailand.

Comment 7: The petitioner objects to Akzo's inclusion of a certain non-operating income amount as an offset to general and administrative expenses (G&A). According to the petitioner, the income item in question does not relate to either U.S. or home market sales of subject merchandise, and therefore should not be allowed as a reduction in Akzo's G&A expense.

Akzo argues that the non-operating income item is properly included in its reported G&A expenses because this amount relates to the general operations of the company. Moreover, Akzo notes that the Department accounted for this item as part of G&A expense in the original LTFV investigation.

Department's Position: We agree with Akzo that it appropriately included the non-operating income amount in its submitted G&A expense calculation. As stated in the original LTFV investigation of this case, this amount relates to the general operations of the company (i.e., a general expense rather than a direct cost of production). See Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, 59 FR 23686, 23690 (comment 17) (May 6, 1994).

Comment 8: The petitioner argues that the Department is authorized to reduce normal value by a CEP offset only if (1) different levels of trade (LOT) exist between U.S. and home market sales, (2)

the data on the record do not provide an appropriate basis to make an LOT adjustment and (3) normal value is established at a more advanced stage of distribution than the CEP. Petitioner contends that Akzo merely asserted, without any evidence, that it was entitled to a CEP offset because its U.S. sales were based on CEP. Petitioner argues that the treatment of U.S. sales as CEP transactions does not by itself establish that different LOTs exist, nor does it relieve respondent of the requirement that it substantiate the necessity for an LOT adjustment as a predicate to obtaining the CEP offset. Petitioner asserts that the SAA states: ''only where different functions at different levels of trade are established under section 773(a)(7)(A)(i), but the data available do not form an appropriate basis for determining a level of trade adjustment under section 773(a)(7)(A)(ii), will Commerce make a constructed export price offset adjustment under section 773(a)(7)(B).'' Petitioner asserts that Akzo did not demonstrate that different LOTs exist between U.S. and home market sales and that an LOT adjustment is warranted.

Petitioner argues that Akzo's position closely parallels that of the respondent Mitsubishi Heavy Industries, Ltd. (MHI) in Large Newspaper Printing Presses and Components Thereof, whether Assembled or Unassembled, from Japan: Final Determination of Sales at Less than Normal Value, 61 FR 38189 (July 23, 1996) (Large Newspaper Printing Presses from Japan). Petitioner asserts that MHI did not claim an LOT adjustment, and failed to establish that LOT differences exist between U.S. and home market sales. Petitioner argues that, in that case, MHI claimed that, if the Department uses CEP analysis for its U.S. sales, an LOT adjustment must be made because CEP analysis removes economic activities which change the LOT for U.S. sales. Petitioner argues that MHI claimed it was entitled to a CEP offset because the record did not contain data permitting an actual LOT adjustment.

Petitioner states that the Department rejected the respondent's claim in Large Newspaper Printing Presses from Japan. Petitioner asserts that the Department determined that, without first establishing the basis for LOT adjustment, a CEP offset is not authorized. Petitioner argues that Akzo, like the respondent in Large Newspaper Printing Presses from Japan, asserts that the mere use of CEP analysis is sufficient to establish that different LOT exist. Petitioner argues that the Department should reject this argument, as it did in Large Newspaper Printing Presses from Japan.

Akzo maintains that the 773(a)(7) of the Act directs the Department to deduct the CEP offset in the following situation:

> When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).

19 U.S.C. 1677b(a)(7)(B).

Akzo argues that the Department's decision to grant the CEP offset was not made solely because CEP was used. Instead, Akzo claims, it was based on Akzo's demonstration that different LOTs exist between the two markets, the home market was at a more advanced stage of distribution than the LOT of the CEP, and the LOT adjustment could not be quantified. Akzo also contends that it calculated and supplied the indirect selling expenses needed to measure the CEP offset. Akzo argues that it submitted the information related to the selling functions for the relevant comparison value. Akzo contends that the petitioner never objected to Akzo's claim or request for offset during the antidumping proceeding. Akzo argues that it fully responded to the Department's requests for information.

Akzo notes that, in the Large Newspaper Printing Presses from Japan case that the petitioner relied upon, the Department specifically distinguished the circumstances compelling rejection of the offset from the facts of this review.

Akzo argues that petitioner claims that the channels of trade and selling activities in each market are identical, but fails to compare the LOTs at the appropriate points. Akzo argues that the only undisputed aspect of the CEP offset in any proceeding to date is that the net CEP (i.e., after statutory adjustments on the U.S. side), not the selling price to the unrelated purchaser, is the starting point for determining whether there are differences in the LOT. Akzo argues that the petitioner focuses on the U.S. price before adjustments are made under Section 772(d).

Akzo maintains that the clearest standards from recent Department decisions for the criteria used in granting the offset is Antifriction Bearings (Other than Taper Roller Bearings) and Parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom, 61 FR 35713, (AFBs from France). The test for determining whether different levels of trade exist was described as follows:

> To test the claimed levels of trade, we analyzed the selling activities associated with the channels of distribution respondents reported. In applying this test, we expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

AFBs from France 61 FR 35718. Akzo argues that the circumstances of this case fit squarely with those of AFBs from France.

Akzo argues that the fact that the Department contrasted the facts in Large Newspaper Printing Presses from Japan with the preliminary results in the present case is evidence enough that the circumstances are different. Akzo argues that having used the aramid fiber preliminary results as the standard in Large Newspaper Printing Presses from Japan, it would be inappropriate for the Department to reverse the decision in the final results.

Department's Position: We agree with Akzo. In identifying the LOT for CEP sales, we considered only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act. Pursuant to section 773(a)(1)(B)(i) of the Act, we consider the selling functions reflected in the starting price of the home market sales before any adjustments.

Unlike Large Newspaper Printing Presses from Japan, the respondent in this case provided the information necessary to determine that LOT differences exist between the U.S. and home market sales. As explained in the preliminary results of this case, the facts on the record of this review establish that there is one LOT in the United States, and that the selling activities associated with the LOT of the CEP sales to the United States are different than the selling functions for sales in the home market. Further, the sales of PPD-T aramid fiber in the home market are at a more advanced stage of distribution than the CEP level of trade. Because the sales of PPD-T aramid fiber in the home market were all made at one LOT and there was no information regarding sales of other products by Akzo in the home market, any differences in the LOTs could not be quantified. Alternatively, there was no other information on the selling activities of other producers of the same

product or other similar products on the record on which to base a LOT adjustment. See Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Administrative Review, 61 FR 15766 (April 9, 1996). Therefore, a CEP offset is appropriate, and we are continuing to grant a CEP offset for these final results.

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)
Akzo	12/16/93–05/31/95	22.03

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 PPD-T aramid fiber from the Netherlands 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 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) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 66.92 percent, the ''all others'' rate established in the LTFV investigation (59 FR 32678, June 24, 1994). 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: September 25, 1996.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25246 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–812]

Dynamic Random Access Memory Semiconductors From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMs) from the Republic of Korea (61 FR 20216). Subsequent to the publication of these final results, the petitioner, Micron Technology, Inc. (Micron), and one respondent in this review (LG Semicon Co., Ltd. (LGS)), filed suit with the Court of International Trade (CIT) with respect to the Department's methodology used in calculating LGS' dumping margin. No suit was filed by any parties to this proceeding with respect to the dumping margin. No suit was filed by any parties to this proceeding with respect to the dumping calculations pertaining to the other respondent in this review, Hyundai Electronics Industries, Co., Ltd. (Hyundai). We have corrected four ministerial errors with respect to sales of subject merchandise by Hyundai. The errors were present in our final results of review. The review covers the period October 29, 1992, through April 30, 1994. We are publishing this amendment to the final results of review in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr. or Thomas F. Futtner, Office of AD/CVD Enforcement, Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0651/3814.

SUPPLEMENTARY INFORMATION:

Background

The review covers two manufacturers/exporters of DRAMs from the Republic of Korea (Korea): Hyundai and LGS, and the period October 29, 1992 through April 30, 1994. The Department published the preliminary results of review on September 11, 1995 (60 FR 47149), and the final results of review on May 6, 1996 (61 FR 20216).

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support

the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

The period of review (POR) covers from October 29, 1992 through April 30, 1994 for all respondents.

Ministerial Errors in Final Results of Review

After reviewing allegations of ministerial errors submitted by the petitioner and Hyundai, the Department determined that it should correct four clerical errors pertaining to Hyundai. The Department corrected the following clerical errors in the final results pertaining to Hyundai:

In the final results of review, we applied second-tier best information available (BIA) to Hyundai's embedded DRAM sales (see Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 20216 (May 6, 1996), Comment 9). However, we incorrectly applied this rate to the quantity of the embedded DRAM sales instead of to the value of the embedded DRAM sales. We adjusted our calculations by correctly applying BIA so as to assign the BIA rate of 11.16 percent to the value of the sales in question (see Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea Memorandum on Clerical Errors in the Final Results of Review, (DRAMS Clerical Error Memorandum) (August 30, 1996)).

In the margin calculations in the final results of review, we inadvertently omitted Hyundai's value added taxes (VAT), U.S. repacking expenses for certain sales, and revised profit for constructed value (CV) for comparisons to non-further-manufactured U.S. sales. We corrected the final calculations to include Hyundai's home market VAT, U.S. repacking expenses, and revised profit for CV (see DRAMS Clerical Error Memorandum).

Amended Final Results of Review

Upon correction of the ministerial errors listed above, the Department has determined that the following margin exists for the periods indicated:

Manufacturer/exporter	Percent margin
October 29, 1992 through April 30, 1994:	
Hyundai Electronics Industries	0.22

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hyundai will be zero percent; (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 in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 3.85%, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the 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 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 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 25, 1996.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25240 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–817]

Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski, or Erik Warga, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone:

(202) 482–3773, (202) 482–0631, or (202) 482–0922, respectively.

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'').

FINAL DETERMINATION: We determine that foam extruded PVC and polystyrene framing stock (''framing stock'') from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom 61 FR 22021, (May 13, 1996), the following events have occurred:

On May 16, 1996, respondent, Robobond Ltd. (''Robobond''), alleged the Department made two ministerial errors in its preliminary determination. The Department found that there were errors made in the preliminary determination; however, these errors did not result in a combined change of at least five absolute percentage points in, but no less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination. Accordingly, no revision to the preliminary determination was made. (*See* Memorandum from the Framing Stock Team to Barbara R. Stafford, June 6, 1996.)

On May 16, 1996, the Department issued a supplemental cost questionnaire to Robobond. Robobond submitted its response on May 31, 1996, and June 6, 1996.

On May 24, 1996, respondent, Magnolia Group Plc. (''Magnolia''), withdrew from the investigation.

In June 1996, we verified the questionnaire responses of Ecoframe Plc. (''Ecoframe'') and Robobond. Petitioner and respondents submitted case briefs on August 12, 1996, and rebuttal briefs on August 19, 1996. On August 22, 1996, petitioners protested that information in Ecoframe's rebuttal constituted new information. On August 23, 1996, the Department rejected certain new information contained in Ecoframe's rebuttal brief. The Department held a public hearing for this investigation on August 23, 1996.

On September 3, 1996, the Department requested certain information from Ecoframe regarding its quantity adjustment claim. Ecoframe responded on September 5, 1996. Petitioners submitted comments on September 9, 1996.

Scope of Investigation

This investigation covers all extruded PVC and polystyrene framing stock regardless of color, finish, width or length. Finished frames assembled from foam extruded PVC and polystyrene framing stock are excluded. The merchandise under investigation is currently classifiable under subheadings 3924.90.20.00; 3926.90.90.90; 3926.90.95.90; and 3926.90.98.90 of the Harmonized Tariff Schedules of the United States (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is September 1, 1994, through August 31, 1995.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information by the deadlines for the submission of information or in the form and manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because respondent Magnolia withdrew from the proceeding following the preliminary determination, Magnolia's questionnaire response information on the record is unverifiable. Therefore, we must use facts otherwise available with respect to Magnolia.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. (See also Statement of Administrative Action, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994) (''SAA'').) Magnolia's failure to participate following the preliminary determination and to agree to verification of its information on the record demonstrate that Magnolia has failed to cooperate to the best of its ability in this investigation. In past cases, when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. (See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium 58 FR 37083, (July 9, 1993).) Therefore, the Department has determined that, in selecting among the facts otherwise available with respect to Magnolia, an adverse inference is warranted. As facts otherwise available, we are making an adverse inference and assigning to Magnolia the margin calculated based on its submitted information at the preliminary determination [1] of 84.82 percent. This rate is the higher of the highest margin alleged in the petition, or the highest calculated rate of any respondent in the investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise by respondents to the United States were made at less than fair value, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i), we compared the weighted-average EP to the weighted-average NV during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics, comparable quantities and level of trade.

A. Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the Scope of Investigation section, above, produced in the United Kingdom (''UK'') and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (in order of preference): material; weight per linear foot; profile

[1] Following the preliminary determination minor errors were found in the margin program. These errors have been corrected for the final determination.

type; width; finish type (pasta/compo, foil, mylar, laminated/wrapped, embossed plain substrate, embossed substrate with foil, embossed substrate with mylar, wet system (*e.g.*, paint, or other); and total number of finishes.

B. Comparable Quantities

In this investigation, Ecoframe requested the Department to make fair value comparisons of its sales at comparable quantities. We have examined the sales information submitted by Ecoframe and determined that this methodology is appropriate. (For further discussion, *see* ''Interested Parties' Comments'' section of this notice.) Where there were no home market sales of the most similar merchandise at comparable quantities to match to U.S. sales, we compared the U.S. sales to the weighted-average of the most similar foreign like product.

C. Level of Trade

Based on our findings at verification, there was no support for Robobond's level of trade claim. Therefore, level of trade was not a factor in Robobond's final margin calculations. (For further discussion, *see* ''Interested Parties' Comments'' section of this notice.)

Export Price

In accordance with subsections 772 (a) and (c) of the Act, we calculated EP for each of the respondents where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. Use of constructed export price was not otherwise warranted based on the facts of record.

We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions:

Robobond

Adjustments to reported sale terms, payment dates, and international freight were made based on verification findings. We made adjustments for verified commission expense on certain U.S. sales in the final margin calculation. Credit expense was recalculated to reflect the verified short-term interest rate. (For details, see September 25, 1996, Final Determination Calculation Memorandum for Robobond.)

Ecoframe

Minor adjustments to reported sales data were made based on verification findings. (For details, see September 25, 1996, Final Determination Calculation Memorandum for Ecoframe.)

Normal Value; Cost of Production Analysis

In the preliminary determination, the Department found reasonable grounds to believe or suspect that each respondent made sales in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether the respondents made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act.

Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of each respondent's cost of materials and fabrication used in producing the foreign like product, plus amounts for home market general and administrative expenses (''G&A'') and packing costs in accordance with section 773(b)(3) of the Act.

B. Test of Home Market Prices

We used the respondents' adjusted weighted-average COP to test home market prices. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices, within an extended period of time, in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of COP Test

In accordance with section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we considered such below-cost sales not to be made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we disregarded those sales because we consider to be made in substantial quantities within an extended period of time (in accordance with section 773(b)(2)(B) of the Act) and 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).

Where there were no above-cost sales available for matching purposes, export prices that would have been compared to home market prices for these models were compared instead to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, selling, general, and administrative expenses (''SG&A''), profit and U.S. packing costs as reported in the U.S. sales databases. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price to CV Comparisons

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses (where appropriate) in accordance with section 773(a)(8) of the Act.

Adjustments to COP and CV

We based COP and CV on the same methodology used in the preliminary determination, with the following exceptions:

Ecoframe

Minor adjustments to reported costs were made based on verification findings. (See Memorandum to the file from Michael Martin dated July 30, 1996 (''cost verification report'').)

Robobond

Robobond's reported G&A expense was adjusted to include a figure for dividends. An amount for building depreciation expense was added to reported total depreciation expense. Robobond's reported depreciation expense for equipment was adjusted to reflect depreciation expense calculated in accordance with the depreciation methodology historically used by the company. (For above-noted adjustments concerning Ecoframe and Robobond, see ''Interested Party Comments.'')

Adjustments to Normal Value

We based normal value on the same methodology used in the preliminary determination, with the following exceptions:

Ecoframe

Minor adjustments to reported sales data were made pursuant to verification

findings. Additionally, credit expense was recalculated to reflect the verified short-term interest rate used by Ecoframe.

Robobond

Minor adjustments to reported sales terms, inland freight, and payment dates were made pursuant to verification findings. Certain reported direct selling expenses were treated as indirect selling expenses. Credit expense was recalculated to reflect the verified short-term interest rate used by Robobond. (For details concerning these adjustments, *see* ''Interested Party Comments'' in this notice.)

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions 61 FR 9434, (March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the U.K. pound did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Robobond

Comment 1: Final Determination *Based on Adverse Facts Available*

Petitioner asserts that Robobond has misled the Department during the course of this investigation through a series of omissions, discrepancies, and misrepresentation of data provided on the record. While certain misstatements and inaccuracies in the information supplied by Robobond may be inadvertent, petitioner maintains that other instances appear to be deliberate attempts by Robobond to mislead the Department and to manipulate and distort the results of this proceeding. Petitioner submits that the cumulative impact of the omissions and misrepresentations attributable to Robobond render Robobond's responses inherently unreliable as a whole. As such, petitioner requests the Department to reject Robobond's responses for the final determination and assign it a margin based on the most adverse facts available.

Robobond counters that there is no merit whatsoever in petitioner's claims that Robobond misled the Department. Robobond maintains that its sales and cost of production data were successfully verified, and those topics for which discrepancies were noted involve only minor issues which can easily be corrected for the final determination. Accordingly, Robobond urges the Department to reject petitioner's allegations.

DOC Position

Certain discrepancies and omissions in Robobond's reported sales and cost data were discovered during verification (*see e.g.*, comment 6 below, regarding missing accounting records). However, the discrepancies and omissions do not warrant the use of adverse facts available. Such errors will be addressed individually. (See, *e.g.*, Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review 61 FR 18558 (April 26, 1996).)

Comment 2: International Freight

For certain sales observations where international freight was incorrectly reported as zero, Robobond argues that these omissions were clerical errors, consistent with criteria recently announced in Certain Fresh Cut Flowers from Ecuador; Final Results of the Antidumping Duty Administrative Review, 61 FR 37044, (July 16, 1996) [2] (''Flowers''). According to Robobond, the omission of international freight from these sales constitutes inadvertent errors that satisfy the test set forth in Flowers and should be treated accordingly.

Further, Robobond contends that the use of the highest reported per unit international freight figure would unnecessarily overstate the actual international freight cost associated with the sales in question. Robobond notes that application of the highest reported figure is inconsistent with the Department's actions regarding errors in international freight described in the sales verification report for Ecoframe, the other UK respondent in this investigation.

Alternatively, if the Department does not decide that these omissions constitute clerical errors, Robobond suggests that the Department apply a weighted-average freight expense from the initial invoice or invoices to the correcting invoice as a more reasonable method of adjustment.

Petitioner argues that Robobond's failure to report international freight for certain U.S. sales clearly does not constitute an inadvertent error, but was either a methodological error, error in judgement, or substantive error, within the definition given in Flowers. Petitioner requests that the Department reject Robobond's claims for the correction of clerical errors because Robobond has not satisfied the test set forth in Flowers, and assign the highest reported international freight rate per linear foot to these sales transactions.

DOC Position

The test set forth in Flowers defines a clerical error as being ''not a methodological error, an error in judgement, or a substantive error.'' In the case of the one invoice (4275), where international freight was not reported for one out of 23 line items, we agree with Robobond's assessment that this was a clerical error. The fact that international freight was reported for all line items listed on the invoice except for one (amounting to 6% of total sales

[2] ''* * * We will accept corrections of clerical errors under the following conditions: (1) The error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification.'' (pages 37044–37045)

value and 9% of total footage of the invoice) indicates that this movement expense was inadvertently missed when compiling the database. Accordingly, we have treated this omission as a clerical error for the final determination.

With respect to the other six invoices in question, we determine that the omission does not constitute a clerical error. The omission of international freight figures for certain reported sales resulted where certain product line items listed on the delivery notes (and transported to the customer) were overlooked by invoicing staff when preparing the original sales invoice. Subsequently, additional invoices were issued to account for the missed product line items on the original invoice. When compiling the sales database, however, Robobond neglected to account for international freight for these six invoices even though it was known that international freight was provided for these sales. This omission occurred consistently for six invoices which were issued under similar circumstances. In all six instances, the actual invoice document noted the error and, in most cases, referred to the original sales invoice. Accordingly, we find that Robobond did not act to the best of its ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, we are applying the highest international freight figure reported for merchandise listed in the original invoice for the six invoices in question.

Comment 3: Error in Calculating International Freight

For sales listed on one sales invoice (invoice 4331), petitioner notes that the international freight figure was understated because the amount of the expense was incorrectly billed to the U.S. customer at a lower rate. Therefore, petitioner requests that the Department make a correction to account for this understatement.

DOC Position

We agree with petitioner and have corrected this error accordingly.

Comment 4: Exclusion of Certain Reported Sales

Robobond asserts that certain reported sales should not be considered in the final margin calculation because those transactions are not sales to the ''first unaffiliated U.S. customer.'' According to Robobond, these sales were of merchandise initially sold to a U.S. customer, but portions of these sales were not paid for and, subsequently, they were directed to another U.S. customer. Robobond requests that these sales be excluded from the final margin calculation. Alternatively, if the Department were to include these sales in its final margin calculation, Robobond requests that the Department use a weighted-average international freight cost of the initial invoice to calculate the freight cost for the subsequent sale.

Petitioner counters that the sales in question should be considered in the final margin calculation. According to petitioner, the initial sales to the U.S. customer were not actually concluded because the customers did not pay for the merchandise or keep the merchandise. Petitioner requests the Department reject Robobond's argument and consider applying international freight for these reported sales based upon facts available.

DOC Position

We agree with petitioner. The transactions in question were sales by Robobond of returned goods to the first unaffiliated U.S. customer. Accordingly, these sales are included in the final margin calculation.

Additionally, Robobond's argument for using weighted-average international freight fails to address the fact that the cost to transport the merchandise from the UK to US was not reported for these sales even though such freight costs were incurred by Robobond. We do not consider the omission of the known freight expense for all five invoices to be a clerical error and, accordingly, we find that Robobond did not act to the best of its ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, we have applied the highest reported international freight figure per linear foot.

Comment 5: Affiliated Party

Petitioner asserts that an unreported affiliated party was disclosed at verification. Robobond counters that the status of the alleged affiliated party was thoroughly examined at verification where it was found that the company in question was dissolved prior to the POI and, therefore, should not be considered a factor in determining whether to base the final determination on facts available.

DOC Position

We agree with Robobond. Company records from the U.K. Registrar of Companies were examined for all listed shareholders of Robobond, Robam, D&J Simons, Ltd., D&J Simons & Sons, Ltd, Danant Holdings and Gransim Properties. As noted in the verification report, no discrepancies were discovered concerning the corporate structure and affiliated parties reported by Robobond. Therefore, this issue does not require further consideration for purposes of the final determination.

Comment 6: Accounting Records

Petitioner contends that Robobond's accounting records were incomplete to the extent that the Department was precluded from verifying the accuracy of Robobond's questionnaire responses and, in particular, reconciling Robobond's reported quantity and value of sales during the POI. Because of this deficiency at verification, petitioner requests the Department to reject Robobond's responses and determine that the most adverse inference is warranted in the selection of facts otherwise available for purposes of the final determination.

Robobond counters that the Department's verification report makes no mention of any major discrepancies in its review of company sales and accounting records for the POI. Robobond maintains that to the extent that accounting records were incomplete, this did not hinder the Department's verification. Further, Robobond notes that, according to the verification report, nominal ledger daybooks and sales invoice files were available for verifying completeness.

DOC Position

We consider Robobond's reported volume and value of sales to be verified as complete and accurate for purposes of this investigation. While the missing accounting records are a cause for concern, as noted in the Department's verification report, source records and nominal ledger daybooks were available for review and used for reconciling Robobond's reported volume and value of sales and testing completeness of Robobond's reported sales of subject merchandise made during the POI. Therefore, there is no basis for making a final determination in this proceeding based solely upon facts available.

Comment 7: Level of Trade

Petitioner contends that Robobond made statements supporting its level of trade claim that were subsequently proven false at verification. According to petitioner, such misleading statements reflect Robobond's consistent equivocation on the record of this proceeding and, therefore, the Department should use facts available for the final determination.

Robobond maintains that it stated nothing false on the record of this proceeding. According to Robobond, all statements made concerning its sales

process, size of orders, and inventory maintenance in support of its level of trade claim were accurate. Robobond requests the Department to dismiss petitioner's assessment of these statements.

DOC Position

We did not grant Robobond's level of trade claim for the preliminary determination because it did not provide sufficient information to indicate that separate levels of trade existed (*see* May 3, 1996, Decision Memorandum from the Team to Deputy Assistant Secretary Barbara Stafford). Verification failed to disclose any evidence to support Robobond's claim that its sales were made at different levels of trade. Therefore, the Department has rejected Robobond's alleged level of trade claim.

Comment 8: Treatment of Commission Expense

Petitioner contends that there is no reasonable basis to conclude that no other commission payments were made for sales of subject merchandise during the POI because Robobond's accounting records were incomplete. Therefore, for the final determination, petitioner requests the Department to apply a commission expense to all sales made during the three-month period of the POI for which the accounting records were incomplete.

Robobond submits that it properly reported relevant commission expense data prior to verification, in accordance with the Department's regulations, and notes that the verification report disclosed no discrepancies regarding this subject. Therefore, Robobond argues an application of a commission expense to U.S. sales as facts available is unwarranted.

DOC Position

The commission expense was reported by Robobond to the Department prior to verification. As noted in the verification report, with the exception of the reported commission payment, no evidence of any other commission payments were discovered to be linked to any POI sales of the subject merchandise. Therefore, we have considered the verified commission expenses relating to U.S. sales observations in the final margin calculation.

Comment 9: Home Market Direct Selling Expenses

Bank Charges (Returned Check Fees)

Petitioner asserts that the sales verification revealed that the returned check fees, reported by Robobond as direct selling expenses, were not the actual expenses charged by the bank. The difference between the reported and verified amounts for this expense, petitioner contends, was grossly overstated and, as such, should be rejected as a direct selling expense.

Robobond contends that the actual difference between the reported and verified amounts was insignificant when compared to the total value of home market POI sales. Robobond argues the difference cannot be characterized as an ''extreme overstatement'' of the expense. Therefore, the Department should reject petitioner's arguments.

DOC Position

As stated in the verification report, the returned check fees reported by Robobond were not the actual amounts charged by the bank for returned checks. However, the Department was able to verify the actual returned check fees charged to Robobond. We agree with Robobond that the difference between what was reported and what was verified is negligible in proportion to the home market sales database and does not warrant the use of facts otherwise available. We have therefore corrected this field in Robobond's database to reflect the verified amounts of returned check fees.

Freight Revenue (credit notes clearing customer accounts that were incorrectly billed for freight)

Petitioner asserts that verification revealed Robobond over-credited certain customers for freight, thereby improperly inflating the adjustment to normal value. Therefore, petitioner argues the Department should reject freight revenue as a direct selling expense.

Robobond contends that it reported the amount actually credited to the customer's account when the freight charges were removed. Therefore, Robobond argues that it appropriately reported the actual credits incurred and the Department should adjust the normal value accordingly.

DOC Position

We agree with petitioner, in part. At verification, it was revealed that, due to the nature of the expense, the freight credit should not exceed the amount reported for freight revenue. Where this situation occurred in Robobond's database, we find that Robobond did not act to the best of its ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, we have used, as the facts available, zero in this expense field. However, the remaining freight revenue was verified. Accordingly, this error does not warrant rejecting the entire expense.

Shortage Credits

Petitioner cites Robobond's submissions stating that there were no referenced invoices on the face of the credit notes issued by Robobond for shortages. Petitioner argues that verification found this statement to be false and, as such, the Department should reject this adjustment as a direct selling expense.

Robobond contends that the allocation methodology is correct, in that Robobond believed that these credit notes incorrectly identified the applicable invoice. Therefore, allocating the credit notes on a customer-specific basis, Robobond contends, is an acceptable methodology.

DOC Position

Verification revealed that the shortage credit notes could be accurately tied to specific invoices. Therefore, we have allocated the credit notes to the applicable invoices.

Return Freight Charges (freight charges for merchandise returned to Robobond)

Robobond asserts that it adequately tied certain returned freight charges (DIRSEL7B) to the appropriate customer. Regarding the remaining returned freight charges (DIRSEL7A), Robobond contends that the freight company did not provide sufficient documentation to link the freight charges to a specific customer. Therefore, the charges were allocated over total sales during the POI. Robobond argues that the methodology used is legitimate and the adjustments should be accepted as direct selling expenses for the final determination.

Petitioners argue that because the returned freight charges listed in DIRSEL7A could not be tied to sales within the POI, the expense should be considered indirect. As for the returned freight charges listed in DIRSEL7B, Petitioners believe that the credit notes did not adequately establish that they were tied to sales within the POI and as such should be considered indirect.

DOC Position

We agree with petitioner in part. The antidumping questionnaire directs respondents to report those expenses which can be directly tied to a sale within the POI as direct selling expenses. Where an expense cannot be tied to a sale within the POI, the expense is considered indirect. Therefore, we treated the returned

freight charges which were not tied to a sale within the POI as indirect selling expenses for purposes of the final determination. As for the remaining returned freight expenses (i.e., those expenses tied to a specific customer) we determine that the documentation provided at verification adequately established that the expenses were tied to sales during the POI. Accordingly, we have considered these to be direct selling expenses for purposes of the final determination.

Freight Credit (credit notes issued by the freight company to Robobond)

Petitioner argues that Robobond failed to tie the credit notes issued by the freight company to specific sales during the POI. As such, petitioner contends that these expenses should be considered indirect.

DOC Position

We agree with petitioner in part. The antidumping questionnaire directs respondents to report those adjustments which can be directly tied to a sale within the POI as direct. Where an adjustment cannot be tied to a sale within the POI, it is considered indirect. Therefore, we treated the freight credits which were not tied to a sale within the POI (DIRSEL6A) as indirect selling expenses for purposes of the final determination. As for the remaining freight credits (DIRSEL6B), we determine that the documentation provided at verification adequately established that the revenues were tied to sales during the POI. Accordingly, we have considered these to be direct for purposes of the final determination. (See Memorandum to the File from the Framing Stock Team, September 25, 1996, for a discussion of specific freight credit notes.)

Bankruptcy Credit Notes (credit notes issued to clear the accounts of customers that went bankrupt)

Robobond contends that the Department should accept the bankruptcy credit notes reported in its database as a direct selling expense. Robobond cites *Daewoo Electronics Company Ltd.* v. *United States*, 712 F. Supp. 931, 938 (CIT 1989), *aff'd in part and rev'd in part on other grounds*, 6 F.3d 1511 (Fed. Cir. 1993), cert. Denied, 114 S. Ct. 2672 (1994) and Color Television Receivers from the Republic of Korea 61 FR 4,408, February 6, 1996) as supporting its position that these credit notes have been accepted in the past as bad debt expense which is treated as a direct selling expense.

Petitioners argue that the credit notes could not be tied to sales within the POI and, therefore, should be considered an indirect selling expense.

DOC Position

We agree with Robobond. The Department verified the bad debt expenses and found these expenses to be incurred with respect to sales of the subject merchandise and to specific customers which went bankrupt during the POI. Furthermore, we found no discrepancies with respect to the allocation methodology. We have therefore, accepted these expenses as direct selling expenses for purposes of the final determination.

Accounts Receivable (credit notes to clear the outstanding balance of customer's accounts)

Petitioner contends that Robobond deliberately attempted to manipulate the sales database by issuing credit notes to clear the outstanding balance of certain customers. Petitioner argues that the Department should reject the credit notes as a direct selling expense. Instead, petitioner contends, the Department should calculate the imputed credit expense on the total amount of the credit notes, for each customer, from September 1, 1994, through the present and apply that credit expense to every sale made by Robobond to the customer in question as the facts otherwise available.

Robobond disputes petitioner's interpretation as unreasonable and contends the use of the facts otherwise available is not justified because none of the criteria of Section 776(a)(2) of the Act are applicable in this situation. Finally, Robobond asserts that if the Department disagrees with the classification of these credit notes as direct selling expenses it should simply treat them as indirect.

DOC Position

The documentation regarding the accounts in question was thoroughly examined at verification. While we do not find evidence that the data were manipulated for the purposes of this proceeding, the credit notes in question could not be tied to specific sales during the POI. We have therefore treated this expense as indirect.

Remaining Credit Notes

Petitioner contends that the discrepancies found during the review of the randomly sampled credit notes additionally call into question the reliability and credibility of Robobond's responses. Petitioner argues that, due to the abundant discrepancies found at verification, the Department should assign to Robobond a margin based on the facts otherwise available.

Robobond argues that it correctly reported its credit notes and that the Department should disregard petitioner's claim.

DOC Position

We disagree with petitioner. Verification revealed minor errors with respect to two credit notes. These errors have been corrected for the final determination. As for not using total adverse facts available, see, interested party comment 1.

Comment 10: Home Market Warranty Claims (based on credit notes)

Robobond asserts that the questionnaire directs respondents to report warranty expenses on a product-specific basis. If this is not possible, Robobond continues, the respondent should use a broader allocation basis (*i.e.*, a customer-specific basis), not a narrower invoice-specific basis (*i.e.*, tying warranty credit notes to specific sales during the POI). Robobond cites Antifriction Bearings and Parts Thereof from Germany: Final Results of AD Administrative Review 56 FR 31692, (July 11, 1991) (''AFBs from Germany''), to support its claim that the methodology used is consistent with the Department's established practice regarding warranty expenses. Moreover, Robobond argues that it would have been impractical and unduly burdensome to report warranty expenses on an invoice-specific basis. Therefore, Robobond contends that it correctly reported its warranty expenses and the Department should adjust normal value accordingly.

Petitioner argues that Robobond was unable to produce historical warranty expense information. Additionally, not all of the warranty credit notes could be tied to sales within the POI (*i.e.*, on an invoice-specific basis). Therefore, the Department should reject Robobond's reported warranty expenses. Further, petitioner contends that AFBs from Germany does not support Robobond's argument, instead it confirms that Robobond ignored the Department's stated policy regarding warranty expenses in that the acceptance of surrogate product-specific data is acceptable only when the respondent has provided the Department with historical warranty expense data with which to measure the reasonableness of the product-specific data.

DOC Position

We agree with Robobond. As stated in AFBs from Germany:

With respect to warranty expense, our past practice has been to accept variable warranty expenses which were incurred during the review period as a surrogate for such expenses actually incurred on sales during the review period, provided such expenses reasonably reflect the firm's historical experience with respect to warranty expenses. We use a surrogate expense amount because warranty commitments for sales under review may not reach fruition until after the review period is over. Therefore, the Department does not require a sale-by-sale breakdown of direct warranty expenses, just a reasonable allocation of these expenses.

(AFBs from Germany, 56 FR at 31723.)

In this case, as in AFBs in Germany, we are satisfied that the accounting system of Robobond prevents reporting these expenses on a sale-by-sale basis or compiling historical data. Therefore, we have determined that the verified allocation for warranty expense is accurate, reasonable, and complete.

Comment 11: Home Market Credit Expense

Robobond argues that the Department should accept the verified home market short-term interest rate reported in its questionnaire response to calculate home market credit costs.

Petitioner contends that the Department should not accept the reported short-term interest rate and should instead base credit expense on the equivalent interest rate plus 1.5 per cent (*i.e.*, for U.S. sales, the U.S. prime rate plus 1.5 per cent and for home market sales, the U.K. interest rate equivalent to the U.S. prime rate plus 1.5 per cent).

DOC Position

We agree with Robobond. The documentation regarding the Robobond's short-term interest rate agreement was thoroughly examined at verification—no discrepancies were noted. We have therefore used the reported interest rate in our final calculations.

Comment 12: Depreciation

Petitioner asserts that Robobond should not be permitted to selectively change its depreciation methodology during the POI in order to lower costs. Petitioner notes that Robobond's May 31, 1995, financial statement indicates that this change in accounting methodology reduced the company's depreciation expense and POI production costs by a significant amount. According to petitioner, the change in depreciation methodology was made well after this investigation was initiated. Moreover, petitioner notes that Robobond has continued to depreciate all other categories of assets on the basis of its normal accelerated depreciation methodology and the company's parent and sister companies also continue to use an accelerated methodology on all of their assets. Expenditures for plant and machinery, the only class of assets subject to the change in depreciation methodology, increased in the fiscal year ending May 31, 1995. Robobond's change in depreciation methodology is nothing more than an after-the-fact attempt to artificially reduce production costs.

Respondent maintains that the Department should use Robobond's submitted plant and machinery depreciation expense because it accurately reflects the company's POI depreciation expense. Robobond argues that the accelerated depreciation methodology it followed in the past reflected the uncertainty of any given asset's useful life, while Robobond was developing the subject merchandise. However, with the establishment of its new facility and equipment, Robobond maintains that it has the right to adopt a depreciation methodology more representative of the assets' useful lives. Moreover, the methodology adopted by Robobond is an acceptable methodology under the generally accepted accounting principles (''GAAP'') of the UK. Robobond further argues that under section 773(f)(1)(A) the Department must calculate costs ''based on the records of the exporter or producer of the merchandise'', if those records are in accordance with the country's GAAP and reasonably reflect the costs associated with the production of the subject merchandise.

DOC Position

We disagree with Robobond. Section 773(f)(1)(A) of the Act states that ''[c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.'' Further, as explained in the SAA, ''[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.'' SAA at 834.

In this instance, Robobond historically used an accelerated depreciation methodology in preparing its financial statements. Notwithstanding this long-established practice, Robobond has now changed to a straight-line depreciation method in its financial statements (as reflected in Robobond's May 31, 1995, statements), which were completed after the filing of the petition in this proceeding. Moreover, this change in methodology is limited solely to calculating depreciation expense for equipment; all other assets continue to be depreciated according to the historically utilized methodology. Also, Robobond's financial statements, prepared by outside auditors, do not provide any business reason for this change.

In past cases, where respondents have switched accounting methodologies following the initiation of an investigation, the Department has closely examined such modifications and has rejected those changes which do not reasonably reflect costs and which redounds to the benefit of the respondent in the proceeding. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil, 58 FR 37091 (July 9, 1993); Amended Order and Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Venezuela, 60 FR 64018 (December 13, 1995).)

Where changes in historically-utilized company practice are made contemporaneous to the investigation, the burden plainly is on the respondent to show that the change was made for business reasons other than the AD proceeding and that the new methodology reasonably reflects the company's costs of producing subject merchandise. In such circumstances, the fact that a changed methodology is permissible under GAAP will not automatically justify the change if there is no legitimate business reason.

Robobond asserts that the change in depreciation methodology was due to the opening of a new production facility at the beginning of the fiscal year. However, the company's records and other record information do not provide evidence in support of this assertion. As to Robobond's assertion that the change in methodology was in accordance with the UK's GAAP, Robobond has presented no information in support of its arguments that the straight-line depreciation methodology more reasonably reflects costs than its historically-used accelerated methodology, which also is in accordance with UK's GAAP. With

regard to Robobond's comments on useful life, we note that both methods use the same estimate of useful life; however, the accelerated method allocates more of the expense in the early years. Additionally, the notes to Robobond's May 31, 1995, financial statements state that the change in depreciation methodologies reduces the depreciation expense relative to the expense calculated according to the historically-utilized methodology.

In sum, in light of the evidence of record, we find that Robobond has not met its burden on this issue. The record evidence does not reflect that this methodological change was done for business reasons. Although Robobond provided post-hoc rationalizations for the change, it did not provide record evidence from a time period prior to the initiation of the investigation to show that the change was made for business reasons. Additionally, the SAA indicates that the exporter will be expected to demonstrate that it has historically utilized such accounting practices. Robobond has not historically used the straight-line method of depreciation in its accounting records. Further, Robobond did not consistently apply this change in methodology to all of its asset categories.

For purposes of the final determination, we therefore are adjusting Robobond's reported depreciation expense to reflect depreciation calculated according to its historically-utilized method.

Comment 13: G&A Expense

Petitioner contends that there is ample evidence on the record that the various companies owned by the Simons family are related for purposes of this dumping investigation. According to petitioner, in such situations, the Department normally combines the G&A expense of all related companies and then allocates the aggregate total across the consolidated cost of sales of those companies. In addition, petitioner notes that Robobond submitted for the record on June 6, 1996, the D&J Simons and Sons, Ltd. financial statements for the fiscal year ending October 31, 1995. The end of D&J Simons & Sons' 1995 fiscal year extends approximately seven weeks beyond the initiation of this investigation. The Department normally derives G&A and financial expense ratios from data contained in the financial statements for the fiscal year that most closely corresponds with the POI. However, petitioner argues that these financial statements cannot be used because Robobond has manipulated the information contained in them. Specifically, petitioner notes that the historical amounts paid for compensation decreased significantly in the October 31, 1995, financial statements. Furthermore, it appears that some compensation was purposefully shifted to dividends rather than normal methods in order to further reduce period costs.

Robobond counters that the Department should use Robobond's submitted G&A expense because they accurately represent the POI expense associated with the subject merchandise. Robobond maintains that its reported G&A expense included its own expense, as well as, those G&A expenses incurred by affiliates on its behalf. Additionally, Robobond notes that the Department verified that Robobond identified all G&A expenses incurred by affiliates on the company's behalf. According to Robobond, the fact that its affiliates neither produce nor sell the subject merchandise defeats any presumption that the remaining G&A expenses incurred by the affiliates are incurred on behalf of Robobond.

DOC Position

We agree with respondent in part. Verification showed no evidence to indicate that Robobond misreported its G&A expenses for itself or any of its affiliates.

While petitioner is correct in observing that directors' compensation as reported was significantly lower in Robobond's October 31, 1995, financial statement than in previous years, it appears that Robobond reallocated the difference in directors' compensation to its pension fund, which is captured along with directors' salaries in Robobond's reported G&A. Additionally, dividends were issued to Robobond's shareholders as another portion of the directors' compensation package.

Additionally, where a manager/owner in a closely-held company could potentially reallocate costs through the issuance of dividends in lieu of directors' salaries, we reviewed the Robobond's past practices on issuing dividends and found that Robobond has never issued dividends in prior years. This change in policy reallocates directors' compensation to dividends. Further, this change in policy on issuing dividends occurred following the initiation of this investigation. For purposes of the final determination, we have adjusted Robobond's reported G&A figure to include dividends.

Comment 14: Building Depreciation

To avoid double counting for the same type of expense, Robobond contends that the Department should include in COP and CV only building maintenance and not building depreciation. Robobond notes that, under UK accounting principles, a company may not report depreciation on a freehold building (*i.e.*, an estate held in fee) if it elects to maintain the building in a manner that preserves or extends its useful life and to record, as current expense, the cost of maintaining the buildings. Accordingly, Robobond requests that the Department include only building maintenance expense in calculating Robobond's COP because: (1) Building maintenance expenses are recorded in Robobond's normal cost accounting records, and (2) Robobond does not record building depreciation in its normal course of business.

DOC Position

As noted in the previous comment concerning depreciation, Section 773(f)(1)(A) of the Act directs the Department to calculate COP based on the company's records if those records are in accordance with the country's accepted practice and reasonably reflect the costs associated with the production of the subject merchandise. While the UK accounting principles do not require companies to depreciate buildings, U.S. accounting principles require building depreciation as a means of cost allocation. Under UK GAAP the cost of the building is never recognized as an expense, however, U.S. GAAP recognizes both the cost of the building and the maintenance as expenses, in order to properly match the expenses to revenues. Routine building maintenance expense, therefore, does not capture associated building depreciation. In this instance, we find that the accounting principles of the UK do not reasonably reflect the costs associated with the production of the subject merchandise. For the final determination, we have included building maintenance expenses and building depreciation expense in calculating Robobond's COP.

Ecoframe

Comment 15: Start-Up Costs

Petitioner argues that the Department should not make a startup adjustment to Ecoframe's cost of production. Petitioner contends that Ecoframe failed to provide sufficient evidence that it meets the criteria under Section 773(f)(1)(C)(ii) of the Act. Specifically, petitioner argues that Ecoframe failed to establish that it was still in the start-up phase during the POI and that production levels were limited by technical factors associated with the initial phase of commercial production.

Petitioners argue that the POI in this case starts nine months after Ecoframe commenced production of framing stock and was therefore well into full operation during the POI.

Petitioner argues that the yield loss information provided by Ecoframe is not evidence of technical factors associated with the initial phase of commercial production. Further petitioner's own analysis indicates that these yield losses are a normal part of routine production, and are most probably indicative of the degree of ornateness of the profiles produced. The more ornate the profile the higher the yield loss. Finally, petitioner argues that respondent must demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to start-up such as chronic production problems, demand, or business cycle.

Ecoframe argues that it provided sufficient information to warrant a startup adjustment to the cost of production. Specifically, Ecoframe points to the fact that the plant had been operational for less than two years by the end of the POI and at that time even the major U.K. manufacturer of framing stock was still producing substandard moulding. Ecoframe also contends that numerous technical factors were limiting initial production during the POI. Therefore, the Department should make a startup adjustment to Ecoframe's cost of production.

DOC Position

We agree with petitioners. According to section 773(f)(1)(C)(ii) of the Act adjustments ''shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.''

The SAA also states ''any determination of the appropriate startup period involves a fact-intensive inquiry.'' This includes a consideration of ''factors unrelated to startup operations that may have affected the volume of production processed, such as demand, seasonality, or business cycles.'' The SAA further states that the ''start-up [period] will be considered to end at the time the level of commercial production characteristic of the merchandise, producer, or industry concerned is achieved. The attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well be for a company achieves optimum capacity utilization.'' SAA at 836 (emphasis added). Moreover, ''[t]o determine when a company reaches commercial production levels, Commerce will consider first the actual production experience of the merchandise in question.'' SAA at 836.

In this case, although Ecoframe was using new production facilities and techniques, the Department does not have sufficient information on the record to determine when the start-up period ended and the commercial production period began. Specifically, Ecoframe did not submit a production level analysis demonstrating that it had not yet reached full commercial production levels. Such an analysis would include information distinguishing the production levels, the product cost levels, and the prices during the start-up phase and the commercial phase. Furthermore, the analysis would have to address ''factors unrelated to start-up operations that may have affected the volume of production processed, such as demand, seasonality, or business cycles.'' SAA at 837.

Ecoframe only provided information that its yield losses decreased dramatically in March 1996. The start-up adjustment is not intended to adjust for high yield losses experienced by respondent, but rather it is intended to state product costs at amounts realized when commercial production levels are reached. Yield losses are only one factor that would have to be considered in such an analysis. In this regard, the SAA states that ''Commerce will not extend the start-up period so as to cover improvements and cost reductions that may occur over the entire life cycle of a product.'' This suggests that improvements in product yields over time do not constitute ''start-up costs.'' SAA at 836.

In sum, we reject Ecoframe's claim for a start-up adjustment because it did not demonstrate the existence of a start-up phase that warrants such treatment under section 773(f)(1)(C)(ii) of the Act.

Comment 16: Quantity Adjustment

Ecoframe stated that all its products are custom products and as such are made to order. Because everything is made to order, Ecoframe contends, numerous factors reduce the unit cost of the product as the order size increases. Therefore, in order to make an accurate comparison the Department must match at comparable quantities. Where a match at comparable quantities is not possible, an adjustment should be made to account for the price differences based on order size.

Petitioner contends that Ecoframe's request is untimely and unsupported by evidence on the record. Specifically, petitioner cites 19 CFR 353.55(b) which states that the calculation of normal value based on sales with quantity discounts will occur if:

(1) During the period examined or during a more representative period, the producer or reseller granted quantity discounts of at least the same magnitude on 20 percent or more of sales of such or similar merchandise for the relevant country; or

(2) The producer or reseller demonstrates to the Secretary's satisfaction that the discounts reflect saving specifically attributable to the production of different quantities.

Petitioner argues that Ecoframe's responses fail to demonstrate a clear and direct correlation between price differences and quantities sold or costs incurred.

DOC Position

We agree with Ecoframe in part. Information on the record demonstrates that the prices between the different quantity bands were sufficiently varied to warrant comparisons at comparable quantity bands, where possible as outlined in Ecoframe's September 5, 1996, submission (*see* ''Fair Value Comparisons'' section of this notice). Ecoframe, however, did not provide sufficient information to warrant a quantity adjustment where a comparison sale at a comparable quantity was not available.

Comment 17: Credit Expense Calculation

Ecoframe asserts that the method for verifying the reported rate used for calculating the home market credit expense is highly inaccurate. Because the bank calculates the interest on a daily basis, the balance changes daily and, therefore, the interest expense charged may be above or below the average interest rate. According to Ecoframe, a more appropriate way to check Ecoframe's interest expense is to compare it with Ecoframe's agreement with the bank, which notes the interest rate given to Ecoframe.

DOC Position

For checking the reported interest rate used for figuring credit expense for home market sales, we calculated the short-term interest for the POI based on

the quarterly interest expense and outstanding balances which resulted in an actual interest rate of approximately two percentage points higher than the interest rate reported by Ecoframe. It is important to note that Ecoframe's interest rate agreement with its UK bank was never submitted to the Department prior to verification or presented at verification for review. For purposes of the final determination, we are calculating credit expense for home market sales based on the quarterly interest expense and outstanding balances examined at verification.

Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after May 13, 1996, the date of publication of our preliminary determination in the Federal Register. Because Robobond received a *de minimis* final dumping margin, entries of subject merchandise from Robobond are excluded from these instructions. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Ecoframe	20.01
Robobond/Simons	de minimis
Magnolia	84.82
All Others	20.01

Pursuant to section 733(d)(1)(A) and section 735(c)(5) of the Act, the Department has not included zero and *de minimis* weighted-average dumping margins and margins determined entirely under section 776 of the Act, from the calculation of the ''all others'' deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: September 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25242 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–810]

High-Tenacity Rayon Filament Yarn From Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 3, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period of review (POR) covering 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 and rebuttal comments received from Akzo Nobel Faser AG, Akzo Nobel Industrial Fibers Inc., and Akzo Nobel Fibers Inc. (collectively ''Akzo'') (the respondent), and the North American Rayon Corporation (the petitioner), we have corrected certain clerical errors in the margin calculations. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

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).

Background

On July 3, 1996, the Department published the preliminary results of administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany (61 FR 34792). The Department has now conducted this review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is high-tenacity rayon filament yarn from Germany. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 5403.10.30.40. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. This review covers one manufacturer/exporter of the subject merchandise and the period June 1, 1994, through May 31, 1995.

Analysis of Comments Received

Comment #1: Respondent contends that the antidumping duty order should be revoked upon completion of the instant review. Respondent states that the URAA changed the *de minimis* standard to two percent. Arguing that the URAA affects all reviews requested after January 1, 1995, respondent maintains that it is now eligible for revocation, since it received margins of less than two percent for each of the last three review periods. Respondent also emphasizes that it filed the requisite certification pursuant to 19 CFR 353.25(b).

Respondent contends that the Agreement on Implementation of Article VI of the General Agreement on Tariffs

and Trade 1994 (Antidumping Agreement) does not establish a clear-cut definition for the term ''investigation.'' In particular, respondent states that since an express limitation to the scope of the term ''investigation'' is not established in the Antidumping Agreement, it contends that an ''investigation'' can be interpreted as applicable to both the initial investigation phase as well as the review phase of antidumping proceedings. Therefore it argues that the two percent *de minimis* standard for ''investigations'' should apply to an antidumping review proceeding. Moreover, respondent claims that the Department should apply this law retroactively to the two earlier reviews, in which case it will have three years of *de minimis* margins and revocation of the order would be required. Finally, respondent contends that such an approach would provide consistency between the investigation and review stage of an antidumping proceeding.

The petitioner emphasizes that before the Department shall consider revoking an antidumping duty order, a *de minimis* margin (defined as 0.5 percent or below) must be determined for three consecutive years. Petitioner contends that the Department was correct in its determination not to revoke the antidumping duty order with respect to Akzo because, of the three reviews conducted, there has been only one year during which Akzo received a margin of 0.5 percent or below (*i.e.*, the administrative review period of June 1, 1993 through May 31, 1994).

Department's Position: We agree with petitioner that the 0.5 percent *de minimis* standard set forth in 19 CFR 353.6 continues to apply to reviews. As a matter of domestic law, the statute and the Statement of Administrative Action (SAA) which accompanied the passage of the URAA are very clear that the new two percent *de minimis* standard applies only to investigations initiated after January 1, 1995, the effective date of the URAA. See sections 733(b)(3) and 735(a)(4).

The SAA clearly states that ''[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations.'' See H.R. Doc. No. 316, Vol. 1, Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, 103rd Cong., 2nd Sess. (Sept. 27, 1994), at 845. The two percent *de minimis* standard is applicable only to investigations: ''* * * in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis*.'' SAA at 844. Likewise, ''[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent *ad valorem*, the existing regulatory standard for *de minimis*.'' SAA at 845 (emphasis added), *see also* 19 CFR 353.2(1) (an ''investigation'' is a distinct proceeding ending, *inter alia*, on publication of an order).

Comment #2: Petitioner claims that the Department did not use the proper shipment dates (as reported in respondent's supplemental response) in the calculation of imputed credit costs incurred on those sales made from Germany but shipped from the respondent's warehouse in Canada.

Respondent states that credit expenses for these transactions were indeed calculated based on the shipment dates submitted in the supplemental response, in accordance with the Department's questionnaire instructions, and not on the shipment dates originally submitted by respondent.

Department's Position: We have confirmed that respondent correctly calculated the credit expense on these transactions by using the dates on which the subject merchandise was shipped from Germany. These dates were included in respondent's supplemental questionnaire response.

Comment #3: Petitioner claims that the Department performed a programming error in identifying the period of review. Petitioner states that in order to remove from the margin analysis any U.S. sales made outside of the POR, the beginning and ending period dates should be June 1, 1994, and May 31, 1995, respectively.

Respondent disagrees with petitioner's claim. Respondent contends that if petitioner's proposal is accepted, one of its export price (EP) sales would be eliminated from the Department's margin analysis since the date of sale for this transaction occurred prior to June 1, 1994, whereas the merchandise entered the United States subsequent to that date. In justifying why this particular sale should be included during the POR, respondent contends that it adhered to the Department's questionnaire instructions which state, ''Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) For EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR.'' Therefore, although the sale date fell outside the POR, respondent reported this transaction due to the fact that the merchandise entered the United States during the POR. Further, respondent claims that petitioner's proposed correction to the margin program would not advance the objective stated in the preamble to the Department's proposed regulations which is to liquidate entire periods of review and to avoid tying entries to sales.

Department's Position: We agree with petitioner that we used improper dates in our margin program to identify the period of review. For these final results, we have corrected the dates to accurately reflect the POR. However, we agree with respondent that we should analyze the one U.S. sale made before the POR because the merchandise was entered into the United States during the POR and because the sale was not reviewed in the previous administrative review. Therefore, we have included the sale in this review.

This decision comports with the Department's effort, as reflected in the preamble to the Department's Proposed Rule 353.212, to promote the objective of offering clarity and predictability to the antidumping law by normally requiring that duties be assessed on merchandise entering during a particular review period:

> With respect to the use of duty assessment rates, the Department believes that, except in unusual situations, we should assess duties on subject merchandise entered during each review period. Therefore, paragraph (b)(1) provides that the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. In all cases, this will result in the assessment of duties on merchandise entered during the review period.

See Notice of Proposed Rulemaking and Requests For Public Comment, 61 FR 7308, 7316 (Feb. 27, 1996).

*Comment #*4: Petitioner contends that in the preliminary results, the Department incorrectly classified an ''emergency sale'' as an EP sale. Petitioner argues that since the subject merchandise was sold to a U.S. customer after its importation into the United States, this sale, which respondent terms as an emergency transaction, should therefore be classified as a constructed export price (CEP) sale. Petitioner argues that as a CEP sale, the Department is required to deduct selling expenses incurred by Akzo's U.S. subsidiaries as well as CEP profit in accordance with section 772(d)(3) of the Act. Further, petitioner contends that credit expenses are understated, since the Department did

not take into consideration credit expenses incurred during the period beginning with the original date of shipment from Akzo's factory until the ''emergency transaction'' sale date in the United States.

Respondent argues that what it describes as an ''emergency transaction'' of approximately several thousand pounds of yarn cannot be considered a CEP sale since the sale meets all the requirements of an EP sale. Respondent explains that this particular subject merchandise was sold to the original unrelated customer prior to importation into the United States, the sales procedure involved with this ''emergency transaction'' was no different from other EP sales made. In the alternative, respondent states that the original sale of this subject merchandise took place during the period of the second administrative review, whereupon, the merchandise was stored in the original customer's warehouse. In the subsequent review period, respondent issued a credit note to that customer, canceling the first sale, and resold the merchandise to another customer. The original transaction was previously reviewed by the Department, and was covered by liquidation instructions issued for that review. Therefore, respondent states that the Department has the discretion to exclude the ''emergency transaction'' from this review.

Department's Position: We have determined to exclude the sale at issue in this review from our margin calculations. Section 772 of the Act defines both EP and CEP as those sales made to the first unrelated buyer located in the United States. In this case, the original sale to the first unrelated U.S. buyer occurred during the previous review. The subject merchandise entered the United States during the previous POR. The Department captured this sale of approximately several thousand pounds of yarn in that review and subsequently assessed an antidumping duty on this sale. Thus, the ''emergency sale'' in question, which occurred during the instant review, is a resale of the merchandise within the United States and not subject to additional assessment. Therefore, we have excluded it from our analysis for these final results.

Comment #5: Petitioner asserts that discrepancies exist between Akzo's reported POR quantity of U.S. sales and U.S. Customs data. Petitioner asserts that respondent was not able to convincingly demonstrate the reason for the quantity discrepancy. Moreover, petitioner states that the discrepancy is even larger than originally measured, since petitioner did not include the amount associated with the ''emergency transaction'' in its subsequent comparisons.

Respondent contends that because the Department conducted a thorough verification of Akzo's reported sales, petitioner's comments in this regard hold no merit. Respondent claims that the Department substantiated the accuracy of its U.S. sales data base by reconciling the reported quantities to the 1994 fiscal year and POR financial statements. Further, respondent contends that according to petitioner's own calculations, the allegation of underreporting of sales is proven false. Respondent cites to petitioner's November 13, 1995 letter in which petitioner acknowledged that it neglected to account for a particular sale when matching respondent's reported data to U.S. Customs data. Respondent contends that when these sales are added, and the ''emergency transaction'' subtracted from its reported U.S. sales, its total quantity for U.S. sales exceeds U.S. Customs data.

Department's Position: We agree with respondent. We conducted a thorough verification of the quantity and value of respondent's U.S. sales during verification and determined that respondent's reported U.S. quantity and value amounts reconciled to its general ledger and audited financial statement amounts. See Sales Verification Report, at 7.

Comment #6: Respondent contends that the Department's methodology used for model matching is ineffective. Specifically, respondent contends that certain models sold in its home market were not properly identifiable as having identical contemporaneous matches to models sold in the United States. Respondent proposes programming language which, in its estimation, would remedy the matching problems. Petitioner does not rebut respondent's comment.

Department's Position: Overall, our model matching methodology properly identifies and matches identical merchandise in respondent's home market with contemporaneous U.S. sales.

However, we detected a minor programing error which resulted in certain sales not being appropriately matched. Therefore, we made appropriate corrections to the program to remedy this error.

Comment #7: Both petitioner and respondent allege clerical errors made in the margin program for the preliminary results. First, petitioner claims that the Department erred in its foreign inland freight and foreign brokerage currency conversion calculations. Respondent concurs with petitioner's claim.

Second, respondent contends that the Department inadvertently misspelled a particular variable in the margin program with the result that home market and U.S. sales were not properly matched since the months included within the extended period of review are not utilized for matching purposes. Petitioner does not dispute respondent's contention.

Department's Position: We agree with both petitioner and respondent and have made the appropriate corrections to the margin program for these final results.

Final Results of Review

As a result of the comments received, we have changed the results from those presented in our preliminary results of review:

Manufacturer/exporter	Margin (percent)
Akzo Nobel Faser A.G., Akzo Nobel Industrial Fibers, Inc., Akzo Nobel Fibers, Inc. (Akzo)	0.60

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a) of the Act: (1) The cash deposit rate for Akzo will be the rate established above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (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 investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or the less-than-fair-value (LTFV) investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 24.58 percent, the ''all others'' rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act and 19 CFR 353.22.

Dated: September 25, 1996.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25245 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–602]

Industrial Phosphoric Acid From Belgium; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 24, 1996, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on industrial phosphoric acid (IPA) from Belgium (52 FR 31439; August 20, 1987). The review covers one manufacturer, Société Chimique Prayon-Rupel (Prayon), and exports of the subject merchandise to the United States during the period August 1, 1994, through July 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results of review. Based on our analysis of the comments received, we have not changed our analysis for the final results from that presented in the preliminary results of review.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Joseph Hanley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION:

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).

Background

On August 25, 1995, FMC Corporation and Monsanto Company requested an administrative review of the antidumping duty order on IPA from Belgium with regard to Prayon. The Department initiated the review on September 15, 1995 (60 FR 47930), covering the period August 1, 1994, through July 31, 1995. On May 24, 1996, the Department published the preliminary results of review (61 FR 26160). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2809.20. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Prayon and FMC Corporation and Monsanto Company, two domestic producers of industrial phosphoric acid.

Comment 1

Prayon argues that the Department does not have the legal authority to exclude from the home market sales listing Prayon's sales to Europhos, an affiliate which does not resell the IPA.

Prayon argues that section 773(a)(1)(B)(i) of the Act defines normal value (NV) as the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. Prayon notes that section 771(15) of the Act specifies types of sales considered outside the ordinary course of trade (*e.g.*, sales made below the COP). Prayon further notes that section 773(a)(5) of the Act deals with sales through affiliates (*i.e.*, sales through affiliates can be disregarded and the price of the sale by the affiliated party may be used to determine NV). However, Prayon argues that, the Act makes no provision for excluding from the calculation of NV sales made to an affiliated party that are not for resale, but for consumption by that party.

Prayon further argues that the Department does not have the authority under section 353.45 of its regulations (''Transactions between related persons'') to disregard home market sales to affiliated parties for consumption by those parties. Prayon argues that section 353.45(b) merely reiterates the provisions of 773(a)(5) and that section 353.45(a) rests on the authority of 773(a)(5) and therefore only applies where there are sales made through affiliated parties, not to affiliated parties.

Prayon concludes that in the absence of any legal authority to exclude such sales, sales to Europhos must be considered in calculating NV.

Petitioner argues that it is a fundamental tenet that ''(t)the antidumping law attempts to construct value on the basis of arm's length transactions.'' *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1572 (Fed. Cir. 1983)(*Smith-Corona*). Thus, asserts Petitioner, the Department has routinely exercised the power to exclude sales between affiliated parties from its dumping margin calculations. Moreover, argues Petitioner, this power has, on a number of occasions, been reviewed and sanctioned by the courts.

Department's Position

We disagree with Prayon. Prayon's sales to Europhos have not been shown to be at arm's-length prices (*i.e.*, the weighted-average sales price to Europhos was less than 99.5 percent of the weighted-average sales price to unaffiliated parties); therefore, the Department must exclude them. See *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994) (hereinafter *Usinor*).

While section 771 of the Act does specify certain types of sales which are considered outside the ordinary course of trade, this list is not exhaustive and

is meant only to provide examples. See section 771(15) (A) and (B). Specifically, section 771(15) states that the Department considers sales made below the COP and certain transactions used to determine COP and CV, among others, to be outside the ordinary course of trade and therefore excluded from the calculation of NV. Among other types of transactions considered by the Department to be outside the ordinary course of trade are sales *to* an affiliate that are determined not to be at arm's-length prices.

Furthermore, section 353.45(a) clearly states that the Department will consider a sale to an affiliate in determining NV ''only if satisfied that the price is comparable to the price at which the producer * * * sold such or similar merchandise to a person not related to the seller.'' This approach has been upheld by the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (Federal Circuit). See, *e.g., Conners Steel Co.* v. *United States*, 527 F. Supp. 350, 354 (CIT 1981) (hereinafter *Conners Steel*) (''it need only be stated that the law does not remove sales to a related purchaser from consideration as part of home market sales. Common sense, of course, would indicate that strictly by themselves sales to a related purchaser would be a questionable guarantee of a fair home market price. However, if they are made at the same price as sales to independent purchasers, there is no reason why they cannot form part of the total quantity of home market sales used as a benchmark.''); and *NEC Home Electronics, Ltd.* v. *United States*, 54 F.3d 736, 739 (Fed. Cir. 1995) (hereinafter *NEC*) (''There is a perceived danger that a foreign manufacturer will sell to related companies in the home market at artificially low prices, thereby camouflaging true [foreign market value] and achieving a lower antidumping duty margin * * *. Thus, regulation provides that the ITA will use the home-market, related-party sale in computing [NV] 'only if satisfied that the price is comparable to the price at which the [seller] sold such or similar merchandise to a person not related to the seller.' 19 CFR 353.45(a)(1994).'')

Therefore, in accordance with the Department's regulations, the Act and judicial precedent, the Department compared Prayon's weighted-average sales price to Europhos to its weighted-average sales price to unaffiliated parties in order to determine whether the sales to Europhos should be used when calculating NV. Because the weighted-average sales price to Europhos was less than 99.5 percent of the sales price to unaffiliated parties, the Department has continued to exclude sales to Europhos when calculating NV.

Comment 2

Prayon argues that even if the Department had the legal authority to disregard sales to Europhos, in this case they should not have been excluded because, contrary to the Department's determination in the preliminary results of review, such sales were made at arm's-length.

Prayon, quoting *British Steel PLC* v. *United States*, Slip. Op. 96–88 (CIT 1996) at 71 (quoting *NLRB* v. *Baptist Hosp., Inc.*, 442 U.S. 773,787 (1993)), argues that ''an agency presumption must be both consistent with the intent of the statute and based on a rational connection between the facts proven and the facts presumed.'' Prayon states that the arm's-length test applied by the Department is not consistent with the intent of the statute because the test distorts NV by excluding many transactions between affiliates at prices below the weighted-average price to unrelated parties but including all affiliated party transactions at prices above the weighted-average price to unaffiliated party sales. Prayon states that this practice does not permit a fair comparison between export price and NV as required by the Statute.

Furthermore, Prayon argues that the arm's-length test is not based on a rational connection between the facts considered (*i.e.*, that the weighted-average sales price to an affiliate is less than 99.5 percent of the weighted-average sales price to unrelated parties) and the facts presumed (*i.e.*, that the prices to the affiliate were not the result of arm's-length negotiations).

Moreover, Prayon argues that the Department cannot merely rely on a sales price comparison as a conclusive basis for excluding affiliated party sales from the NV sales base. See *NEC*. Prayon argues that in *NEC*, the Federal Circuit held that the Department must conduct an inquiry into other facts relevant to whether or not the sales concerned were at arm's-length. Accordingly, asserts Prayon, the Department should take into consideration the fact that (1) while Prayon holds a 50 percent stake in Europhos it is much smaller in size than its joint venture partner and is, therefore, unable to manipulate transactions with Europhos; (2) it is not in Prayon's interest to lower the price to Europhos in order to lower U.S. dumping margins since Prayon sells a large volume of IPA to Europhos; and (3) since Prayon wishes to maximize profits and Europhos wishes to minimize material costs, it follows that Prayon's prices to Europhos are the result of hard, arm's-length negotiations that took into consideration the large volume of IPA sold to Europhos and the long-term nature of the purchase contract.

Prayon claims that sales prices to Europhos were negotiated on an arm's-length basis, and that therefore the Department should include those sales in the home market sales base for the purposes of calculating NV in the final determination.

Petitioner argues that the Department's regulations permit sales between affiliated parties only if they are at arm's-length; and, that the Department's arm's-length test has been upheld by the Courts. Moreover, Petitioner asserts that the Department's use of sales price as a conclusive basis to judge the arm's-length nature of a transaction between affiliates has also been upheld by the Courts.

Department's Position

We disagree with Prayon. First, the Department's practice of excluding sales to affiliates that are less than 99.5 percent of the weighted-average sales price to unrelated parties does not violate the intent of the statute, which is to provide a fair comparison between the export price and NV. Rather, by ensuring that home market sales to affiliates are excluded if the price of such sales are not similar to the sale prices to unrelated parties, the Department's test promotes a fair comparison between the export price and NV.

Prayon's interpretation of the facts proven and the facts presumed is inaccurate. The fact presumed is that sales to an affiliate are a questionable guarantee of a fair home market price. The fact proven is that the weighted-average sales price to Europhos is well below the weighted-average sales price to unrelated parties and, therefore, not representative of a fair home market price. See *Conners Steel*, cited above.

In addition, contrary to Prayon's assertions, the Department's regulations make clear that we will use the price on a sale between affiliated parties in calculating dumping margins ''only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.'' See section 353.45(a) of the Department's regulations. In short, the burden of satisfying the Department that the sales are at arm's-length is on Prayon.

It is not self-evident that the profit motive cited by Prayon will always

cause affiliated companies to use arm's-length transfer prices. Furthermore, since Prayon's sales price to Europhos were below the standard arm's-length price, the question of whether the transfer price was controlled by Prayon or Europhos is not useful to determine whether sales were made on an arm's-length basis. In addition, while the pricing arrangement between Prayon and Europhos may predominantly benefit either party or both parties, it does not indicate that transactions were made on an arm's-length basis.

Moreover, the Department's use of the price comparability test (*i.e.*, treating sales to affiliates as being at arm's-length only if the weighted average price to the affiliate is at least 99.5 percent of the price to an unrelated party) has been upheld by the CIT. See *Usinor Sacilor*, 872 F. Supp. at 1004.

Additionally, the CIT has upheld the Department's practice of using price rather than other factors as the basis for determining the arm's-length nature of a transaction. See *NTN Bearing Corp. of America* v. *United States*, 905 F. Supp. 1083 (CIT 1995) (hereinafter *NTN*). In *NTN*, the CIT stated that it ''disagrees with [respondent] that Commerce's arms-length test is flawed because Commerce did not take into account certain factors proposed by [the respondent].'' See *NTN* at 1099.

Moreover, in the *NEC* case cited by Prayon, the CIT did not state that the Department must always consider factors other than price comparisons in determining the arm's-length nature of a transaction between affiliates. Rather, the CIT remanded the case to the Department to address NEC's argument that compliance with the Japanese commodity tax law ensured that the transaction was at arm's-length. (*NEC*, 54 F.3d at 743, 744 (taking no position on the merits of NEC's argument but holding that the ITA's conclusion that NEC had not provided data indicating sales were at arm's length was not supported by substantial evidence because it did not address NEC's claim)). In the review underlying *NEC*, the Department did not make a statistical comparison between home market prices to related parties and those to unrelated parties because, in the home market, NEC sold only to related parties. In this review, in contrast, the Department addressed Prayon's Belgian law argument based on a comparison of prices on the record that shows, despite the Belgian law, that prices to Prayon's related party are not comparable to those of unrelated parties. Accordingly, the Department's practice continues to be compared to the price to affiliates with the price to unrelated parties in order to determine whether sales to affiliates are made at arm's-length.

Based on the foregoing, we have, in these final results, continued to exclude sales to Prayon's affiliate, Europhos, since the weighted-average price of such sales was less than 99.5 percent of the weighted-average price to unrelated parties.

Comment 3

Prayon argues that the Department is not justified in disregarding the discount taken by the affiliated coordination center to which Prayon sells its receivables, and that this discount should be considered Prayon's actual home market credit expense. Prayon states that the discount taken is required by Belgian law to reflect prevailing market interest rates. Therefore, Prayon asserts that there is no basis for disregarding the discount and substituting an artificial imputed credit expense.

Moreover, Prayon argues that if the Department uses an imputed credit expense, that expense should be recalculated using corrected interest rates. Prayon argues that the interest rates it provided to the Department were Belgian interbank rates (BIBOR), which by their nature are lower than the rates that would apply to commercial loans to non-bank parties. Additionally, Prayon claims that for short term borrowings, a lender would add a premium onto the BIBOR rate.

Petitioner argues that the Department's reliance on the imputed credit expense rather than the discount offered by Prayon's affiliated party is reasonable and fully consistent with prior practice. Petitioner asserts that Prayon has offered no justifiable reason why the Department should change its approach. Moreover, Petitioner argues that Prayon has had ample opportunity to submit information to the Department on its home market sales and credit expenses, and the Department should not, as suggested by Prayon, reopen the record to request additional information from Prayon.

Department's Position

We disagree with Prayon. The facts of this case are identical to the facts in the 1993/94 review. In the final determination for that review we stated that, ''the Department is not satisfied that the discount rate ''charged'' by Prayon Services, when factoring Prayon's accounts receivables, is representative of market rates.'' We noted that ''(i)n almost all home market observations, the credit expense calculated using the discount rate method is substantially higher than the imputed credit expense (*i.e.*, the market rate) Prayon would have incurred had it not sold its accounts receivable to Prayon Services.'' We concluded that:

> (D)ue to the substantial difference between the two methodologies, the Department is not satisfied that the discount rate ''charged'' by Prayon Service is representative of market rates. Moreover, since Prayon sold all of its accounts receivable to Prayon Services, the Department is unable to compare the discount rate charged by Prayon Services with a discount rate charged by an unrelated party to insure that the rate is comparable to market rates.
>
> Additionally, we are not convinced that Prayon Service's legal obligation under Belgian law is sufficient proof that Prayon Services actually charged an arm's-length discount rate to Prayon. Prayon states that Prayon Services was established under Belgian law, which provides certain tax benefits for companies organized and operated according to certain specified requirements. However, the requirement that the factoring of accounts meet Belgian law requirements in order to capture certain tax benefits may not be a reliable benchmark for U.S. antidumping purposes. This is supported by the Department's determination in Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, 37158 (July 9, 1993) (''There is no requirement that U.S. antidumping practice conform to Japanese antitrust laws or practices which have entirely different purposes and standards'').
>
> Therefore, because the standard established by Belgian law is not sufficiently similar to that established by the Department, as evidenced by the substantial difference between Prayon's discount rate and the Department's date of payment method, we cannot rely on Prayon's compliance with that law as evidence that the rate charged by Prayon Services to Prayon is at arm's-length. [footnote excluded]

Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review, 61 FR 20227, 20229–20230 (May 6, 1996).

Accordingly, for these final results, the Department, when determining credit expense incurred by Prayon on its home market sales, has relied upon the imputed credit expense incurred by Prayon as determined by the following formula: ((Pay date-Shipment date)/365)*short-term home market interest rates.

We also disagree with Prayon that the Department should reopen the record to ensure that the correct interest rates are used. In response to a request for information on the home market short-term interest rates used to calculate imputed inventory carrying costs in the home market, Prayon supplied the Department with the monthly average

short-term rates offered by Credit Lyonnais Belgium for loans in Belgian francs. *See* Prayon's submission of April 26, 1996. The Department used these rates to calculate the imputed credit expense incurred by Prayon for the preliminary results of review, and sees no reason not to use these rates in the final results of review.

Moreover, the Department's regulations permit factual information to be submitted for consideration in the final results of review up to the date of publication of the preliminary results of review or 180 days after the date of publication of the notice of initiation of the review, whichever comes first. See section 353.31(a)(1)(ii) of the Department's regulations. Both of these deadlines have passed (the preliminary results of review were published on May 24, 1996, and this review was initiated on September 15, 1995). Furthermore, it is the Department's stated practice to not consider in final results of review information untimely submitted. See section 353.31(a)(3).

Final Results of Review

Based on our analysis of the comments received, we have determined, as we did in the preliminary results, that a margin of 11.36 percent exists for Prayon for the period August 1, 1994 through July 31, 1995. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Prayon will be 11.36 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate, as established in the original investigation, will be 14.67 percent.

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 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 also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25241 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results and rescission in part of antidumping duty administrative review.

SUMMARY: On April 8, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (TRBs), from Romania. This review covers the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price 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).

Background

On April 8, 1996, the Department published in the Federal Register (61 FR 15465) the preliminary results of its administrative review of the antidumping duty order on TRBs from Romania (52 FR 23320, June 19, 1987). We conducted a hearing on May 22, 1996. On July 30, 1996, we extended the time limit for the final results to September 25, 1996 (61 FR 39631). We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

This review covers eight companies and the period June 1, 1994 through May 31, 1995. Of the eight companies for which petitioner requested a review, only Tehnoimportexport (TIE) made shipments of the subject merchandise to the United States during the period of review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the respondent, TIE, and the petitioner, The

Timken Company (Timken). At the request of both parties, a public hearing was held on May 22, 1996.

Comment 1

TIE argues that the Department should not use surrogate data from the Thailand bearing producers NMB Thai and Pelmec Thai (NMB/Pelmec) for overhead and selling, general, and administrative (SG&A) expenses, because the Thai producers manufacture ball bearings that are more sophisticated than TIE bearings. TIE cites NMB/Pelmec's own catalogs as evidence of the sophistication of those companies'' bearings, and notes that the Department recognized, in a review of antifriction bearings (AFBs) from Romania, that NMB/Pelmec may not be ideal for purposes of comparison to TIE.

Timken counters that the rates from NMB/Pelmec used by the Department are the only reasonable values on the record regarding costs of producers of comparable merchandise in a country at a level of economic development comparable to that of Romania.

Department's Position

We agree with Timken. As discussed in the preliminary results of this review, we determined that Thailand is at a level of economic development comparable to that of Romania and is a significant producer of bearings. Therefore, we selected Thailand as a surrogate country. Where we were unable to locate publicly available published information (PAPI) to establish surrogate values from the primary surrogate country, Poland, we used Thai values. Notwithstanding any differences in the level of sophistication of bearings between the Thai and Romanian companies, NMB/Pelmec was the best available source of surrogate values from Thailand. Furthermore, the degree of sophistication of the bearings sold by the Thai companies would not directly impact the amount of SG&A expenses incurred by the company.

Comment 2

TIE argues that the Department's use of ranged Thai data to establish SG&A and overhead rates violates due process. TIE notes that the Department used ranged data based on the proprietary version of NMB/Pelmec's response—data TIE cannot independently verify. Further, TIE notes that the Department did not secure permission from NMB/Pelmec to use its data for this particular review, as it did when the data was used in a previous review of AFBs from Romania.

Timken responds that the rates are the best available, and should be retained by the Department. Timken notes that in typical non-market economy (NME) cases, the Department historically has relied on rates supplied by the embassy of the surrogate country, without independently verifying the underlying data. See transcript of the hearing, May 22, 1996, page 39.

Department's Position

We agree with Timken. The data used for this review were publicly available information from producers in a comparable industry (NMB/Pelmec), in a country deemed a suitable surrogate (Thailand). The fact that the underlying data used to arrive at the publicly available rates were proprietary is irrelevant; the ranged data are publicly available on the record of the 1988–90 antidumping review of AFBs from Romania, and we have placed these data on the record of this review. It is not necessary for the Department to secure permission to use data that is already in the public domain. Thus, the Department has continued to use the NMB/Pelmec values.

Comment 3

TIE argues that the Department's use of the same Thai SG&A data in the 1988–90 review of AFBs from Romania was based on application of adverse best information available (BIA), which is not relevant to this review. TIE notes that its alleged failure to provide certain information regarding selling expenses during the course of the 1988–90 AFB review resulted in the Department's applying the SG&A rate as adverse BIA. Further, this same rate was rejected in the subsequent AFB review because adverse BIA was not warranted.

TIE further argues the rate should not be used as other than adverse BIA, because certain expenses included in the NMB/Pelmec SG&A calculation are not applicable to TIE. Since the Department has made no findings in this review that TIE has not provided all necessary information, TIE claims, adverse BIA is unwarranted, and by extension, use of the NMB/Pelmec rate is inappropriate.

Timken notes that, unlike the numbers often used by the Department from embassy correspondence, or estimates from companies'' annual reports, the NMB/Pelmec rates are based on actual questionnaire responses. Timken concludes that these rates are as accurate as, if not more accurate than, any other rates used in NME antidumping duty proceedings.

Department's Position

We recognize that, in the 1988–90 review of AFBs from Romania, the Thai SG&A rate was applied as adverse BIA, and we recognize that this rate includes non-SG&A expenses. As this rate was being used as adverse BIA in that review, we did not consider whether the rate included non-SG&A expenses at that time. However, we agree that, if a surrogate SG&A value includes expenses that are generally not considered to be SG&A expenses, these components should be excluded from the surrogate value. After further analysis of the NMB/Pelmec SG&A rate, we find that the rate included adjustments for inland freight and import duties on raw materials, which generally are not categorized as SG&A expenses. Furthermore, because we have already accounted for inland freight costs elsewhere in our calculations, inclusion in the applied SG&A rate would double-count this expense. Therefore, for the purposes of this review, we have recalculated the Thai SG&A expense to exclude inland freight and import duties on raw material inputs.

Comment 4

TIE argues that the Thai SG&A rate is aberrational, and that the Department has an obligation not to use aberrational data.

According to TIE, because the SG&A expenses calculated by the Department are the highest ever calculated in any NME case, the data are aberrational, and should be rejected. TIE notes that the Department has refused to use data in other cases because it determined that such data conflicted with other publicly available data, and was, therefore, unrepresentative.

Timken notes that because the NMB/Pelmec SG&A and overhead expense data are derived from actual questionnaire responses, it is likely that the rate is as accurate as, if not more accurate than, any other rates used in previous antidumping proceedings. Furthermore, petitioner claims, it is logical that overhead rates stated as a percentage of total cost of production will be higher in countries in which labor costs are lower, as is the case in developing countries such as Thailand.

Department's Position

There is nothing on the record of this review to suggest that the NMB/Pelmec SG&A expense is not reflective of the Thai bearings industry. In fact, to our knowledge, NMB/Pelmec are the only bearing producers in Thailand. Accordingly, we do not view the NMB/Pelmec SG&A expense as aberrational.

Comment 5

TIE argues that, instead of using the NMB/Pelmec SG&A value, the Department should use ''Yugoslavian or other data,'' and cites the data it put on the record on March 28, 1996. TIE notes that the Department used Yugoslavia as a surrogate country in the last completed review of Romanian TRBs, and argues that the ten percent rate used in that review is more logical than the NMB/Pelmec rate.

Timken notes that TIE admits that this Yugoslavian rate was simply the former ten percent statutory minimum. Timken argues that, because the statutory minimum is no longer valid, the ten percent rate should be disregarded.

Department's Position

We agree with Timken. Yugoslavia is not a valid surrogate country for this review, due to changed conditions since 1988–89, the period of the review to which respondent refers. Therefore, it would not be appropriate to use a Yugoslavian rate, except in the absence of a publicly available SG&A rate from one of the suitable surrogate countries, such as Thailand. Furthermore, although Yugoslavia was used as a surrogate country in a past review, the SG&A rate used was actually the ten percent statutory minimum, which is not valid under the controlling statute.

Comment 6

TIE advocates the use of the former statutory minimum of ten percent for the SG&A expense. TIE notes that the Department is using an eight percent figure for profit, the former statutory minimum for profit. Further, TIE notes that the Department has never used a figure other than the former statutory minimum of ten percent for SG&A, except where the Department selected an adverse BIA rate. Thus, TIE argues, there is little or no evidence that the SG&A rate exceeds ten percent. TIE claims that in market-economy bearings cases where SG&A has been calculated, the expense has rarely exceeded ten percent.

Timken notes that as a result of Article 2.2.2 of the Uruguay Round's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, the statute eliminates the minimum rate for SG&A, and mandates use of actual rates where possible.

Department's Position

We agree with Timken. Under the controlling statute, the statutory minimum of ten percent for SG&A is invalid, and the Department must use actual rates when possible. See 19 U.S.C. 1677b(e)(2). Hence, the Department has continued to use the actual SG&A rate from NMB/Pelmec, two producers of comparable merchandise from a qualifying surrogate country. Use of the former statutory minimum in previous reviews has no bearing on this review. Furthermore, TIE incorrectly states that the Department is using the former eight percent minimum for profit. We are using eight percent as the profit margin in this review not because it was formerly the statutory minimum profit figure, but because publicly available information indicates that the profit figure is not less than eight percent.

Comment 7

TIE argues that the Department fails to describe the expenses included within the NMB/Pelmec overhead rate, and that the rate should therefore be rejected. TIE claims a breakdown of overhead expenses is impossible to generate, and that some components likely should be excluded to match the overhead for TIE.

Department's Position

The Department generally does not dissect the overhead rate of a surrogate country and apply only components relevant to the producer. It is generally not possible to break the surrogate overhead value into its individual components, at the level of detail that would be necessary to value each individual component of the NME producer's overhead. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China (60 FR 29571, June 5, 1995) (Drawer Slides) and Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR 22359, 29575, June 5, 1995). Rarely, if ever, will it be known that there is an exact correlation between overhead expense components of the NME producer and the components of the surrogate overhead expenses. Therefore, as discussed in Drawer Slides, the Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered. Accordingly, Department practice is to accept a valid surrogate overhead rate as wholly applicable to the NME producer in question.

Comment 8

TIE contends the NMB/Pelmec overhead rate is an improper surrogate for Romanian overhead costs. Because TIE uses technology and machinery from the 1960s, its equipment is fully depreciated. TIE argues NMB/Pelmec's factories, which utilize expensive, modern equipment, have large depreciation expenses built into overhead. Therefore, the overhead rates as a percentage of the cost of manufacturing (COM) are not comparable to overhead rates for Romanian companies, or for comparable companies in Thailand or other surrogate countries, and should not be used as a surrogate for TIE's overhead.

Further, TIE argues that NMB/Pelmec's miniature, high-precision bearings use less raw materials than do TIE's bearings, which are larger. Therefore, TIE reasons, overhead as a percentage of the cost of manufacturing is higher for smaller bearings. By extension, TIE argues, the overhead rate for TIE, as a percentage of raw materials and labor, should be lower than the rate from NMB/Pelmec.

Timken notes that while TIE may have depreciated its equipment to zero, the rate at which an NME producer is able to depreciate equipment is irrelevant in the identification of appropriate, market economy surrogate values. Timken also notes that if machinery is old, then though depreciation costs are low, maintenance and repair expenses would be correspondingly high. Timken further argues that NMB/Pelmec's overhead rates are driven by low labor rates indicative of a developing country, and not by raw material costs.

Department's Position

We disagree with TIE, again for the same reasons cited in our response to comment 7. The Department does not tailor surrogate overhead rates to match the circumstances in the NME country. Therefore, following Department practice, we have continued to use the valid surrogate overhead rate from Thailand.

Comment 9

TIE suggests that, if the Department continues to use the NMB/Pelmec data for overhead, it should use the lowest of the overhead rates for NMB/Pelmec bearings listed in NMB/Pelmec's 1988–90 cost printouts, as ranged by the Department. TIE points out that there is a large range in the bearings-specific overhead rates. TIE claims that the lowest of the overhead rates would more accurately reflect overhead for the larger bearings sold by TIE to the United States.

Department's Position

The record does not contain information which allows us to verify TIE's assertion that the NMB/Pelmec models with the highest cost of manufacture and lowest overhead are, in fact, the largest models made by NMB/Pelmec. Therefore, the Department has continued to use the average overhead rate of all NMB/Pelmec models.

Comment 10

TIE asks the Department to use overhead data TIE submitted in its March 28, 1996 submission. In that submission, TIE asked the Department to consider rates from a Portuguese bearings company, a Yugoslavian metal processing company, and a Thai metal processor. TIE argues that these rates are more timely than the NMB/Pelmec rate.

Timken points out that Romania is not at a level of economic development comparable to that of Portugal—and that TIE actually argued, in a previous review, that Romania's level of development has never been as high as that of Portugal, and that the Department should eliminate Portugal from consideration as a surrogate country. Timken also notes that TIE's proposal to use surrogate values from metal processors does not meet the comparable-merchandise requirement of the statute (19 U.S.C. 1677b(e)(2)).

Department's Position

We agree with Timken. Neither Yugoslavia nor Portugal were found to be appropriate as surrogate countries for this review. The Thai overhead value submitted by TIE is from an industry other than bearings, and therefore inferior to the NMB/Pelmec overhead rate.

Comment 11

TIE asks the Department to disregard the imported price of Swedish steel in calculating cost of production for bearings produced at the Alexandria factory. Because Alexandria purchased less than three percent of its steel from Sweden, the amount purchased is insignificant, and, consistent with Department practice and the proposed regulations, the price should be disregarded. At the very worst, argues TIE, only the corresponding percentage of Swedish steel used by Alexandria should be used in the Department's calculations.

Timken argues that the amount of market economy steel purchased is irrelevant; import prices selected by the Department represent the price of steel available to TIE. Further, Timken argues that the Swedish price should be applied to both factories, since they are part of a single entity.

Department's Position

We agree with TIE. In calculating surrogate prices, the Department routinely disregards quantities too small to be representative. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews (60 FR 49251, September 22, 1995). We have therefore recalculated steel costs for the Alexandria plant using only surrogate prices from European Union (EU) exports to Poland.

Comment 12

TIE argues that the number of hours worked per month, obtained from the International Labor Office (ILO) Yearbook of Labor Statistics, 1995 and used to calculate surrogate wage rates in Poland, understates the true hours worked per month in Poland. TIE notes that information submitted by Timken, from Investing, Licensing & Trading Conditions Abroad, Poland 1995 (IL&T), published by the Economist Intelligence Unit, indicates a work week of 42 hours, and argues that the surrogate wage rate should be recalculated to reflect this.

Timken responds that the IL&T referred to the statutory maximum number of hours permitted under Polish law, and that the hours actually worked may be lower in Polish industry.

Department's Position

We agree with TIE. The ILO data used in the preliminary results was for actual hours worked, not paid hours (which would include, for example, paid vacation leave). The monthly wage statistics we used in the preliminary results, from the August 1995 issue of the Statistical Bulletin, published by the Polish government, however, are based on total compensation for paid hours, and not actual hours worked. Therefore, for these final results we recalculated the wage rate using the IL&T data, which represent paid hours.

Comment 13

TIE argues that Polish labor rates used by the Department improperly included payments for bonuses from profits. According to TIE, the use of a wage which includes bonus payments from profits is improper, as it assumes profits were, in fact, made by Polish bearing companies. TIE asks that the Department use wages exclusive of payments from profit.

Timken maintains the Department's goal is to identify and apply the fully-loaded labor costs (not just basic wages) of producers in the surrogate country. Profit bonuses, a portion of the cost to the employer, and of direct benefit to the employee, should be included in the Department's calculation.

Department's Position

We agree with Timken. Wage rates should reflect, as accurately as possible, the actual cost to employers. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China (60 FR 29571, 6/5/95). As is the case with SG&A and overhead, the Department generally does not dissect the wage rate of a surrogate country and apply only certain components to the producing country. See our response to comment 7. Department practice is to accept a valid surrogate wage rate as wholly applicable to the NME respondent in question.

Comment 14

TIE argues that Polish labor rates are not representative of labor rates in Romania or comparable countries, and should be rejected. According to TIE, the per capita gross national product (GNP) of Poland is roughly double that of Romania. TIE argues it would, therefore, be unfair to use the Polish wage rate. TIE advocates use of an average wage rate, derived from rates placed on the record from Algeria and Ecuador, and a rate for Poland revised in accordance with comment 12, above. Even this average, TIE contends, far exceeds the Romanian labor rate. TIE notes that the Department's proposed regulations direct the Department to use what is essentially an average labor rate in economically comparable market economy countries, and argues that the Department should adopt this policy for this review.

Timken discounts TIE's argument that Polish labor rates are not representative of Romanian labor rates, noting that the purpose of the surrogate value exercise is to find a rate to replace the Romanian rate, not to find a rate representative of the Romanian rate. Timken further counters that the components of the average wage rate proposed by TIE are invalid. Except for the rate for Poland, the other wage rates are minimum wage rates, not prevailing wage rates. Moreover, Algeria and Ecuador are not suitable surrogates, as they have no comparable industry.

Department's Position

We agree with Timken. Although proposed regulations suggest use of an

average labor rate, current Department practice is to use wage data from the surrogate country. Of the countries suggested for use by TIE, only Poland has a comparable industry. Poland, as the chosen surrogate country, is the proper source for surrogate wage rates.

Comment 15

Timken claims that TIE does not meet the Department's existing criteria for a separate rate determination. Timken contends that TIE does not have autonomy from the government in the selection of key management personnel, one of the criteria for determining *de facto* absence of government control. Timken notes the State Ownership Fund (SOF) owns seventy percent of TIE stock. Because of this, the SOF has a seat on the Council of Administration, which selects TIE's executive management. Its presence on the Council of Administration, Timken says, reflects participation in what is, by comparison with market-economy countries, the board of the company. According to Timken, presence on that board permits *de facto* control, by the Romania government, over the selection of TIE's key management personnel.

TIE counters that it has made a clear, steady progression toward complete privatization over the years, and that changes effective in this review clearly indicate a lack of *de facto* government control. TIE compares the status of privatization in Romania with that of Poland, to which the Department granted market-economy status despite government stock ownership of Polish industry. TIE claims that, even in the context of a test for market-economy status, the Department does not determine that ''government ownership'' of state-owned enterprises precludes their independence.

Department's Position

We agree with Timken. We have reexamined our position on this issue and have determined that TIE is not entitled to a separate rate. The record of the review indicates that the General Assembly of Shareholders consists of a representative of the SOF and a representative of the POF, and that voting power is commensurate with stock ownership. Seventy percent of the vote goes to the SOF, and thirty percent to the POF. The General Assembly of Shareholders chooses the Council of Administration, which is responsible for the hiring and firing of key personnel, such as the general director, and the designation of the Executive Committee, which controls the day-to-day running of TIE. The Council of Administration consists of three members, each with equal voting power; one of the members is from the SOF, one is from the POF, and one is from TIE. There is no record information indicating who any of these members are and whether they are representatives of the Romanian government or its ministries (see hearing transcript, pages 59–60) or otherwise how closely they are tied to the government. In addition, we note that TIE's management has remained the same since the composition of the Council of Administration changed. Accordingly, we find that TIE has not established that it has autonomy in making decisions regarding the selection of its management and, for this reason, there is insufficient record evidence of the absence of *de facto* government control over TIE to entitle TIE to a separate rate.

Comment 16

Timken argues the Department's separate rate analysis should be made consistent with rules for evaluating affiliated parties and for collapsing firms in market-economy countries. Timken says that, since the Romanian government owns more than five percent of TIE, and of the bearings factories, it is in a position to shift export activities from TIE to the factories to avoid antidumping duties. Timken argues that the Romanian government, as a majority shareholder, has the ability to exercise restraint or direction over TIE and the producing factories. Citing 19 U.S.C. 1677(33) and section 351.401(f) of the proposed regulations, Timken contends that, in a market-economy review, the Department would normally treat two or more similarly affiliated companies as a single entity. Timken argues that TIE, the bearings factories, and the Romanian government should be treated likewise.

TIE counters that, since the Romanian government does not exercise *de facto* control of TIE, despite its more than five percent stock ownership, the Department should not consider TIE and the Romanian government as affiliated parties. Nor should the Department view the factories as affiliated with the Romanian government. TIE notes there is no coordination between the two major stock-holding groups—the SOF and the POF—with regard to TIE and the two independent factories. TIE also notes that if the Department precluded a separate rate for a company because of more than five percent ownership by the government, no company could ever obtain a separate rate if its stock were owned by the government. This would contradict the Department's decisions in a number of cases, where the Department granted separate rates to Chinese trading companies owned by ''all the people'' when the supplying factories were also owned by ''all the people.''

Department's Position

The separate rates test for non-market economies is separate and distinct from the test to determine whether related producers in market economies should be treated as a single enterprise. Even the preamble to the proposed regulations, cited by Timken, specifically notes that section 351.401(f) ''does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate.'' As set forth in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China (59 FR 22585, May 2, 1994), the NME separate rates test focuses on government control over export activities. As discussed above in our response to Comment 15, we have found that TIE is not eligible for a separate rate in this review.

Comment 17

Timken argues that a separate, non-zero rate for TIE, while the Romania-wide rate remains at zero, is contrary to the purpose of the antidumping duty law. Such a determination would encourage the shifting of production and export activities to avoid the reach of the antidumping duty law. Timken argues this is contrary to congressional intent and is an absurd conclusion, which should be rejected.

Timken further argues that, if the Department maintains a separate rate for TIE, it should apply the margin from the investigation, 8.70 percent, not the rate from the previous review, to all other firms. In *UCF America* v. *United States*, Ct. No. 92–01–00049, Slip Op. 96–42 (CIT February 27, 1996) (UCF), Timken argues, the Court of International Trade (the Court) held that companies that have never been individually reviewed should receive the margin found in the original investigation.

Department's Position

The Department acknowledges the recent decision of the Court, cited by Timken, in UCF. In this decision, the Court affirmed the Department's remand results for reinstatement of the relevant cash deposit rate, but expressed disagreement with use of the ''PRC-wide'' rate as the underlying basis for reinstatement. The Court raised various concerns with the Department's application of a ''PRC-wide'' rate.

The Court suggested that the Department lacks authority for applying a ''PRC-wide'' rate in lieu of an ''all others'' rate. We note, however, that section 777A(c) of the Act requires the Department to determine individual dumping margins for each known exporter or producer. Pursuant to this authority, the Department implements a policy in NME cases whereby all exporters or producers are presumed to comprise a single entity, the ''NME entity.'' The Court has upheld our NME policy in previous cases. See *e.g., UCF America, Inc.* v. *United States,* 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp.* v. *United States,* 841 F. Supp. 1255, 1266–67 (CIT 1993); *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1013–15 (CIT 1992).

The ''NME-wide'' rate is consistent with section 735(c)(1)(B)(i)(I) of the Act. This provision directs the agency to assign a dumping margin for each exporter or producer individually investigated. As discussed above, in NME cases, all producers and exporters comprise a single entity. Thus, we assign the NME rate to the NME entity just as we assign an individual rate to a single exporter or producer operating in a market economy. As a result, all exporters and producers that are part of the NME entity are assigned the ''NME-wide'' rate. Because the ''NME-wide'' rate is the equivalent of a company-specific rate, it changes only when we review the NME entity (*i.e.*, all NME producers and exporters that have not qualified for a separate rate).

To qualify for a separate rate, an NME exporter or producer must provide evidence showing both *de jure* and *de facto* absence of government control. See Final Determination of Sales at Less Than Fair Value; Silicon Carbide from the People's Republic of China (59 FR 22585, May 2, 1994). Until such evidence is presented, a company is presumed to be part of the NME entity and receives the ''NME-wide'' rate. Consequently, whenever the NME enterprise has been investigated or reviewed, calculation of an ''all others'' rate under section 735(c)(1)(B)(i)(II) of the Act is unnecessary. All exporters or producers will either qualify for a separate company-specific rate, or be part of the NME enterprise, and receive the ''NME-wide'' rate. Thus, there can be no exporters or producers who have never been investigated or reviewed.

In this review, we have determined that TIE is, and always has been, the sole exporter of the subject merchandise to the United States. The Romanian government stated in its response to our questionnaire, and we have confirmed with the U.S. Customs Service, that TIE was the only Romanian exporter of the subject merchandise to the United States during this period of review (POR). In addition, in past administrative reviews of this case, TIE has been the only exporter of the subject merchandise to the United States. However, we have determined that TIE is not eligible for a separate rate. Since TIE's exports represent the only exports of this merchandise to the United States, we have calculated a rate for TIE based on its exports to the United States during the POR, and TIE's rate becomes the all-Romanian rate, or the ''NME-wide'' rate, and will be applied to all companies in Romania.

Comment 18

Timken argues that the Department should use European HTS subheading 7204.41 to classify nonalloy scrap generated in the production process. Cold-rolled steel is nonalloy steel; scrap produced from nonalloy steel is less costly, and should be reflected in the Department's scrap adjustment to material costs. If there are no significant exports of 7204.41 steel to Poland during the POR, it would be reasonable to use exports for a period preceding the POR.

TIE argues that there is an insignificant variation in the scrap values between HTS subheading 7204.29, which the Department used in its preliminary results, and subheading 7204.41. Further, use of data from prior periods would be less accurate, and should be rejected.

Department's Position

We agree with Timken. For these final results, we have calculated the portion of nonalloy scrap steel generated from the cold-rolled steel used, and have used HTS subheading 7204.41 for that portion in our calculation of the surrogate value for nonalloy scrap. For the remaining hot-rolled scrap steel, we have continued to use a surrogate price from the POR for subheading 7204.29.

Comment 19

Timken requests the Department use different HTS classifications for the steel bar used by the Romanian factories. Timken claims that European HTS 7228.30.89, the category used by the Department in the preliminary results, excludes steel with a chemical composition suitable for manufacturing bearings. This category, according to Timken, also excludes steel bars and rods with a circular cross-section, the same type of steel used in bearings production. Timken suggests the Department use the European HTS 7228.30.40 (for bearings produced in 1994) and 7228.30.41 and 7228.30.49 (for bearings produced in 1995). These classifications, Timken claims, are the closest matches with the U.S. definition of bearing-quality steel.

TIE notes that, in prior reviews of this order, Timken advocated the use of category 7228.30.89, the predecessor to the Department's steel bar selection for the preliminary results of this review. TIE notes there is no indication on the record that the Romanian factories use steel precisely corresponding to the category 7228.30.40, and that Timken has not asserted that European HTS 7228.30.89 is aberrational. Furthermore, Timken has not provided any data or documentation regarding category 7228.30.89. In addition, recent EU data show virtually no exports of steel to Poland under Timken's suggested categories. Therefore, TIE concludes, the Department should continue to use category 7228.30.89 in steel calculations.

Department's Position

We agree with TIE. We previously have found, in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results of Antidumping Duty Administrative Review (56 FR 41518, August 21, 1991), that SAE 52100 steel, the type reported used by TIE, best corresponds with European HTS 7228.30.89. While other European HTS categories may closely match what the U.S. considers bearing-quality steel, there is no evidence on record that the Romanian factories used this type of steel. Since the steel type reported by TIE is SAE 52100, and since we have previously found this type matches most closely with European HTS 7228.30.89, we have continued to use this category in our calculations.

Comment 20

Timken argues that the Department should use International Standard Industrial Classification (ISIC) category 382 instead of 381 when referring to the International Labour Office Yearbook of Labor Statistics to determine the number of hours worked in Poland. In Timken's February 26, 1996 submission, Timken provided the detailed descriptions of the ISIC categories. Ball and roller bearings, Timken points out, are classified in ISIC 3829, a subgroup of Major Group 382. Hence, Timken claims, the Department should use ISIC Group 382 instead of 381.

TIE argues that, since the Department used information from the government of Poland which specifically lists the labor rate for the manufacture of metal

products (except machinery and equipment), to the extent that the Department continues to use ILO data, it should continue to use ISIC group 381: Manufacture of Fabricated Metal Products, Except Machinery and Equipment. To calculate wage rates using monthly income from one category and hours worked from another would, TIE claims, lead to an inaccurate valuation. TIE argues that industry group 381 has been used by the Department in previous bearings cases.

Department's Position

We agree with Timken that the proper group for bearings is ISIC group 382 because bearings are included in one of its subgroups. However, for these final results we are using data on hours worked from the IL&T that are not industry-specific (*see* our response to comment 12). With respect to monthly income data, we used, in the preliminary results, ISIC group 381 data from the Statistical Bulletin, published by the Polish government. For these final results, we have recalculated the wage rate using monthly incomes in the Statistical Bulletin from ISIC group 382.

Comment 21

Timken argues that the Department should adjust its materials factor prices to account for insurance and freight costs incurred in shipping to Poland. The EUROSTAT export data used by the Department in the preliminary results reflected FOB values. Therefore, according to Timken, an appropriate adjustment must be made to reflect the cost of the materials when delivered to the importing country. Timken suggests the Department use the CIF–FOB conversion factor published by the International Monetary Fund in the International Financial Statistics Yearbook. Timken notes that the Department made such an adjustment in Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof from the People's Republic of China (56 FR 67590, December 31, 1991).

TIE replies that applying the CIF–FOB conversion factor to import prices into Poland would lead to distorted prices. First, TIE states that there is no evidence on record that Romanian factories insured their imports of raw materials. The CIF–FOB factor includes an adjustment for insurance that is not relevant in determining a surrogate value. Second, TIE argues that use of the CIF–FOB conversion factor would overstate freight costs between the EU and Poland. The CIF–FOB conversion factor is based on all imports into Poland, from all countries, and therefore includes ocean and air freight from distant countries. The EU and Poland, however, are contiguous, and most of the steel imported by Poland was from Germany, a contiguous country; therefore, freight methods and rates would be cheaper.

Department's Position

We agree with Timken that the FOB prices of EU exports to Poland do not state the true costs to Poland for raw materials. Although there is no evidence on record indicating whether Romanian factories insure their imports of raw materials, producers do incur costs to ship inputs to the factory. Therefore, the Department has used the CIF–FOB conversion factor suggested by Timken, as the best available surrogate information. This factor can not be separated into distinct rates for freight and insurance. Similarly, although freight distances for steel imported into Poland might differ from the average freight distance reflected in the conversion factor, we have no way to ascertain that difference.

Comment 22

Timken asks the Department to recalculate factor prices to exclude data involving small quantities of a product. Specifically, Timken asks the Department to disregard a country's exports to Poland if the total quantity from that country during the POR is less than ten metric tons. Smaller quantities, Timken claims, often involve special products or peculiar transactions that yield unit values unrepresentative of overall price levels for that HTS category.

Department's Position

We agree with Timken. In the preliminary results, we derived raw material surrogate prices based in part on quantities too small to be representative. Accordingly, the Department has recalculated factor prices after eliminating any data from a country exporting an insignificant amount to Poland during the POR. See Memorandum from Case Analyst to the File, dated September 25, 1996, ''Analysis for the final results of the 1994–1995 administrative review of tapered roller bearings and parts thereof, finished or unfinished, from Romania—Tehnoimportexport, S.A. (TIE),'' which is on file in the Central Records Unit (room B–099 of the Main Commerce Building) for the amounts considered to be insignificant.

Clerical Errors

TIE identified a clerical error with respect to the reporting of packing costs in its original submission. Review of the data shows that an obvious error was made in the reporting of a packing factor for one model. Accordingly, we have decided to correct the error, and recalculate the margins for the affected observations.

TIE also identified clerical errors made by the Department in its preliminary results of review. Although the submission alleging the clerical errors was submitted to the Department after the deadlines for submission of case and rebuttal briefs, and after the public hearing, we have determined that we made such errors, and have corrected them for the final results.

Currency Conversion

During the interim between the publication of the preliminary results and these final results, the Department was able to obtain daily exchange rates certified by the Federal Reserve Bank for the Thai Baht. Accordingly, we used these rates in place of the monthly rates used in the preliminary results.

Non-Shippers

Tehnoforestexport, S.C. Rulmenti S.A. Alexandria, S.C. Rulmentul S.A. Brasov, S.C. Rulmenti S.A. Barlad, S.C. Rulmenti Grei S.A. Ploiesti, S.C. Rulmenti S.A. Slatina, and S.C. URB Rulmenti Suceava S.A. stated that they did not have shipments during the period of review, and we confirmed this with the United States Customs Service. Therefore, we are treating them as non-shippers for this review, and are rescinding this review with respect to these companies.

Final Results of Review

As a result of our review of the comments received, we have determined the margin to be:

Manufacturer/ exporter	Time period	Margin (per-cent)
Romania Rate	6/1/94–5/31/95	14.89

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of TRBs from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for TIE and all other exporters will be 14.89 percent; and (2)

for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also 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 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)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This 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: September 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25243 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Notice of Prospective Grant of Coexclusive Patent License

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of a field of use coexclusive license in the United States to practice the invention embodied in U.S. Patent Number 5,389,523, titled, ''Liposome Immunoanalysis By Flow Injection Assay'' to Pasadena Scientific Industries, having a place of business in Hanover, Maryland and Saddleback Aerospace Corporation, having a place of business in Issaquah, Washington.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective coexclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective coexclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Number 5,389,523 is a method of immunoanalysis which combines immobilized immunochemistry with the technique of flow injection analysis, and employs microscopic spherical structures called liposomes, or lipid vesicles, as carriers of detectable reagents.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensees to perform further research on the invention for purposes of commercialization. NIST may grant the licensees an option to negotiate for coexclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for coexclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of the invention for licensing was published in the Federal Register, Vol. 57, No. 226 (November 23, 1992). A copy of the patent application may be obtained from NIST at the foregoing address.

Dated: September 24, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–25194 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 092096A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a letter of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities was issued on September 23, 1996, to Conoco Inc., P.O. Box 51266, Lafayette, LA.

EFFECTIVE DATE: The letter of authorization is effective from September 23, 1996, through September 23, 1997.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers 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. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139) and remain in effect until November 13, 2000.

Summary of Request

NMFS received a request for a letter of authorization on September 16, 1996, from Conoco, Inc. This letter requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of this letter of authorization is based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: September 23, 1996.

Rennie S. Holt,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–25162 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 092696A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a letter of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities was issued on September 27, 1996, to the Walter Oil & Gas Corporation, 1021 Main Street, Suite 2200, Houston, TX.

EFFECTIVE DATE: The letter of authorization is effective from September 27, 1996, through September 27, 1997.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers 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. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139) and remain in effect until November 13, 2000.

Summary of Request

NMFS received a request for a letter of authorization on September 25, 1996, from the Walter Oil & Gas Company. This letter requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of this letter of authorization is based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: September 27, 1996.

Patricia Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–25206 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 092396A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Assessment Panel (SEP).

DATES: The meeting will be held on October 23, 1996, beginning at 8:00 a.m., and will conclude at 5:00 p.m. on October 24, 1996.

ADDRESSES: The meeting will be held at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL; 813–281–8900.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review available social and economic data on the Gulf of Mexico red snapper, vermilion, and amberjack fisheries and to determine the social and economic implications of the levels of acceptable biological catch recommended by the Council's Reef Fish Stock Assessment Panel. The SEP may recommend to the Council total allowable catch levels for the 1996–97 fishing year.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 17, 1996.

Dated: September 26, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–25204 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 092596C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Stone Crab Advisory Panel (AP).

DATES: This meeting will be held on October 23, 1996, from 10:00 a.m. to 3:00 p.m.

ADDRESSES: This meeting will be held at the Banana Bay Resort and Marina, 4590

Overseas Highway, Marathon, FL; telephone: 305–743–3500.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review effort and landing trends in the fishery and indicate to the Council whether the industry supports development of a limited access or effort limitation system.

The AP is comprised of fisherman and other user groups who advise the Council on fishery issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 16, 1996.

Dated: September 26, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–25205 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090696H]

Endangered Species; Permits

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

ACTION: Issuance of permit 1015 and modification 2 to permit 885.

SUMMARY: Notice is hereby given that NMFS issued Permit 1015 to Drs. Frank A. Chapman and Wallis H, Clark, Jr., of the Department of Fisheries and Aquatic Sciences, University of Florida (P611), and modification 2 to Permit 885 to Mark B. Bain, New York Cooperative Fish and Wildlife Research Unit (P555), to take listed shortnose sturgeon for the purpose of scientific research subject to certain conditions set forth therein.

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

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250) for Permit 885;

or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141) for Permit 1015.

SUPPLEMENTARY INFORMATION: Notice was published on June 6, 1996 (61 FR 28855) that Drs. Frank A. Chapman and Wallis H, Clark, Jr., of the Department of Fisheries and Aquatic Sciences, University of Florida (P611), had applied for a permit to conduct scientific research on shortnose sturgeon (*Acipenser brevirostrum*), as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222). The purpose of the research is to identify the physical, chemical, and biological parameters necessary for optimal survival and growth of shortnose sturgeon. Specific items to be studied are: salinity and temperature tolerance, nutrient requirements, embryonic development and metamorphosis, sex determination, and gonadal development and physiology. 200 shortnose sturgeon would be obtained from U.S. Fish and Wildlife hatcheries and transferred to the Permit Holders' facilities in Florida to be maintained in captivity. The fish would be PIT-tagged, anaesthetized, handled, have blood and tissue samples taken, and be spawned and progeny reared, in accordance with the application and current handling standards. On September 23, 1996, NMFS issued Permit 1015 for five years, authorizing the above research.

On August 22, 1996, NMFS issued modification 2 to Permit 885 held by Mark B. Bain, New York Cooperative Fish and Wildlife Research Unit (P555), to take listed shortnose sturgeon as authorized by the ESA. The purpose of the authorized research is to study endangered shortnose sturgeon in the Hudson River downstream of Albany, NY. Data from this project will help to assess the potential impact to shortnose sturgeon from development activities in the Hudson River, and may provide insight on the complimentary management of shortnose and Atlantic sturgeon. In addition, this project seeks to quantify the shortnose sturgeon population in the Hudson River. The applicant is authorized to collect, measure, weigh, and tag 5,000 shortnose sturgeon annually, and take blood and tissue samples from some fish. Two mortalities are authorized annually. Modification 2 authorizes the following: 1) Stomach sampling on 100 of the shortnose sturgeon, 2) attachment of sonic tags to 20 of the shortnose sturgeon, 3) sampling of muscle tissue, and 4) extension of the permit expiration date until December 31, 1998.

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

Dated: September 25, 1996.

Robert C. Ziobro,

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

[FR Doc. 96–25163 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 092496B]

Permits; Foreign Fishing

In accordance with a Memorandum of Understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the exclusive economic zone under provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of the Russian Federation requesting authorization for three vessels to conduct joint venture operations in the Northwest Atlantic Ocean for Atlantic mackerel. The large stern trawler/processors KOKAND, SADKO and ZUND are identified as the vessels that will receive Atlantic mackerel from U.S. vessels. Send comments on this application to:

National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910; and/or to one or both of the Regional Fishery Management Councils listed below:

Chris Kellogg, Acting Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231–0422;

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790, (302) 674–2331.

For further information contact Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2337.

Dated: September 25, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–25208 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATE: October 28, 1996.

ADDRESS: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: September 26, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–25137 Filed 10–1–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Services (DACOWITS); Conference

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, as amended, notice is hereby given on a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: October 23–27, 1996 (Summarized agenda follows).

ADDRESSES: Oklahoma City Medallion Hotel, One North Broadway Oklahoma City, OK 73102 Phone Number: 1–800–285–2780.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Wednesday, October 23, 1996

General conference registration
Field Trip (DACOWITS Members and Senior Military Representatives Only)

Thursday, October 24, 1996

Opening Ceremony/General Business Session (Open to Public)
Lunch (Paid Registered Conference Participants only)
Subcommittee sessions (Open to Public)

Friday, October 25, 1996

Subcommittee sessions (Open to Public)
Lunch (Paid Registered Conference Participants only)
Subcommittee sessions Wrap-up (Open to Public)

Saturday, October 26, 1996

Tri-Committee Review (Open to Public)
Executive Committee Rules and Procedures

Sunday, October 27, 1996

Final Committee Meeting/Military Representatives review (Open to Public)
Closing session (Open to Public)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kay Troutt, USAF or CDR Tala J. Welch, USN DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the OSD Reception and Dinner and Field Trip.

(2) The Opening Session/business session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 18, 1996.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral Presentations by members of the public will be permitted only on Sunday, October 27, 1996 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 18, 1996 and make 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Executive Director, DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Non social agenda events that are not open to the public are for administrative matters unrelated to substantive advice provided to the Department of Defense and do not involve DACOWITS deliberations or decision-making issues before the Committee.

Dated: September 25, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–25138 Filed 10–01–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–385–000]

CNG Transmission Corporation; Notice of Section 4 Filing

September 26, 1996.

Take notice that on September 17, 1996, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on specified uncertificated gathering lines. CNG states that the uncertificated lines are being abandoned in place or removed and that no contract for transportation service with CNG will be canceled or terminated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 30, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

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

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

Lois D. Cashell,

Secretary.

[FR Doc. 96–25149 Filed 10–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–067]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

September 26, 1996.

Take notice that on September 23, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 100,000 MMBtu, not to exceed 10 Bcf of Frontier's gas storage inventory on an ''as metered'' basis to Interenergy Resources Corporation, for term ending October 31, 1997.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting in the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 First Street N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25147 Filed 10–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–806–000]

Tennessee Gas Pipeline Company and Columbia Gulf Transmission Company; Notice of Application

September 26, 1996.

Take notice that on September 20, 1996, Tennessee Gas Pipeline Company (Tennessee) and Columbia Gulf Transmission Company (Columbia Gulf), (referred to collectively as Applicants), filed a joint application with the Commission in Docket No. CP96–806–000 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission to lease firm capacity to each other in accordance with a Reciprocal Operating Lease Agreement (Agreement), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The Applicants state that the proposed Agreement is designed to: (1) Provide Tennessee needed additional capacity on the South Pass 77 system; (2) grant Columbia Gulf direct access from its mainline system to the South Pass 77 system through a lease of a portion of Tennessee's mainline facilities; and (3) amicably resolve a contract dispute between Tennessee and Columbia Gulf with respect to the Applicants' capacity rights on the South Pass 77 system which has impeded the attachment of new supplies the system.

Columbia Gulf will retain 115,000 Mcf per day as its capacity entitlement on the South Pass 77 system and lease to Tennessee any capacity it would otherwise be entitled to over and above 115,000 Mcf per day.

Columbia Gulf will lease 115,000 Mcf per day of capacity (an amount equal to Columbia Gulf's retained capacity entitlement on the South Pass 77 system) on Tennessee's mainline system and the South Pass 77 system to a point of interconnection between Tennessee and Columbia Gulf at Egan, Louisiana.

Applicants state that the lease of capacity will provide their customers with greater flexibility, increased supply and market opportunities. Tennessee's customers will have increased access to receipt points on the South Pass 77 system and Columbia Gulf's customers will have direct access to South Pass area production for the first time. Applicants also represent the Agreement will have no detrimental impacts on any existing customers. Further, applicants maintain this new access has the potential to increase the value of released capacity on both systems.

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

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed authorizations are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Lois D. Cashell,

Secretary.

[FR Doc. 96–25148 Filed 10–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3046–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

September 25, 1996.

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

1. PECO Energy Company

[Docket No. ER96–3046–000]

Take notice that on September 19, 1996, PECO Energy Company (PECO) filed a Service Agreement dated September 10, 1996 with PACIFICORP Power Marketing, Inc. (PPM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PPM as a customer under the Tariff.

PECO requests an effective date of September 10, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to PPM and to the Pennsylvania Public Utility Commission.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER96–3047–000]

Take notice that on September 19, 1996, PECO Energy Company (PECO) filed a Service Agreement dated September 12, 1996 with Consolidated Edison Company (ConEd) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds ConEd as a customer under the Tariff.

PECO requests an effective date of September 12, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ConEd and to the Pennsylvania Public Utility Commission.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER96–3048–000

Take notice that on September 19, 1996, PECO Energy Company (PECO) filed a Service Agreement dated September 6, 1996 with Illinova Power Marketing, Inc. (ILLINOVA) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds ILLINOVA as a customer under the Tariff.

PECO requests an effective date of September 6, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ILLINOVA and to the Pennsylvania Public Utility Commission.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER96–3049–000]

Take notice that on September 19, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, Service Agreements with Questar Energy Trading under FERC Electric Tariff, Second Revised Volume No. 1, a revised Index of Purchasers under said Tariff, and Certificate of Concurrences from Questar Energy Trading.

A copy of the filing was served upon Questar Energy Trading.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER96–3050–000]

Take notice that on September 19, 1996, Southwestern Electric Power Company (SWEPCO), tendered for filing an executed Scheduling Agent Agreement between SWEPCO and the City of Minden, Louisiana (Minden). The Agreement documents an arrangement whereby SWEPCO will act as Minden's scheduling agent for the purpose of bringing Southwestern Power Administration (SPA) power to Minden's system.

SWEPCO requests an effective date of June 1, 1996, for the Scheduling Agent Agreement. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing have been served on Minden, SPA and the Louisiana Public Service Commission.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER96–3051–000]

Take notice that on September 19, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for AIG Trading Corporation (AIG). Boston Edison requests that the Service Agreement become effective as of September 1, 1996.

Edison states that it has served a copy of this filing on AIG and the Massachusetts Department of Public Utilities.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER96–3052–000]

Take notice that on September 19, 1996, Northern States Power Company (Minnesota)(NSP), tendered for filing a Transmission Service Agreement between NSP and WPS Energy Services, Inc.

NSP requests that the Commission accept the agreement effective August 20, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER96–3053–000]

Take notice that on September 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate GSS.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Delmarva Power & Light Company

[Docket No. ER96–3054–000]

Take notice that on September 19, 1996, Delmarva Power & Light Company of Wilmington, Delaware, submitted to the Commission service agreements with the City of Dover, Delaware, for firm point-to-point transmission service under Delmarva's Order No. 888 compliance tariff (Delmarva Power & Light Company, Tariff Volume 13).

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER96–3055–000]

Take notice that on September 19, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Stand Energy Corporation (Stand). The agreement provides a mechanism pursuant to which the parties can enter into separately schedule transactions under which NYSEG will sell to Stand and Stand will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on September 20, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Stand.

Comment date: October 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Power Wisconsin Corporation

[Docket No. ES96–47–000]

Take notice that on September 23, 1996, Northern Power Wisconsin Corporation filed an application, under § 204 of the Federal Power Act, seeking the following authorizations in connection with the proposed merger and reorganization for which authority is being sought separately in Docket No. EC95–16–000:

(1) to issue up to 68,811,523 shares of common stock, par value $2.50 per share;

(2) to issue up to 3,900,000 shares of cumulative preferred stock, par value $100.00 per share; and

(3) to assume all of the outstanding obligations and liabilities of Northern State Power Company, a Minnesota corporation which amounted to approximately $1.86 billion as of June 30, 1996.

Comment date: October 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–25191 Filed 10–1–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–790–000, et al.]

Nautilus Pipeline Company, L.L.C., et al.; Natural Gas Certificate Filings

September 25, 1996.

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

1. Nautilus Pipeline Company, L.L.C.

[Docket Nos. CP96–790–000; CP96–791–000; CP96–792–000]

Take notice that, on September 16, 1996, Nautilus Pipeline Company, L.L.C. (Nautilus), 5555 San Felipe, Houston, Texas 77056, filed an application for: (1) a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act (NGA), authorizing Nautilus to construct and operate approximately 101 miles of 30-inch diameter pipeline and ancillary facilities (Docket No. CP96–790–000); (2) a blanket certificate, pursuant to Part 284, Subpart G of the Commission's Regulations, authorizing Nautilus to provide both firm and interruptible transportation services to others (Docket No. CP96–791–000); and (3) a blanket certificate, pursuant to Part 157, Subpart F of the Commission's Regulations, authorizing Nautilus to construct and operate certain facilities under Section 7 of the NGA (Docket No. CP96–792–000), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Nautilus is a limited liability company, organized under the laws of the State of Delaware, with its principal place of business located in Houston, Texas. Nautilus' owners include: (1) Sailfish Pipeline Company, L.L.C., a wholly-owned subsidiary of Leviathan Gas Pipeline Partners, L.P. (25.67%); (2) Marathon Gas Transmission, Inc., an affiliate of Marathon Oil Company (24.33%); and (3) Shell Seahorse Company, an affiliate of Shell Offshore, Inc. (50.00%). Nautilus states that, although it does not currently own any pipeline facilities and is not currently engaged in any natural gas transportation operations, it will become a natural gas company, subject to the Commission's jurisdiction, upon acceptance of the certificates requested in the subject application.

Nautilus proposes to construct and operate approximately 101 miles of 30-inch diameter pipeline. According to Nautilus, the proposed pipeline will be able to deliver up to 600,000 Mcfd on a firm basis, and will cost approximately $121 million in 1996 dollars. Nautilus states that the pipeline will receive gas at Ship Shoal Block 207, from Manta Ray Offshore Gathering Company, L.L.C., and transport it to Exxon U.S.A. Inc.'s Garden City Gas Processing Facility (Exxon's Garden City Plant), located at Garden City, in St. Mary Parish, Louisiana. As proposed, the pipeline will extend from a platform in Ship Shoal Block 207, offshore Louisiana, to a location near Burns Point, onshore Louisiana, where it will interconnect with the Burns Point Gas Processing Facility. From there, it will extend to and terminate at Exxon's Garden City Plant.

Nautilus states that the proposed pipeline has been designed to transport natural gas to the onshore pipeline grid, from both shallow and deep water locations in the Gulf of Mexico, including offshore, Louisiana sources in the Green Canyon, Ship Shoal, Grand Isle, Eugene Island, South Timbalier, and Ewing Bank areas. According to Nautilus, it will neither own nor operate any gas processing facilities and does not plan to enter into any gas processing agreements. Nautilus states that, at Garden City, gas exiting the proposed pipeline may be delivered to the pipeline facilities of Koch Gateway Pipeline Company, Trunkline Gas Company, Columbia Gulf Transmission Company, Louisiana Intrastate Gas Company, Acadian Pipeline System, and Cypress Gas Pipeline Company.

Nautilus states that it has received transportation commitments for reserves from more than 100 blocks in the Ship Shoal, South Timbalier, Ewing Bank, and Green Canyon areas, and that additional commitments are expected to result from an open season to be held

from September 16, 1996 to October 31, 1996.

According to Nautilus, the first gas to be transported through the proposed pipeline will come from deep-water oil reserves underlying Green Canyon Blocks 200, 201, 244, and 245 (the Troika development). Nautilus states that Troika, a subsea development in 2,700 feet of water, is expected to produce up to 80,000 Bopd and 150,000 Mcfd of casinghead gas, beginning in the fall of 1997. Nautilus states that, at this time, 100,000 Mcfd of Troika's casinghead gas is committed to Nautilus.

In addition to the Part 284, Subpart G blanket certificate that Nautilus seeks, Nautilus requests that the Commission approve its proposed initial rates and corresponding tariff, under which Nautilus would offer firm transportation service under three different rate schedules, and interruptible transportation service under a single IT rate schedule. Nautilus proposes to render traditional firm transportation service (with reservation and commodity charges) under its proposed FT–1 rate schedule, and flexible firm transportation services under its FT–2 and FT–3 rate schedules. According to Nautilus, rate schedules FT–2 and FT–3, which contain provisions implementing conditional reservation charges, are designed to permit shippers to pay for service on a volumetric basis, commit for a longer or shorter term, adjust contract volumes, receive authorized overrun service, and exercise capacity release rights. Nautilus' tariff also includes a proposed priority for casinghead gas delivered under the firm rate schedules, so as to avoid shutting-in oil production.

Nautilus also requests a waiver of § 154.109(c) of the Commission's Regulations, which requires the General Terms and Conditions of an FERC gas tariff to contain a statement of the order in which a company discounts its rates and charges, specifying the order in which various rate components will be discounted, in accordance with Commission policy. In addition, Nautilus requests a waiver of §§ 284.7(c)(1) and 284.8(d) of the Commission's Regulations, to the extent that the Commission determines that the proposed conditional reservation charges under the FT–2 and FT–3 rate schedules require it, plus a waiver of § 284.243(b) of the Commission's Regulations, which requires that firm shippers be permitted to release their capacity, in whole or in part, permanently or on a short-term basis.

Comment date: October 16, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP96–797–000]

Take notice that on September 18, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP96–797–000 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 approval and permission to construct and operate a delivery tap for Gibson County Utility District (Gibson), under the blanket certificate issued in Docket No. CP88–532–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that it proposes to construct and operate an interconnection in Gibson County, Tennessee. ANR further states that the proposed interconnection will consist of two four inch taps, valving and associated measuring equipment. ANR asserts that the volumes to be delivered will be within the certificated entitlement of the customer. ANR further asserts that the proposed construction will have no adverse impact on its peak day deliveries nor will it have any impact on annual entitlement of any of ANR's existing customers. ANR indicates that the construction costs of the proposed facilities will be approximately $95,900 for which Gibson will reimburse ANR.

Comment date: November 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP96–805–000]

Take notice that on September 20, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a prior notice request with the Commission in Docket No. CP96–805–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to partially abandon certain undersized facilities and to construct and operate replacement facilities at the Twin Falls meter station in Twin Falls County, Idaho, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northwest proposes to (1) remove approximately 150 feet of 4-inch inlet piping, one 750,000 Btu per hour heater, one 4-inch filter, and four 4-inch regulators and appurtenances, and (2) install as replacement facilities approximately 150 feet of 6-inch inlet piping, one 1.5MMBtu per hour heater, one 6-inch filter and four 4-inch control valve type regulators and appurtenances at the Twin Falls meter station. Northwest states that these upgrades would enable Northwest to accommodate existing firm maximum daily delivery obligations to Intermountain Gas Company (Intermountain) and its affiliate IGI Resources, Inc. (IGI) and to accommodate Intermountain's request for additional delivery capacity and delivery pressure under existing firm service agreements. Northwest also states that the maximum design capacity of the Twin Falls meter station would increase from approximately 18,400 Dth per day at 365 psig to approximately 31,000 Dth per day at 365 psig or 40,870 Dth per day at 500 psig. Northwest estimates that it would cost $234,900 to upgrade the Twin Falls meter station.

Comment date: November 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP96–807–000]

Take notice that on September 20, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP96–807–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade its Twin Falls No. 2 Meter Station in Twin Falls County, Idaho by partially abandoning existing obsolete meter facilities and constructing and operating upgraded replacement facilities under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposes to upgrade the Twin Falls No. 2 Meter Station by removing the existing obsolete 6-inch orifice meter and installing in its place a new 4-inch turbine meter run and appurtenances in parallel with the existing 4-inch turbine meter run. Northwest states that as a result of this proposed upgrade, the maximum design capacity of the meter station will increase from approximately 3,980 Dth per day at 175 psig to approximately

8,760 Dth per day at 200 psig, as limited by the regulators.

Northwest states that this meter station upgrade is necessary to accommodate a request by Intermountain Gas Company for increased delivery capabilities at this point for service under existing firm transportation agreements.

Northwest states that the total cost of the proposed upgrade at the Twin Falls No. 2 Meter Station is estimated to be approximately $69,300.

Comment date: November 12, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP96–808–000]

Take notice that on September 20, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a prior notice request with the Commission in Docket No. CP96–808–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to partially abandon certain facilities and to construct and operate replacement facilities at the Pocatello meter station in Bannock County, Idaho, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northwest proposes upgrade its delivery capacity at the Pocatello meter station to better serve the needs of Intermountain Gas Company (Intermountain) and its affiliate IGI Resources, Inc. (IGI) under existing firm service agreements. Northwest states that the maximum design capacity of the Pocatello meter station would increase from approximately 18,725 Dth per day at 250 psig to approximately 23,976 Dth per day at 350 psig, as limited by the regulators. Northwest estimates that it would cost $18,100 to upgrade the Pocatello meter station.

Comment date: November 12, 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, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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.

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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 96–25190 Filed 10–1–96; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of September 2 Through September 6, 1996

During the week of September 2 through September 6, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Personnel Security Hearing

Oakridge Operations Office, 9/4/96, VSO–0091

An OHA Hearing Officer issued an Opinion regarding the eligibility of an Individual to maintain access authorization under the provisions of 10 CFR Part 710. After considering the Individual's testimony and the record, the Hearing Officer first found that the Individual had used an illegal drug, cocaine. The Hearing Officer also found the Individual to have two illnesses or mental conditions (Cocaine Abuse and Personality Disorder, Not Otherwise Specified) that in the opinion of a board-certified psychiatrist cause, or may cause, a significant defect in his judgment or reliability. In view of the Individual's positive drug test for cocaine, his personality disorder and his failure to file federal tax returns for several years, the Hearing Officer found that the Individual had engaged in unusual conduct or was subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. Further, the Hearing Officer did not find sufficient evidence rebutting the derogatory information or mitigating the security concerns. Accordingly, the Hearing Officer recommended that the Individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

B H Y TRUCKING, INC. ET AL	RG272–00081	09/03/96
COOK MOTOR LINES, INC	RA272–75	09/06/96
GULF OIL CORPORATION/PYRAMID SUPPLY, INC	RF300–13356	09/03/96
SHADOW LAKE RANCH ET AL	RK272–3385	09/04/96

Dismissals

The following submissions were dismissed:

Name	Case No.
HARMON-BOLES GAS PRODUCTS INC	RF300–15343
IDAHO OPERATIONS OFFICE	VSO–0097
NIXON COMPANY	RF352–7
SULLIVAN COUNTY CENTRAL RECEIVING	RF272–95142

[FR Doc. 96–25180 Filed 10–1–96; 8:45 am]

BILLING CODE 6450–01–P

Week of July 15 Through July 19, 1996

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals

During the week of July 15 through July 19, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 981

Appeals

Glen Milner, 7/16/96, VFA–0179

Glen Milner filed an Appeal from a determination issued to him by the Freedom of Information Act/Privacy Division (FOI/PA) in response to a request for information Mr. Milner submitted under the Freedom of Information Act (FOIA). In that determination, FOI/PA stated that it could not find the information Mr. Milner requested, regarding ''the decision in 1992 to send specially fitted railcars to Russia to transport nuclear weapons and the present use and condition of these railcars.'' This was a copy of a request sent to the Albuquerque Operations Office which was still processing the request. FOI/PA stated that no documents were found responsive to Mr. Milner's request, especially since no decision had been made in 1992 to send railcars to Russia. Furthermore, any information about the railcars is located in Albuquerque. Mr. Milner indicated in his Appeal that his was a broader request than that stated in FOI/PA's determination. The DOE found that the interpretation accorded his letter was reasonable. Accordingly, Mr. Milner's Appeal was denied.

Personnel Security Hearings

Oakland Operations Office, 7/16/96, VSA–0078

The Director of the Office of Hearings and Appeals issued an Opinion regarding the request for review by an individual of a Hearing Officer's adverse decision regarding his eligibility for access authorization under the provisions of 10 C.F.R. Part 710. The DOE had claimed the individual had forged a 161–K credential, a document permitting the carrying of a weapon on DOE property. After considering the individual's arguments and the record, the Director found that: the Hearing Officer had not imposed too high a burden of proof on the individual, the Hearing Officer's finding regarding the individual's evasiveness should be upheld, and despite the fact that the Hearing Officer failed to consider some portions of the evidence supporting the individual's case, the Hearing Officer had made a comprehensive, common sense judgment. Accordingly, the Director recommended that the individual's access authorization should not be reinstated.

Oakland Operations Office, 7/17/96, VSO–0088

Under the provisions set forth in 10 CFR Part 710, the Department of Energy, Oakland Operations Office (DOE/OK) suspended an individual's access authorization pending administrative review, based upon derogatory information received by the DOE/OK which indicated illegal use of marijuana by the individual. Following a hearing convened at the request of the individual, the Office of Hearings and Appeals Hearing Officer found in his Opinion that: (i) The individual's marijuana use was not substantial and was in remission, (ii) the individual successfully completed a viable drug treatment program, and (iii) the individual documented a sufficient period of abstinence and provided other evidence to support a showing of rehabilitation. Accordingly, the Hearing Officer concluded in the Opinion that the individual's access authorization should be restored.

Oakland Operations Office, 7/17/96, VSO–0089

Under the provisions set forth in 10 CFR Part 710, the Department of Energy, Oakland Operations Office (DOE/OK) suspended an individual's access authorization pending administrative review, based upon derogatory information received by the DOE/OK which revealed illegal use of methamphetamine, cocaine and marijuana. On this basis, DOE/OK also invoked 10 CFR § 710.8(1), finding that by use of the drugs the individual had

violated a drug certification and that this constituted unusual conduct tending to show he was not reliable or trustworthy. Following a hearing convened at the request of the individual, the Office of Hearings and Appeals Hearing Officer found in his Opinion that the individual had become severely addicted to methamphetamine and, despite the individual's candor and commendable recovery efforts since admitting his drug use, he was far from being rehabilitated. The Hearing Officer further disapproved the individual's assertion that he had not made a knowing decision when he signed the Drug Certification. Accordingly, the Hearing Officer concluded in the Opinion that individual's access authorization should not be restored.

Refund Application

Gulf Oil Corp./Central Truck Lines, Inc., 7/17/96, RF300–20692

The DOE issued a Decision and Order, denying a refund application filed on behalf of Central Truck Lines, Inc. (Central Truck) in the Gulf Oil Corporation refund proceeding. The applicant, Allan Day Musgrove, claimed the right to a refund as the owner of a dissolved corporation which owned the parent of Central Truck. In the Decision and Order, the DOE determined that the circumstances surrounding the acquisition and subsequent dissolution of the corporations involved indicated that Mr. Musgrove was not injured by the alleged Gulf overcharges experienced by Central Truck. Accordingly, the DOE determined that Mr. Musgrove was not entitled to a Gulf refund for those alleged overcharges.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

BILLY J. TEMPLETON ET AL	RK272–02314	07/16/96
CRUDE OIL SUPPLE REF DIST.	RB272–00084	07/15/96
CRUDE OIL SUPPLEMENTAL REFUND	RB272–85	07/19/96
FRED CARLSON COMPANY, INC. ET AL	RG272–00761	07/15/96
GULF OIL CORPORATION/FLOWERS BAKING CO. OF BIRMINGHAM	RF300–16597	07/16/96
HOLSUM BAKERIES, INC.	RF300–16936	
UNITED TRUCK & BUS SERVICE	RR300–00285	
K.F. CROCKER TRANSPORTATION CO	RA272–69	07/19/96
K.F. CROCKER TRANSPORTATION CO	RA272–70	
KERR-MCGEE COAL CORP.	RG272–291	07/16/96
LIN-MOUR OIL & GAS CO. ET AL	RK272–3334	07/19/96
OUR LADY OF THE MOST BLESSED SACRAMENT ET AL	RK272–03174	07/15/96

Dismissals

The following submissions were dismissed:

Name	Case No.
BUCHANAN OIL CORPORATION	LEE–0114
HOLLAND FUELS, INC.	RF304–4871
KENNETH E. JONES, JR.	RF300–13193
PHILLIP REED MORRISON	RF300–19921
PORETSKY MANAGEMENT, INC	RG272–504
SUNY COBBLESKILL	RF272–90186
SUPERIOR FORWARDING CO.	RG272–558
THE CIRCLE K CORPORATION	RF272–98650

[FR Doc. 96–25181 Filed 10–1–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of March 11 Through March 15, 1996

During the week of March 11 through March 15, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 963

Appeals

Helen Ruth Sutton-Pank, 3/11/96, *VFA–0130*

Helen Ruth Sutton-Pank (Sutton-Pank) filed an Appeal from a determination issued to her by the Albuquerque Operations Office (DOE/AL) of the Department of Energy (DOE). In her Appeal, Sutton-Pank asserted that DOE/AL improperly failed to provide her with medical records in the possession of Lockheed/Martin, the contractor operating Sandia National Laboratories, which she had requested pursuant to the FOIA. The DOE determined that the Lockheed/Martin

records were not agency records within the meaning of the FOIA and Sutton-Pank's Appeal was denied.

James E. Minter, 3/12/96, *VFA–0132*

James E. Minter filed an Appeal from a determination issued to him on January 9, 1996, by the Albuquerque Operations Office (Albuquerque) in response to a request for information Mr. Minter submitted under the Freedom of Information Act (FOIA). In that determination, Albuquerque stated that it could not find the information Mr. Minter requested, copies of statements or reports by Ray Parrett, Chief of the Transportation Safety Division at Oak Ridge Operations Office. Mr. Parrett recalled having taken the notes Mr. Minter was requesting, but the notes could not be located, Mr. Parrett having since retired. We determined that Albuquerque followed procedures which were reasonably calculated to uncover the information sought by Mr. Minter. Therefore, the Appeal was denied.

James H. Stebbings, 3/11/96, *VFA–0123*

James H. Stebbings (Appellant) filed an Appeal from a determination issued by the Department of Energy's Argonne Group in response to a request under the Freedom of Information Act (FOIA). The DOE had forwarded the Appellant's request for documents relating to radiation level testing of human subjects who had been in Eastern Europe during the time of the Chernobyl nuclear incident to the Chicago Operations Office (COO), which in turn forwarded the request to the Argonne Group. The Argonne Group determined that no responsive documents existed at that location. The Appellant challenged the adequacy of the Argonne Group search, citing three responsive documents he had discovered in a commonly accessed internal Argonne bibliography. In the course of investigating the search, the Argonne Group decided that it would continue searching for documents. Further, although the Appellant had mentioned in his request that responsive documents might be found at Brookhaven National Laboratory (Brookhaven), COO failed to forward the response to that location. Therefore, the DOE granted the Appeal and remanded the matter to COO, in order that the request be forwarded to Brookhaven, and to the Argonne Group.

Janis C. Garrett, 3/11/96, VFA–0131

The DOE's Office of Hearings and Appeals (OHA) issued a determination denying a Freedom of Information Act (FOIA) Appeal filed by Janis C. Garrett (Garrett). Garrett appealed the adequacy of a search conducted by the Western Area Power Administration (WAPA). OHA found that the search was adequate.

Personnel Security Hearings

Albuquerque Operations Office, 3/11/96, VSO–0073

Under the provisions set forth in 10 C.F.R. Part 710, the Department of Energy, Albuquerque Operations Office (DOE/AL) denied an individual's request for an access authorization (''Q'' level security clearance), based upon derogatory information received by the DOE/AL which revealed illegal conduct and financial irregularities on the part of the individual. Following a personnel security interview and evaluation by a DOE consultant psychiatrist, DOE/AL denied the individual an access authorization under disqualifying criteria set forth in: (1) 10 C.F.R. § 710.8(h), that the individual has ''[a]n illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist . . . causes, or may cause, a significant defect in judgment or reliability,'' and (2) 10 C.F.R. § 710.8(1), that the individual has ''[e]ngaged in [] unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy . . . .'' Following a hearing convened at the request of the individual, the Office of Hearings and Appeals Hearing Officer found in the Opinion that there was substantial evidence to support the diagnosis rendered by the DOE consultant psychiatrist that the individual has a mental disorder, Antisocial Personality Disorder, which has caused and may continue to cause a significant defect in his judgment and reliability. In addition, the Hearing Officer found that the individual had in a number of incidents demonstrated behavior which tended to show that he was not honest, reliable or trustworthy. Accordingly, the Hearing Officer concluded in the Opinion that the individual should not be granted an access authorization.

Pittsburgh Naval Reactors Office, 3/15/96,VSO–0069

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710. The Hearing Officer found that the circumstances surrounding the late filing of the individual's tax returns do not require the revocation of the individual's security clearance. The Hearing Officer found that the individual's failure to file these tax returns on time was not motivated by a desire to break the law or for personal gain as both the federal and the state government owed her money. The Hearing Officer determined that the individual was an honest person who had problems organizing her financial records and was rehabilitated because the overdue tax returns had been filed and steps had been taken to ensure that future tax returns would be filed on time. Thus, the Hearing Officer concluded that the individual had not engaged in conduct which tends to show that she is not honest, reliable or trustworthy. 10 C.F.R. § 710.8(1). Accordingly, the Hearing Officer found that restoration of the access authorization would not be contrary to the national interest or endanger the common defense and security and recommended restoration of the access authorization.

Implementation of Special Refund Procedures

Brio Petroleum Inc., VEF–0017; *Merit Petroleum Co.,* VEF–0018; *Transcontinential Energy Corp.,* VEF–0020; *UTEX Oil Company,* 3/14/96, VEF–0021.

The DOE issued a Decision and Order implementing procedures for the distribution of $420,922.73 plus accrued interest in alleged overcharges obtained from Brio Petroleum Inc., Merit Petroleum Company, Transcontinental Energy Corporation and Utex Oil Company. These funds were remitted by each firm to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE has determined that these monies will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Under that policy, 20% will be divided among injured purchasers of refined products, 40% to the federal government, and 40% among the states.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

BEL–RAY COMPANY, INC	RF272–77250	03/12/96
CITRONELLE/SUNLAND REFINING CORP. ET AL	RF345–27	03/11/96

CRUDE OIL SUPPLE REF DIST	RB272–0068	03/12/96
DOROTHY BARBEN ET AL	RK272–1107	03/14/96
EARL OVERMOE ET AL	RK272–02900	03/12/96
EVELYN WURDEMAN ET AL	RK272–2065	03/14/96
GULF OIL CORPORATION/C.B. HUGHES ET AL	RF300–16893	03/12/96
GULF OIL CORPORATION/HICKS & RAPELYE GULF ET AL	RF300–19604	03/14/96
LONE STAR INDUSTRIES ET AL	RK272–2669	03/14/96
TMBR/SHARP DRILLING, INC. ET AL	RK272–2621	03/11/96

Dismissals

The following submissions were dismissed:

Name	Case No.
AHLHORN GROCERY & SERVICE STATION	RF300–16262
BOB'S GULF	RF300–13249
C&C COLA	RF272–78276
GIL TAYLOR GULF	RF300–16368
IGERT, INC.	RF300–16721
KOBI GULF	RF300–20245
RESTON'S GULF SERVICE CENTER	RF300–16449

[FR Doc. 96–25182 Filed 10–1–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5619–3]

Agency Information Collection Activities Under OMB Review; NSPS for Grain Elevators (OMB No. 2060–0082; EPA ICR No. 1130.05); NSPS for Petroleum Dry Cleaning Facilities (OMB No. 2060–0079; EPA No. 0997.05)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507 (a)(1)(D), *et seq.*), this notice announces that the following Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Grain Elevators, Subpart DD, EPA ICR Number 1130.05, OMB Control Number 2060–0082; and NSPS for Petroleum Dry Cleaning Facilities, Subpart JJJ, OMB NO. 2060–0079, EPA NO. 0997.05, both expiring November 30, 1996. The ICRs describe the nature of the information collection and their expected burdens and costs.

DATES: Comments must be submitted on or before November 1, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to the appropriate EPA ICR No. 1130.05, or 997.05.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards (NSPS) for grain elevators, Subpart DD, OMB Control Number 2060–0082, EPA ICR Number 1130.05, expiring November 30, 1996. This is a request for an extension of a currently approved collection.

Abstract: Owners or operators to NSPS Subpart DD must make the following one time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility that may increase the rate of emission of the regulated pollutant; notification of the date of the initial performance test; and the results of the initial performance test, including information necessary to determine the conditions of the performance test and performance test measurements and results, including particulate matter concentration and opacity.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, as well as the nature and cause of the malfunction (if known)and corrective measures taken. These notifications, reports and records are required, in general, of all sources subject to NSPS. Without such information, enforcement personnel would be unable to determine if the standards are being met on a continuous basis, as required by the Clean Air Act.

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. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 11, 1996 (61 FR 29551). One commentor telephoned to say he thought EPA's estimate of one new source annually was low. After consulting with Regions and AIRS, EPA has decided not to adjust its estimate. The available data do not indicate the startup of more than one Subpart DD source in the average year.

The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 1764, March 23, 1979).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one hour for each of the estimated 63 established sources, and 42.6 hours for the estimated one new source every year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected Entities: Grain elevators.

Estimated Number of Respondents: 64.5.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 107.1 hours.

Title: NSPS for Petroleum Dry Cleaning Facilities Subpart JJJ (OMB Control No. 2060–0079; EPA ICR No. 0997.05); expiring November 30, 1996. This is a request for renewal of a currently approved information collection request.

Abstract: Owners or operators of petroleum dry cleaning facilities must make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records for two years of the occurrence and duration of any startup, shutdown, or malfunction in the operation of the affected facility. The notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test records are needed to ensure the source's initial capability to comply with the emission standards.

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 coltrol numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 11, 1996 (61 FR 29551). No comments were received.

Burden Statement: The annual public recordkeeping and reporting burden for this collection of information is estimated to average 82 hours per response for new dry cleaning facilities. This is a one-time requirement. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected Entities: Petroleum dry cleaners.

Estimated Number of Respondents: 216.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1483 hours.

Send comments on the Agency's need for the information in these collections, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to the appropriate EPA ICR Number and OMB Control Number in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 25, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–25106 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66231; FRL 5395–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 31, 1996 orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 42 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 OR–95–0029	Dividend Fungicide	1*H*-1,2,4-Triazole, 1-((2-(2-chloro-4-(4-chlorophenoxy)phenyl)-4-methyl-1,3-
000100 TX–94–0009	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl)methyl)-1*H*-1,2,4-triazole

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000100 WA–83–0035	Apron TM 70sd	*cis-N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000241–00355	Funginex Fungicide	*N,N'*-(1,4-Piperazinediylbis(2,2,2-trichloroethylidine)bis(formamide)
000400 OR–87–0006	Omite CR An Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 OR–88–0008	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 OR–92–0020	Comite Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000499–00183	Whitmire Flys-Off Dairy Aerosol Insecticide	*N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000869–00134	Green Light Liquid Flowable Sevin	1-Naphthyl-*N*-methylcarbamate
002517–00031	Sergeant's Flea and Tick Powder	1-Naphthyl-*N*-methylcarbamate
002517–00036	Sergeant's Pump Cat Flea & Tick Spray	1-Naphthyl-*N*-methylcarbamate
002596–00047	Hartz Mountain Dog Flea Powder	1-Naphthyl-*N*-methylcarbamate
002724–00304	Zoecon RF-209 Cockroach Growth Regulator	Ethyl (2*E*,4*E*)-3,7,11-trimethyl-2,4-dodecadienoate
002724–00324	Zoecon RF-253 Fogger	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, Ethyl (2*E*,4*E*)-3,7,11-trimethyl-2,4-dodecadienoate
002724–00325	Zoecon RF-254 Aerosol	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, Ethyl (2*E*,4*E*)-3,7,11-trimethyl-2,4-dodecadienoate
002724–00355	Zoecon RF-270 Emulsifiable Concentrate	2-Butenoic acid, 3-(((ethylamino)methoxyphosphinothioyl)oxy)-1-methylethyl Ethyl (2*E*,4*E*)-3,7,11-trimethyl-2,4-dodecadienoate
003125 MA–78–0002	Guthion 2S	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
003125 PR–90–0001	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 PR–90–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 VA–93–0008	Sencor Solupak 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004758–00130	Pest Control Products Two Metered Insecticide	*N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004758–00132	Pest Control Products Flying Insect Killer	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004758–00133	Pest Control Products Dairy Aerosol Insecticide	*N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004758–00140	Pest Control Products Aerosol Dairy Insecticide	*N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00414	Industrial Aerosol 4.0–0.5	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00515	Industrial Aerosol Insect Killer	(1-Cyclohexene-1,2-dicarboximido)methyl-2,2-dimethyl-3-(2-methylpropenyl)cycloprop (5-Benzyl-3-furyl)methyl, 2,2-dimethyl-3-(2-methylpropenyl) cyclopropanecarboxylate
007056–00053	Chem Spray Baygon Wasp Spray	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Pyrethrins
009779–00304	Trifluralin 4AT	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha)
010807–00112	Misty Denfence Residual Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
028293–00005	Unicorn Spray for Cats & Dogs	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
028293–00016	Unicorn Flea & Tick Spray	1-Naphthyl-*N*-methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
028293–00017	Unicorn Pet Spray	1-Naphthyl-*N*-methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
033657–00001	Chloropicrin	Chloropicrin
033688–00007	Amitrol T	3-Amino-*s*-triazole
046515–00003	Super K-Gro Systemic Grass and Weed Killer Concentrate	Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)
046515–00005	Ready To Use Systemic Grass and Weed Killer	Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine)
056159–00004	Durham's Sevin 5% Dust	1-Naphthyl-*N*-methylcarbamate
059639 FL–89–0008	Dibrom 8 Emulsive	*O,S*-Dimethyl acetylphosphoramidothioate
065020–00006	Bioguard PFD-5	Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16}) Alkyl* dimethyl benzyl ammonium chloride *(61% C_{12}, 23%C_{14}, 11%C_{16}, 2.5%C_{18}) Alkyl* dimethyl benzyl ammonium chloride *(58%C_{14}, 28%C_{16}, 14%C_{12}) Tributyltin neodecanoate
066676 OR–94–0042	Tree Guard	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate
068891 OR–90–0007	Enquik	Urea, sulfate (1:1) (8CI, 9CI) (CA INDEX NAME)
067200–00003	Chase A-Way Insect Repelling Wristband	*N,N*-Diethyl-meta-toluamide and other isomers

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000400	Uniroyal Chemical Co, Inc., 74 Amity Rd., Bethany, CT 06524.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122.
000869	Green Light Co., Box 17985, San Antonio, TX 78217.
002517	Conagra Pet Products, 2258 Darbytown Rd., Richmond, VA 23231.
002596	Hartz Mountain Corp., 400 Plaza Dr., Secaucus, NJ 07094.
002724	Sandoz Agro Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
004758	Pet Chemicals, 4242 BF Goodrich Blvd, Box 18993, Memphis, TN 38181.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
007056	IQ Products Co., Attn: Marty York, 16212 State Hwy 249, Houston, TX 77086.
009779	Riverside/Terra Corp., 600 Fourth St, Sioux City, IA 51101.
010807	AMREP, Inc., 990 Industrial Dr., Marietta, GA 30062.
028293	Unicorn Laboratories, 13535 Feather Sound Dr., Suite 400, Clearwater, FL 34622.
033657	Registration & Regulatory Support Services, Agent For: MTC America Inc., 208-B Hyde Park Ct., Cary, NC 27513.
033688	Richard Otten, Agent For: CFPI Agro, S.A., 5116 Wood Valley Dr., Raleigh, NC 27613.
046515	Celex, Division of United Industries Corp., Box 15842, St Louis, MO 63114.
056159	Beaphar Inc., c/o PCI, 5100 Vista Del Oro, Fair Oaks, CA 95628.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
065020	Biosentry, Inc., 1481 Rock Mountain Blvd, Stone Mountain, GA 30083.
066676	Nortech Forest Products Inc., 7600 W. 27th St., Suite B11, St Louis Park, MN 55426.
068891	Entek Corp., Box 458, Brea, CA 92622.
067200	Chase A-Way Inc., 319 Willis Ave., Mineola, NY 10475.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, two pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrants to explore the possibility of withdrawing their request for cancellation. The active ingredients are listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
28801–69–6	Tributyltin neodecanoate	065020
41096–46–2	Hydroprene	002724

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 31, 19960 days after publication.] This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 12, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–25226 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181024; FRL 5393–2]

Metolachlor; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arkansas State Plant Board (hereafter referred to as the ''Applicant'') to use the pesticide metolachlor to treat up to 1,000 acres of spinach to control weeds. The Applicant proposes the use of an

emergency exemption that has been requested for the previous 3 years, and a complete application for registration of this use and a tolerance petition has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before October 17, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181024,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic must be identified by the docket number [OPP–181024]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of metolachlor on spinach to control weeds. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, due to the loss of Antor *diethatyl ethyl* there is no longer an effective herbicide which will effectively control weeds in spinach. NOR-AM Chemical Company no longer manufactures Antor for use on spinach in the U.S. as of 1992. Stocks of Antor were exhausted in 1993. Ro-Neet is the only remaining preemergent herbicide registered for use on spinach. Antor was the primary preemergence herbicide and was the herbicide of choice in fields where problem weeds such as sibara, pigweeds, chickweed, wild mustard, mayweed, and henbit were known to be present.

Alternative control practices consisting of field selection and hand hoeing will not solve the weed control problems that exist in spinach due to the loss of Antor. Without the use of metolachlor, growers can expect a loss of $185 per acre which is a 243 percent reduction in net revenue. The loss is due to lower average yields and price with Ro-Neet since an estimated 25 to 45 percent of the planted acreage will not be marketable due to weeds.

Under the proposed exemption 1 pound active ingredient (1 pint of product) per acre will be used on 1,000 acres of spinach. A maximum of 1 application will be made by ground and or aerial equipment.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use which has been requested in any 3 previous years, and a complete application for registration of the use and/or a tolerance petition has not been submitted to the Agency. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181024] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: September 26, 1996.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–25227 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181022; FRL 5390–5]

Pirate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California

Department of Pesticide Regulation (hereafter referred to as the ''Applicant'') to use the pesticide Pirate to treat up to 10,000 acres of cotton in Kern County to control spider mites. The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before October 17, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181022,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181022]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of Pirate on cotton to control spider mites. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, spider mites are currently causing widespread damage to cotton throughout California, particularly in the southern San Joaquin County. In 1995, and again in 1996, California experienced unusually heavy rainfall with very wet spring weather. The wet spring weather contributed to an increase in outlying weeds and plants that serve as host for large lygus and aphid populations. As host plants dry out, these pests migrate to adjacent cotton fields. Broad spectrum insecticides are used to control large lygus and aphid populations.

Use of these insecticides destroy populations of mite predators, primarily thrips and big-eyed bugs, that normally maintain mite populations below the economic thresholds. Without the benefit of mite predators, additional acracides must be used to control the exploding mite populations. Furthermore, insecticides which previously provided a degree of control failed to regulate the exceptionally high mite populations which lead to development of resistance to currently labeled materials. There are no products with an alternative mode of action for controlling mites. By using Alert the high probability of resistance occurring with the remaining miticides will be reduced.

The use of Pirate to control the beet armyworm and tobacco budworm on cotton have been issued to most of the states within the southern cotton belt region this year. In an effort to mitigate risk to Federally-listed threatened and endangered species from potentially harmful exposure to Pirate, specific directions, restrictions, precautions and monitoring for wildlife mortality were required.

Under the proposed exemption, Pirate (Alert/AC) may be applied to late season cotton (12''< tall) at a rate of 0.12 to 0.2 lbs. active ingredient [(a.i.)] (8 to 13 fl. ozs of product) per acre by ground or air equipment. Not to apply more then 67.2 fl. oz. (1.05 lbs. a.i., per acre per year). A reentry interval of 12 hours and a preharvest interval of 21 days must be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), in accordance with 40 CFR 166.24. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181022] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: September 26, 1996.

Susan Lewis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–25228 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPT–47005; FRL–5397–8]

Conditional Exemptions from TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 Test Rule requirements to certain manufacturers of chemicals substances subject to these rules.

DATES: These conditional exemptions are effective on October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551 e-mail:TSCA-Hotline@epamail.epa.gov .

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below that submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule. If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or Federal Register notice.

This conditional approval applies to all manufacturers that submitted exemption applications for testing of the chemical substances named in the final test rules listed below from January 1, 1995 through December 31, 1995. Any application received after December 31, 1995 will be addressed separately. Testing reimbursement periods have terminated (sunset) for certain chemicals and exemption notices are no longer required for these chemicals. In accordance with 40 CFR 790.80, before the end of the reimbursement period, manufacturers or processors of the test substance who are subject to the requirement, must submit either a letter of intent to test or an exemption application. Reimbursement period as defined in 40 CFR 791.3, refers to a period that begins when the data from the last non-duplicative test to be completed under a test rule is submitted to EPA, and ends after an amount of time equal to that which had been required to develop that data or after 5 years, whichever is later.

Exemption applications that were received by EPA for anthraquinone (CAS No. 84–65–1), biphenyl (CAS No. 92–52–4), and 2-ethylhexanoic acid (CAS No. 149–57–5) were not required at the time they were submitted because the chemicals each have completed testing programs, their reimbursement periods have sunset, and they are no longer subject to TSCA section 4 reporting requirements in accordance with 40 CFR 790.80. EPA has included a table in 40 CFR 799.18 that lists chemicals and mixtures that have been the subject of section 4 testing actions and for which reimbursement periods have sunset. Exemption applications received by EPA after that date would not appear in this notice.

Chemicals	CAS No.	40 CFR Citation	Company
diethylene glycol butyl ether	112–34–5	799.1560	Marubeni America Corporation
2-ethylhexanol	104–76–7	799.1645	Wacker Silicones Corporation
isopropanol	67–63–0	799.2325	Spies Hecker, Inc. and Wacker Silicones Corporation
commercial hexane (consisting primarily of *n*-hexane and methylcyclopentane).	110–54–3 and 96–37–7	799.2155	Grace Container Products

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special Federal Register notice.

Dated: September 27, 1996.

Frank Kover,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–25229 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1139–DR]

Maryland; 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 Maryland (FEMA–1139–DR), dated September 17, 1996, and related determinations.

EFFECTIVE DATE: September 17, 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 September 17, 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 Maryland, resulting from severe storms and flooding associated with Tropical Storm Fran on September 6–9, 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 Maryland.

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 and Hazard Mitigation Grant Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance 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 Douglas Gore 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 Maryland to have been affected adversely by this declared major disaster:

The counties of Allegany and Frederick for Individual Assistance and Hazard Mitigation Grant Assistance.

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

James L. Witt,

Director.

[FR Doc. 96–25214 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1134–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–1134–DR), dated September 6, 1996 and related determinations.

EFFECTIVE DATE: September 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, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Lacy Suiter as Federal Coordinating Officer for this disaster.

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

James L. Witt,

Director.

[FR Doc. 96–25215 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1134–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–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 17, 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 September 6, 1996:

Hertford and Hyde Counties for Individual Assistance, Public Assistance, and Hazard Mitigation Assistance (already designated for direct Federal assistance).

Martin and Randolph Counties for Public Assistance and Hazard Mitigation Assistance (already designated for Individual Assistance and direct Federal assistance).

Anson, Davidson, and Rockingham Counties for Public Assistance and Hazard Mitigation Assistance (already designated for direct Federal assistance).

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–25218 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1134–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–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 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: 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 September 6, 1996:

Stanly County for Public Assistance and Hazard Mitigation Assistance (already designated for direct Federal assistance).

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–25219 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1138–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–1138–DR), dated September 13, 1996, and related determinations.

EFFECTIVE DATE: September 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: The notice of a major disaster for the Commonwealth of Pennsylvania, 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 September 13, 1996:

Cumberland County for Individual Assistance and Hazard Mitigation.

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

Catherine H. Light,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–25217 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1136–DR]

Puerto Rico; 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 Puerto Rico, (FEMA–1136–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: September 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: The notice of a major disaster for the Commonwealth of Puerto Rico, 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 September 11, 1996:

The municipalities of Aibonito, Cidra, Comerio, Guaynabo, Gurabo, and Maunabo for Public Assistance (already designated for Individual Assistance and Hazard Mitigation.)

The municipalities of Adjuntas, Arecibo, Aguada, Barranquitas, Guayanilla, Jayuya, Lares, Orocovis, Penuelas, Rincon, Utuado, and Yauco for Individual Assistance, Public Assistance and Hazard Mitigation.

The municipalities of Anasco, Aguadilla, Cabo Rojo, Camuy, Florida, Isabela, Maricao, Mayaguez, Moca, San German, San Sebastian, and Vega Baja for Individual Assistance and Hazard Mitigation.

The municipalities of Coamo, Juana Diaz, Manati, Trujillo Alto, and Villalba 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. 96–25222 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 19, 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 Virginia 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 September 6, 1996:

Botetourt, Nottoway, and Roanoke Counties for Public Assistance and Hazard Mitigation.

Greene and Shenandoah Counties for Public Assistance (already designated for direct Federal Assistance, Individual 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. 96–25213 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 24, 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 Virginia, 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 September 6, 1996:

The independent cities of Bedford, Buena Vista and Emporia, and the counties of Amherst, Appomattox, Brunswick, Campbell, Greensville, Louisa, Lunenberg, Prince Edward and Roanoke for Individual Assistance (already designated for direct Federal assistance, Public Assistance and Hazard Mitigation).

The counties of Fauquier, Franklin, Frederick and Orange for Individual Assistance and Hazard Mitigation (already designated for direct Federal assistance).

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–25216 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 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: The notice of a major disaster for the Commonwealth of Virginia, 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 September 6, 1996:

Bedford County for Public Assistance and Hazard Mitigation (already designated for direct Federal assistance.)

Clarke, Henry, Montgomery, and Warren Counties and the independent city of Martinsville for Public Assistance (already designated for direct Federal assistance, Individual 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. 96–25220 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 17, 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 Virginia, 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 September 6, 1996:

The independent cities of Buena Vista and Emporia and the counties of Amherst, Campbell, and Prince Edward for Public Assistance and Hazard Mitigation (already designated for direct Federal assistance).

Rockbridge County for Public Assistance (already designated for Individual Assistance, Hazard Mitigation, and direct Federal assistance).

Alleghany, Greene, Henry, and Montgomery Counties for Hazard Mitigation (already designated for Individual Assistance and direct Federal assistance)

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

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–25221 Filed 10–1–96; 8:45 am]

BILLING CODE 6718–02–P

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 October 16, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Richey Bancorporation, Inc., and Community First Bancorp, both of Glendive, Montana; to engage *de novo* through Community First Bancorp, in management consulting services to depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–25185 Filed 10-1-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 24, 1996. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9:00 am and to continue until 4:00 pm, with a lunch break from 1:00 pm until 2:00 pm. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Report on the Home Mortgage Loan Closing Paperwork. The Council's Community Affairs and Housing Committee and Consumer Credit Committee will report on their review and assessment of the home mortgage loan closing paperwork process.

CRA Implementation - Large Bank Examination Issues. The Bank Regulation Committee will discuss large-bank examination issues—the lending, investment, and service tests; data collection; and strategic plans—and the ratings system under the Community Reinvestment Act.

Revisions to the Bank Holding Company Act—Streamlining the Application and Notice Process for Regulation Y. The Bank Regulation Committee will discuss the Board's proposed revisions to Regulation Y (Bank Holding Companies), which are intended to improve competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions.

Consumer Disclosures on Stored-Value Cards. The Depository and Delivery Systems Committee will report on issues relating to consumer disclosures on stored-value cards.

Dollar Coin. The Depository and Delivery Systems Committee will discuss issues surrounding introduction of a new dollar coin, in substitution for the dollar bill, as would be required by several pending legislative proposals.

Member's Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Committee Reports. Reports from Council committees on their work for 1996.

Open Forum—Emerging Issues: Internet and Home Banking. (Tentative) Committee reports concerning emerging issues and trends, focusing on the Internet and home banking.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Deanna Aday-Keller, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Information with regard to this meeting may be obtained from Ms. Aday-Keller, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, September 26, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–25184 Filed 10–1–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute for Occupational Safety and Health, of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 10 a.m.–5 p.m., October 18, 1996.

Place: NIOSH Research Laboratory, 1095 Willowdale Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters To Be Discussed: Agenda items include a report from the Director of NIOSH, the Musculoskeletal Program Evaluation, Extramural Activities, National Occupational Research Agenda, Health Hazard Evaluation Program Evaluation, EPA Science Advisory Board Communications, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Bryan D. Hardin, Ph.D., Acting Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road, NE, M/S D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: September 26, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–25169 Filed 10–1–96; 8:45 am]

BILLING CODE 4163–19–M

Food and Drug Administration

[Docket No. 96N–0340]

Lilly Research Laboratories, et al.; Withdrawal of Approval of 12 New Drug Applications, 8 Abbreviated Antibiotic Applications, and 23 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 12 new drug applications (NDA's), 8 abbreviated antibiotic applications (AADA's), and 23 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application no.	Drug	Applicant
NDA 6–470	Calcium Gluceptate	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
NDA 8–826	Chlor-Trimeton Injection	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
NDA 9–585	Cort-Dome (hydrocortisone, cream) Cream, ½%, 1%	Bayer Pharmaceutical, 400 Morgan Ln., West Haven, CT 06516–4175.
NDA 11–284	Meprospan (meprobamate) Capsules, 200 milligrams (mg) and 400 mg.	Wallace Laboratories,Half Acre Rd., P.O. Box 1001, Cranbury, NJ 08512–0181.
NDA 16–049	Innovar (fentanyl citrate/droperidol) for Injection	Janssen Pharmaceutica, 1125 Trenton-Harbourton Rd., P.O. Box 200 Titusville, NJ 08560–0200.
NDA 17–589	Solatene (betacarotene) Capsules	Hoffmann-LaRoche Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 18–669	Niclocide (niclosamide) Tablets	Bayer Pharmaceutical.
NDA 18–806	Indomethacin Capsules, 25 mg and 50 mg	Warner Chilcott Laboratories, 200 Plymouth Rd., Ann Arbor, MI 28105.
NDA 18–830	Tambocor (flecainide acetate) 50, 100, 150 and 200 mg Tablets.	3M Pharmaceuticals, 3M Center, Bldg. 270–3A–01, St. Paul, MN 55144–1000.
NDA 19–329	Sodium Chloride Injection 23.4%	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548.
NDA 50–550	Moxan (moxalactam disodium)	Lilly Research Laboratories.
NDA 50–565	Coatin (amdinocillin)	Hoffman-LaRoche, Inc.
AADA 60–107	Sterile Streptomycin Sulfate	Lilly Research Laboratories.

Application no.	Drug	Applicant
AADA 60–384	Penicillin G Potassium for Injection (buffered)	Do.
AADA 60–385	Neomycin Sulfate Tablets, 500 mg (eq. 350 mg base).	Do.
AADA 60–403	Penicillin G Potassium Tablets	Do.
AADA 60–404	Streptomycin Sulfate Injection	Do.
AADA 60–601	Penicillin G Potassium for Injection	Do.
AADA 60–687	Bacitracin Ophthalmic Ointment, 500 units/gram	Do.
AADA 61–742	Sterile Cefazolin Sodium, vials	Fujisawa Pharmaceuticals Co., Ltd., 1515 Fairway, Rydal Park 181 Woodside,Rydal, PA 19046–1664.
ANDA 70–591	Ibuprofen Tablets, 200 mg	Bayer Corp. 36 Columbia Rd., Morristown, NJ 07962–1910.
ANDA 70–626	Ibuprofen Capsules, 200 mg	Do.
ANDA 71–001	Ibuprofen Tablets, 200 mg	Do.
ANDA 71–002	Ibuprofen Capsules, 200 mg	Do.
ANDA 71–508	Oxazepam Tablets, 15 mg	Warner Chilcott.
ANDA 71–767	Flurazepam Hydrochloride Capsules, 15 mg	Do.
ANDA 71–768	Flurazepam Hydrochloride Capsules, 30 mg	Do.
ANDA 72–138	Clonidine Hydrochloride Tablets, 0.1 mg	Do.
ANDA 72–139	Clonidine Hydrochloride Tablets, 0.2 mg	Do.
ANDA 72–140	Clonidine Hydrochloride Tablets, 0.3 mg	Do.
ANDA 80–419	Hydrocortisone Acetate Cream, 1%	H. R. Cenci Laboratories, Inc., P.O. Box 12524, Fresno, CA 93778–2524.
ANDA 83–632	Isoniazid Tablets, 50 mg	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233–3599.
ANDA 85–501	Phentermine Hydrochloride Capsules, 8 mg	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
ANDA 85–502	Theophylline Andydrous Oral Suspension, 100 mg/5 milliliters (mL).	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 85–924	Amitriptyline Hydrochloride Tablets, 150 mg	Halsey Drug Co., Inc.
ANDA 86–240	Kenalog-H® (Triamcinolone Acetonide) Cream 0.1%	Apothecon, P.O. Box 4500, Princeton, NJ 08543–4500.
ANDA 87–941	Diphenhydramine Hydrochloride Elixir, 12.5 mg/5 mL	H. R. Cenci Laboratories, Inc.
ANDA 88–303	Theophylline Elixir, 80 mg/15 mL	Do.
ANDA 88–304	Diphenhydramine Hydrochloride Elixir, 12.5 mg/5 mL	Do.
ANDA 88–654	Theophylline Extended-release Capsules, 125 mg	Central Pharmaceuticals, Inc., 120 East Third St., P.O. Box 328, Seymour, IN 47274–0328.
ANDA 89–013	Promethazine Plain Syrup (Promethazine Hydrochloride), 6.25 mg/5 mL.	H. R. Cenci Laboratories, Inc.
ANDA 89–458	Glutethimide Tablets,250 mg	Halsey Drug Co., Inc.
ANDA 89–568	Butalbital and Acetaminophen Tablets, 50 mg/325 mg.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective October 2, 1996.

Dated: September 10, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96–25198 Filed 9–30–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

2. Annual Administrative Reports for Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Titles I and II—Extension and Revision—The Annual Administrative Reports (AAR) are submitted by grantees funded under Titles I and II of the Ryan White CARE Act of 1990 (as amended by the CARE Act amendments of 1996) and include aggregate information about disbursal of funds, number of clients served and services provided, demographic information about clients served, and costs of provided services. Title I grantees include local governments that meet legislative criteria for disproportionate impact of AIDS. Title II grantees include the 50 States, the District of Columbia, and a small number of territories. Grantees obtain the information for the AAR from individual service providers. Automated reporting alternatives are available to grantees and to providers at the grantee's option. This information is used to determine whether the purposes of the Act and the grants made pursuant to it are being fulfilled. The information is also used locally for planning and priority setting. Respondents include state and local governments,

individuals, non-profit institutions, businesses and other for-profit organizations, and small businesses and entities. HRSA proposes to make some changes in the data elements, to improve their value and/or reduce the burden of data collection and reporting. To allow adequate lead time, the changes for most of the forms would be effective for data collection by service providers beginning in January, 1998; the changes to the AIDS Drug Assistance Program (ADAP) Annual Administrative Report would be effective for reports submitted in March 1997.

The annual burden estimates are as follows:

Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Standard Annual Administrative Report (SAAR):				
Providers (first report)	2,480	1	15.0	37,200
Providers (second report)	500	1	0.5	250
Grantees	99	1	25.0	2,475

Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Report on Low-Volume Providers (MAAR in 1996–97/SAAR in 1998):				
Grantees/Consortia	16	2.3	20.0	740
AIDS Drug Assistance Program (ADAP) Annual Administrative Report:				
Grantees/Consortia	52	1.2	25.0	1,575
Health Insurance Continuation Program (HICP) Annual Administrative Report:				
Grantees/Consortia	19	2.5	15.0	720
Total	2,579	1.25	13.3	42,960

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 25, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–25123 Filed 10–1–96; 8:45 am]

BILLING CODE 4160–15–P

Final Project Requirements, Review Criteria, and Funding Preference for Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities

The Health Resources and Services Administration (HRSA) announces the final project requirements, review criteria and funding preference for the Cooperative Agreements for Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities. These cooperative agreements will be funded for one year under the Public Health Service Act, as amended by Nurse Education and Practice Improvement Amendments of 1992, Title II, Public Law 102–408, dated October 13, 1992, Section 820 (c), Continuing Education for Nurses in Medically Underserved Communities.

Purpose

The purpose of the cooperative agreements is to support the formation of partnerships between recognized regional nursing organizations and nursing entities qualified to provide continuing education in nursing informatics for nursing faculty in schools located in, or preparing students to serve in, medically underserved communities. Nursing informatics is defined as the integration of nursing science, computer science, and information science applied to the identification, collection, analysis, and management of data for nursing education, practice, and research. Increasing the number of nurses in the workforce who are knowledgeable about nursing informatics, especially those practicing in underserved or rural communities, will enhance clinical proficiency and improve access to and quality of health care for increasing numbers in the population. For the purpose of these cooperative agreements, regional nursing organizations are those regionally based nursing organizations whose members must include schools of nursing in institutions of higher education located within the designated region, and whose members may also include health care agencies and other health care entities.

The program announcement, published in the Federal Register at 61 FR 37072, dated July 16, 1996, proposed project requirements, review criteria and funding preference. There was a 30 day comment period. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

One comment was received concerning the project requirement for the nursing informatics continuing education program to be completed in a one-week, 30–36 hour session, that includes a computer lab practicum. The comment statement suggested that more suitable continuing education methodologies would include either delivering the entire course via the Internet, to be completed at each participant's own pace; or sponsoring student traineeships to attend graduate nursing informatics programs. Neither suggestion attends to the programmatic purpose of establishing partnerships between regional nursing organizations and nursing entities qualified to provide continuing education in nursing informatics for nursing faculty in schools located in, or preparing students to serve in, medically underserved communities. Therefore, the following project requirements; review criteria, and funding preference remain as proposed.

Eligibility and Final Funding Preference

Eligible applicants include public and non-profit entities. A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program. A funding preference will be given to recognized regional nursing organizations who enter partnerships with nursing entities experienced in teaching nursing informatics. These entities may include, but are not limited to, schools of nursing. The partner providing the nursing informatics expertise must be located within the recognized regional nursing organization's designated region. It is highly unlikely that any applicant not meeting the funding preference will be supported under this cooperative agreement.

Final Project Requirements

1. Develop a formalized partnership between the regional nursing organization and nursing entities qualified to provide continuing education in nursing informatics.

2. Establish an Advisory Board to oversee the development, administration, and evaluation of the project. The Advisory Board must include at least one non-academically based nurse practicing in a medically underserved community.

3. Utilize an existing assessment of undergraduate and graduate nursing programs within the region to determine:

(a) the availability of computer-based systems;

(b) faculty knowledge, skills, and abilities in the use of computer-based systems; and

(c) the ability of faculty to prepare students for practice in technologically advanced practice environments.

4. Based on analysis of the assessment in #3, develop and implement four regionally-based nursing informatics continuing education programs during the 1997 academic year. Each continuing education program must be designed to:

(a) enhance faculty knowledge, skills, and abilities in nursing informatics in the areas of computer technology; human factors; information and database management; professional practice, trends, and issues; system analysis and design; system implementation and support; system testing and evaluation; and theoretical frameworks;

(b) include a computer lab practicum;

(c) be completed in a one-week, 30–36 hour session;

(d) be provided in two or more different geographic locations to facilitate participation by faculty from distant areas within the region;

(e) enroll a minimum of 14 nursing faculty from schools of nursing located in or experienced in preparing nurses to serve in medically underserved communities;

(f) provide participants a syllabus and reading materials *prior* to the session; and

(b) award continuing education credit in nursing informatics.

6. Project must be documented in a format to facilitate replication by other organizations.

Final Review Criteria

The review of applications will take into consideration the following criteria:

1. The need for the proposed project.

2. The potential effectiveness of the proposed project in carrying out the stated purpose.

3. The administrative and managerial capability of the applicant to carry out the proposed project.

4. The efficacy of the proposed partnership.

5. The adequacy of the facilities and resources available to the applicant to carry out the proposed project.

6. The qualifications of the project director and proposed staff.

7. The feasibility of the proposed budget in relation to the proposed project.

8. The potential of the project to continue on a self-sustaining basis after the period of Federal support.

If additional programmatic information is needed, please contact Meribeth Reed, PhD, RN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857. Dr. Reed may be reached by telephone at (301) 443–5763, by fax at (301) 443–8586, or by e-mail at: (mreed@hrsa.ssw.dhhs.gov).

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health System Reporting Requirements.

Dated: September 26, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–25195 Filed 10–1–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 21, 1996.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 4, 1996.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 4, 1996.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 4, 1996.

Time: 11 a.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 12, 1996.

Time: 11 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 18, 1996.

Time: 8 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

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 Numbers 93.242, 93.281, 93.282)

Dated September 26, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–25132 Filed 10–1–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Advisory Committee on Water Data for Public Use; Notice of Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing and renaming the Advisory Committee on Water Data for Public Use. The purpose of the Committee shall be to represent the interests of water-resources professionals and other water-information users in advising the Federal Government, through the U.S. Department of the Interior, on activities and plans related to water-information programs and the effectiveness of those programs in meeting the Nation's needs.

Futher information regarding the Committee may be obtained from the Chief Hydrologist, U.S. Geological Survey, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

The certification of reestablishing is published below.

Certification

I hereby certify that reestablishing the Advisory Committee on Water Data for Public Use and that renaming it the Advisory Committee on Water Information are in the public interest. The public interests are related to the performance of duties imposed on the U.S. Department of the Interior by 43 U.S.C. 31 (1988), 43 U.S.C. 1457 (1988), by language in the annual U.S. Department of the Interior Appropriations Acts; and by Office of Management and Budget Memorandum No. 92–01.

Dated: September 19, 1996.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 96–25143 Filed 10–1–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AK–962–1410–00–P; AA–6747–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Aleknagik Native Limited, for approximately 1.74 acres. The lands involved are located in T. 10 S., R. 56 W., Seward Meridian, in the vicinity of the Native village of Aleknagik, Alaska; further described as Lots 1 and 2, U.S. Survey No. 4927, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 1, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terrie D. Evarts,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–25173 Filed 10–1–96; 8:45 am]

BILLING CODE 4310–$$–P

[AK–962–1410–00–P; AA–12466, AA–70146, AA–70148, AA–70149, AA–70151]

Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Section 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Calista Corporation for approximately 31,766.27 acres. The lands involved are in the vicinity of Marshall, Russian Mission, Red Devil, and Platinum, Alaska, and are within Tps. 20 and 21 N., R. 69 W., and T. 20 N., R. 70 W.; T. 21 N., R. 66 W., and Tps. 20 and 21 N., R. 67 W.; T. 19 N., R. 45 W.; and T. 14 and 15 S., R. 75 W., Seward Meridian, Alaska, respectively.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 1, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Heather A. Coats,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–25171 Filed 10–1–96; 8:45 am]

BILLING CODE 4310–$$–P′

[AK–962–1410–00–P; AA–10969]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Chugach Alaska Corporation for approximately 3.1 acres. The lands involved are in the vicinity of Mummy Bay, Alaska.

Seward Meridian, Alaska

T. 2 N., R. 9 E.,
Sec. 35.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska

State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until November 1, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–25172 Filed 10–1–96; 8:45 am]

BILLING CODE 4310–$$–P

[WY–037–1430–01; WYM–132700]

Notice of Realty Action; Conveyance Under the Recreation & Public Purposes (R&PP) Act; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands were classified as suitable for conveyance under the Recreation and Public Purposes Act as amended, 43 U.S.C. 869 *et seq.*, on November 9, 1988. The City of Rawlins proposes to use the land for a shooting range to meet the needs of the citizens of Rawlins, including the citizens of Carbon County.

Sixth Principal Meridian

T. 22 N., R. 87 W.,
Sec. 34: S½NW¼, SW¼, W½SW¼SE¼.

The above land contains 260.000 acres.

FOR FURTHER INFORMATION CONTACT: Karla Swanson, Area Manager, Great Divide Resource Area, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming 82301, 307/328–4200.

SUPPLEMENTARY INFORMATION: There will be a meeting on October 16, 1996 from 7:30 p.m. to 8:30 p.m. for the public to comment on this proposed action. The meeting will take place at the Rawlins Family Recreation Center, 1616 Harshman, Rawlins, Wyoming.

The proposed conveyance is consistent with the Great Divide Resource Management Plan and would serve important recreational and educational objectives which cannot be achieved prudently or feasibly elsewhere. The land is not needed for Federal purposes.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

3. Reservation of all minerals to the United States of America, together with the right to prospect for, mine and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of conveyance.

Upon publication of this notice in the Federal Register, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments regarding the conveyance of the lands to the BLM, District Manager, Rawlins District Office, 1300 N. Third Street, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: September 20, 1996.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 96–25200 Filed 10–1–96; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Notice of Inventory Completion for Native American Human Remains from Hawaii in the Possession of the Reading Public Museum, Reading, PA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Reading Public Museum, Reading, PA.

A detailed assessment of the human remains was made by the Reading Museum professional staff in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'I Nei.*

In 1957, human remains representing two individuals were recovered from Kailua, O'ahu, and donated to the museum by Mr. Joseph A. O'Leary. No known individuals were identified. No associated funerary objects are present.

Consultation evidence presented by representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'I Nei* identifies the sand dunes of Kailua are traditional Hawaiian burial grounds.

Based on the above mentioned information, officials of the Reading Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Reading Public Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and *Hui Mālama I Nā Kūpuna 'O Hawai'I Nei.*

This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'I Nei.* Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Michael A. Feyers, The Reading Public Museum, 500 Museum Road, Reading PA 19611–1425; telephone: (610) 371–5627, before November 1, 1996. Repatriation of the human remains and associated funerary objects to Hui Mālama I Nā Kūpuna 'O Hawai'I Nei may begin after that date if no additional claimants come forward.

Dated: September 26, 1996.

C. Timothy McKeown,

Acting Departmental Consulting Archeologist,Acting Manager, Archeology and Ethnography Program.

[FR Doc. 96–25165 Filed 10-1-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the City of Portland, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the City of Portland, OR, which meets the definition of ''sacred object'' and ''object of cultural patrimony'' under Section 2 of the Act.

A detailed assessment of the object was made by professional staff of the

office of the Mayor in consultation with Officials of the Confederated Tribes of the Umatilla Indian Reservation and Confederated Tribes of the Warm Springs Reservation. The Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation declined to participate in the consultation.

The object, know as the Wallula Stone, is an approximately ten ton basalt boulder measuring 48'' by 73'' by 83''. The boulder is covered with ancient petroglyphs. A bronze plaque on the upper face of the boulder reads: ''Transported and Presented by the O.W.R. & N. Co. to the Portland City Free Museum in 1910—C.F. Wiegand, Curator. Rock was found in 1910—20 feet south of U.P.R.R. Track Mile Post 205.16 in Washington.''

In the spring of 1897, an engineering party discovered the boulder while working on the Oregon Railway and Navigation Railroad. The boulder was moved to the Portland city hall in 1910. A map from the files of the former Portland commissioner of public works identifies the original location of the boulder as about a mile north of the Oregon/Washington border, just southeast of the Columbia River. The geographic area in which the boulder was found was ceded to the United States by the Umatilla Indian tribe in 1855. The area has also been identified as part of the aboriginal territory of the Confederated Tribes of the Umatilla Indian Reservation in *Confederated Tribes of Warm Springs v. United States* (1966). In his book *Indian Relics of the Pacific Northwest* (2nd Edition, 1967), N.G. Seaman indicates that the boulder marked a spot far from the village where young men were sent to test their strength and courage. Traditional religious leaders from the Umatilla and Warm Springs indicate that the boulder originally identified a gathering place and sacred site and needs to be returned to the area where it can again be used for those purposes. These traditional religious leaders also indicate that the boulder was used by many members of their tribes and could not have been sold or given away by any single individual. As a product of the consultation the representatives of the Confederated Tribes of the Warm Springs Reservation concurred in repatriating the Wallula Stone to the Confederated Tribes of the Umatilla Indian Reservation.

Based on the above-mentioned information, officials of the City of Portland have determined that, pursuant to 25 U.S.C. 3001 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. City officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Finally, city officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the boulder and the Confederated Tribes of the Umatilla Indian Reservation and Confederated Tribes of the Warm Springs Reservation.

This notice has been sent to officials of the Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation, and the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Michael Mills, Ombudsman, Mayor Katz's Office, Interim City Hall, 1400 SW Fifth Avenue, Room 501, Portland, Oregon, (503) 823–4120 before November 1, 1996 Repatriation of this object to the Confederated Tribes of the Umatilla Indian Reservation may be finalized after that date if no additional claimants come forward.

Dated: September 27, 1996,

C. Timothy McKeown,

Acting, Departmental Consulting Archeologist,

Acting Manager, Archeology and Ethnography Program.

[FR Doc. 96–25238 Filed 10-1-96; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 10, 1996, 10:00 am–12:00 noon, U.S. Department of Labor, Room C–5516 1–A/B, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs; Phone: (202) 219–7597.

Signed at Washington, D.C. this 26th day of September 1996.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 96–25146 Filed 10–1–96; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96–73; Exemption Application No. D–10198, et al.]

Grant of Individual Exemptions; Masters, Mates and Pilots

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department

because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Masters, Mates and Pilots Pension Plan (the Pension Plan) and Individual Retirement Account Plan (the IRAP; together, the Plans) Located in Linthicum Heights, Maryland

[Prohibited Transaction Exemption 96–73; Exemption Application Nos. D–10198 and D–10199]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continued holding by the Plans of their shares of stock (the Stock) in American Heavy Lift Shipping Company (AHL), provided that (a) the Plans' independent fiduciary has determined that the Plans' holding of the Stock is appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and (b) the Plans' independent fiduciary continues to monitor the Plans' holding of the Stock and determines at all times that such transaction remains in the best interests of the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 6, 1996 at 61 FR 20284.

Temporary Nature of Exemption: This exemption is effective until the later of: (1) December 31, 1997, or (2) December 31, 1998 provided another application for exemption is filed with the Department prior to December 31, 1997.

Notice to Interested Persons: The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by June 27, 1996. Interested persons were informed that they had until July 31, 1996 to comment or request a public hearing with respect to the proposed exemption. No requests for a public hearing were received by the Department, but two comments were submitted.

One commentator stated that no exemption should be necessary in the case of the IRAP, which is an eligible individual account plan as defined in section 407(d)(3)(B) of the Act. Such eligible individual account plans are permitted to hold employer stock, provided the holding of such stock is explicitly provided for by the plan documents. The commentator pointed out that the IRAP documents do expressly permit the holding of AHL Stock. The applicant responded by stating that while the commentator might be technically correct, the commentator had ignored the background under which the exemption was originally requested. The investment in AHL Stock was the subject of protracted litigation between the Department, the Plans and certain of their trustees, a former investment adviser to the Plans, and certain Plan participants. [See *In re Masters, Mates & Pilots Pension Plan and IRAP Litigation, Lead File No. 85 Civ. 9545 (VLB) (S.D.N.Y.)*]. This litigation was ultimately settled with the Department pursuant to a Court Order (the Court Order) entered by the United States District Court for the Southern District of New York on November 4, 1992. The Court Order required both Plans to seek an exemption with respect to the holding of the AHL Stock. In compliance with the Court Order, the Named Fiduciary for the Plans' Special Assets Portfolio, Bear Stearns Fiduciary Services, Inc. (BSFS), has consistently sought, and been granted, exemptions with respect to both the Pension Plan and the IRAP [see Prohibited Transaction Exemption 94–85 (PTE 94–85), 59 FR 65403, December 19, 1994].

The second commentator stated that he was opposed to the granting of the exemption for the following reasons: (a) The financial recovery of AHL is attributable to the management and employees of AHL rather than BSFS and the investment manager chosen to oversee the day-to-day operations of AHL, Potomac Asset management (Potomac); (b) BSFS has failed to respond favorably to a proposed acquisition of AHL Stock by an employee stock ownership plan (the ESOP); and (c) the extension of PTE 94–85 will ''unfairly'' extend the opportunity for BSFS or Potomac to find a buyer that is willing to pay a higher price for AHL than the ESOP.

The applicant responded by stating that the assertions have no bearing on whether it is appropriate to extend PTE 94–85. While AHL's employees and management have made important contributions to AHL's recovery, it does not follow that the Plans should dispose of some or all of their AHL investment. In furtherance of their fiduciary duty to the Plans' participants and beneficiaries, Potomac (with the oversight of BSFS) is obliged to protect the value of the Plans' investment in the Stock. Potomac believes that the value of AHL is most likely to be enhanced by focusing in the short term on AHL's economic recovery with a view to the ultimate disposition of the Stock. BSFS and Potomac have no fixed plan regarding the nature or terms of such a disposition and will continue to consider carefully all reasonable offers and proposals to purchase AHL, including the ESOP proposal, if and when such a proposal were accepted, fully negotiated and approved by the AHL Board. However, the applicant represents that it would be a violation of fiduciary duty to favor the ESOP proposal merely to compensate the employees for their ''sacrifice''. Far from being ''unfair'', the obligation to sell AHL at the best possible price is imposed upon the Plans' fiduciaries by the Act.

The Department has considered the entire record, including the comments submitted and the applicant's responses thereto, and has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Chicago Trust Company (Chicago Trust) Located in Chicago, IL

[Prohibited Transaction Exemption 96–74; Exemption Application No. D–10222]

Exemption

Section I. Exemption for the In-Kind Transfer of Assets

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) shall not apply, effective September 21, 1995, to the in-kind transfer to any diversified open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the

'40 Act) to which Chicago Trust or any of its affiliates (collectively, Chicago Trust) serves as investment adviser and/or may provide other services, of the assets of various employee benefit plans (the Client Plans), including plans established or maintained by Chicago Trust (the In-House Plans; collectively, the Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by Chicago Trust as trustee or investment manager, in exchange for shares of such Funds, provided that the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected In-House Plan or Client Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, receives advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Funds and the disclosures described in paragraph (f) of Section II below.

(b) On the basis of the information described in paragraph (f) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of an In- House Plan or a Client Plan in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and, in the case of a Client Plan, the fees received by Chicago Trust pursuant to its investment advisory agreement with the Funds. Such authorization by the Second Fiduciary is to be consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions or redemption fees are paid by an In-House Plan or a Client Plan in connection with the in-kind transfers of assets of the CIFs in exchange for shares of the Funds.

(d) All or a *pro rata* portion of the assets of an In-House Plan or a Client Plan held in the CIFs are transferred in-kind to the Funds in exchange for shares of such Funds. A Plan not electing to participate in the Funds receives a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation takes place.

(e) The CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the CIFs exchanged for such shares on the date of transfer.

(f) The current value of the assets of the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Chicago Trust.

(g) Not later than 30 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, Chicago Trust sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the '40 Act;

(2) The price of each such assets for purposes of the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets.

(The confirmation described in this paragraph I(g) is not required if no assets were valued in accordance with the last sentence of paragraph (f) of Section I.)

(h) Not later than 90 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, Chicago Trust sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected In-House Plan or Client Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before the in-kind transfer (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (c), (d), (e), (p) and (q) of Section II below as they would relate to all Plans are satisfied.

Section II. Exemption for the Receipt of Fees From Funds

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply, effective September 21, 1995, to (1) the receipt of fees by Chicago Trust from the Funds for investment advisory services to the Funds; and (2) the receipt or retention of fees by Chicago Trust from the Funds for acting as custodian or shareholder servicing agent to the Funds, as well as any other services provided to the Funds which are not investment advisory services (i.e., the Secondary Services), in connection with the investment of shares in the Funds by the Client Plans for which Chicago Trust acts as a fiduciary, provided that—

(a) No sales commissions are paid by the Client Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the redemption of such shares by the Client Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Chicago Trust, any of its affiliates or their officers or directors do not purchase from or sell to any of the Client Plans shares of any of the Funds.

(d) For each Client Plan, the combined total of all fees received by Chicago Trust for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which the Client Plans may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Chicago Trust does not receive any fees payable, pursuant to Rule 12b–1 (the 12b–1 Fees) under the '40 Act in connection with the transactions involving the Funds.

(f) A Second Fiduciary who is acting on behalf of a Client Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, receives in advance of the investment by a Client Plan in any of the Funds a full and detailed written disclosure of

information concerning such Fund including, but not limited to—

(1) A current prospectus for each portfolio of each of the Funds in which such Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or other similar services, any fees for Secondary Services, as defined in paragraph (i) of Section III below, and all other fees to be charged to or paid by the Client Plan and by such Funds to Chicago Trust, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Chicago Trust may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to Chicago Trust with respect to which assets of a Client Plan may be invested in the Funds, and, if so, the nature of such limitations;

(5) A copy of the proposed exemption and/or a copy of the final exemption upon the request of the Second Fiduciary; and

(6) The last date as of which consent to an in-kind transfer may be given by the Second Fiduciary, along with the disclosure that if consent is not given by that date, the Second Fiduciary will be deemed to have withheld consent to an in-kind transfer.

(g) On the basis of the information described in paragraph (f) of this Section II, the Second Fiduciary authorizes in writing—

(1) The investment of assets of the Client Plan in shares of the Fund, in connection with the transaction set forth in Section II;

(2) The Funds in which the assets of the Client Plan may be invested; and

(3) The fees received by Chicago Trust in connection with investment advisory services and Secondary Services provided to the Funds; such authorization by the Second Fiduciary to be consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(h) The authorization, described in paragraph (g) of this Section II, is terminable at will by the Second Fiduciary of a Client Plan, without penalty to such Client Plan. Such termination will be effected by Chicago Trust selling the shares of the Funds held by the affected Client Plan within one business day following receipt by Chicago Trust, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of termination (the Termination Form), as defined in paragraph (i) of Section III below; provided that if, due to circumstances beyond the control of Chicago Trust, the sale cannot be executed within one business day, Chicago Trust shall have one additional business day to complete such sale.

(i) The Client Plans do not pay any Plan-level investment advisory fees to Chicago Trust with respect to any of the assets of such Client Plans which are invested in shares of the Funds. This condition does not preclude the payment of investment advisory fees by the Funds to Chicago Trust under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between Chicago Trust and the Funds or the retention by Chicago Trust of fees for Secondary Services paid to Chicago Trust by the Funds.

(j) In the event of an increase in the rate of any fees paid by the Funds to Chicago Trust regarding investment advisory services that Chicago Trust provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary of a Client Plan, in accordance with paragraph (g) of this Section II, Chicago Trust will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each Client Plan invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (j) of Section III below;

(k) In the event of an (1) addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by Chicago Trust to the Funds for which a fee is charged or (2) an increase in the rate of any fee paid by the Funds to Chicago Trust for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Chicago Trust for such fee over an existing rate for such Secondary Service which had been authorized by the Secondary Fiduciary in accordance with paragraph (g) of this Section II, Chicago Trust will, at least 30 days in advance of the implementation of such Secondary Service or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Funds and which explains the nature and amount of the additional Secondary Service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Client Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (j) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (j) and (k) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (g) of this Section II, with instructions regarding the use of such Termination Form including statements that—

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. The termination will be effected by Chicago Trust selling the shares of the Funds held by the Client Plans requesting termination within the period of time specified by the Client Plan, but not later than one business day following receipt by Chicago Trust from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of Chicago Trust, the sale of shares of such Client Plan cannot be executed within one business day, Chicago Trust shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of the Client Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees and will result in the continuation of the authorization, as described in paragraph (g) of this Section II, of Chicago Trust to engage in the transactions on behalf of the Client Plan;

(m) The Second Fiduciary is supplied with a Termination Form at least once in each calendar year, beginning with the calendar year that begins after the grant of this proposed exemption is published in the Federal Register and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to this paragraph, sooner than six months after such Termination Form is supplied pursuant to paragraphs (j) and (k) of this Section II, except to the extent required by said paragraphs (j) and (k) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees;

(n)(1) With respect to each of the Funds in which a Client Plan invests, Chicago Trust will provide the Second Fiduciary of such Plan—

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) A report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to Chicago Trust within 15 days of such document's availability; and

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Chicago Trust or any adviser or sub-adviser to a Fund or any of their affiliates (collectively, Related Party Brokerage), Chicago Trust will provide the Second Fiduciary of such Client Plan at least annually with a statement specifying—

(A) The total, expressed in dollars, attributable to each Fund's investment portfolio which represent Related Party Brokerage;

(B) The total, expressed in dollars, of brokerage commissions attributable to each Fund's investment portfolio other than Related Party Brokerage;

(C) The average brokerage commissions per share, expressed as cents per share, paid for Related Party Brokerage by each Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each Fund for brokerage other than Related Party Brokerage.

(o) All dealings between the Client Plans and any of the Funds are on a basis no less favorable to such Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(p) Chicago Trust maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (q) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Chicago Trust, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than Chicago Trust, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) of Section II below.

(q)(1) Except as provided in paragraph (q)(2) of this Section II and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Client Plans who has authority to acquire or dispose of shares of any of the Funds owned by such Client Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (q)(1)(B) and (q)(1)(C) of Section II shall be authorized to examine trade secrets of Chicago Trust, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) The term ''Chicago Trust'' means Chicago Trust Company and any affiliate of Chicago Trust, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The terms ''Fund or Funds'' mean any diversified open-end investment company or companies registered under the '40 Act for which Chicago Trust serves as investment adviser and may also provide custodial or other services such as Secondary Services as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''Plan'' means any ''employee benefit pension plan'' within the meaning of section 3(2) of the Act or any ''plan'' within the meaning of section 4975(e)(1) of the Code. The term ''Plan'' includes any plan maintained by an entity other than Chicago Trust (referred to collectively herein as the ''Client Plans'') and any of the following Plans sponsored or maintained by Chicago Trust (referred to collectively as the ''In-House Plans''): The Chicago Title & Trust Pension Plan, the Chicago Title & Trust Savings and Profit Sharing Plan, the Celite Employees' Thrift Plan, the Celite Hourly Retirement Savings 401(k) Plan, the Celite Employees' Retirement Plan, the Celite Hourly Retirement Plan and the Heads & Threads Savings and Profit Sharing Plan.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to Chicago Trust. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Chicago Trust if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by or is under common control with Chicago Trust;

(2) Such Second Fiduciary, or any officer, director, partner, employee or relative of such Second Fiduciary is an officer, director, partner or employee of Chicago Trust (or is a relative of such persons); and

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; provided, however, that nothing shall prevent a Second Fiduciary's receipt of its customary fees from a Plan or the Plan's sponsoring employer for serving as a fiduciary to such Plan.

If an officer, director, partner, or employee of Chicago Trust (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of the Plan's investment manager/adviser, the approval of any purchase or sale by the Plan of shares of the Funds, and the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (h)(2) of Section III above, shall not apply.

(i) The term ''Secondary Service'' means a service, other than an investment advisory or similar service, which is provided by Chicago Trust to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(j) The term ''Termination Form'' means the form supplied to the Second Fiduciary of a Client Plan, at the times specified in paragraphs (j), (k), and (m) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (g) of Section II. Such Termination Form is to be used at will by the Second Fiduciary to terminate such authorization without penalty to the Client Plan and to notify Chicago Trust in writing to effect such termination not later than one business day following receipt by Chicago Trust of written notice of such request for termination; provided that if, due to circumstances beyond the control of Chicago Trust, the sale cannot be executed within one business day, Chicago Trust shall have one additional business day to complete such sale.

EFFECTIVE DATE: This exemption is effective as of September 21, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on April 25, 1996 at 61 FR 18435.

Written Comments

The Department received four written comments with respect to the Notice and no requests for a public hearing. One comment was submitted by an active participant in the Chicago Title & Trust Pension Plan. The other three comments were submitted by Chicago Trust. Following is a discussion of these comments.

Participant's Comment

In his comment letter, the CT&T Pension Plan participant complained that he had experienced considerable difficulty in obtaining a copy of the Notice from Chicago Trust. In this regard, the participant indicated that Chicago Trust had not posted the Notice but only the supplemental statement which directed interested persons to a toll-free telephone number where they might request a copy of the Notice and have it mailed to them. The participant indicated that he never received a copy of the Notice despite repeated requests. Because the participant believed that he had been denied information required to make an informed comment, he requested a copy of the Notice and that the Department extend the comment period beyond its deadline of June 10, 1996.

In response to this comment, the Department had Chicago Trust revise the supplemental statement and re-post it along with a copy of the Notice. These documents were placed at all job sites where active participants in the CT&T Pension Plan and the CT&T Profit Sharing Plan are employed. The re-posting occurred on July 15, 1996 and interested persons were given until August 15, 1996 to send written comments to the Department. As a result of the re-posting, the Department received no additional comments or hearing requests.

Chicago Trust's Comments

Chicago Trust's comments are intended to clarify the Notice in the following areas:

(1) *Written Confirmation of Securities for which Market Prices Are not Readily Available.* Section I(g) of the Notice states that not later than 30 days after the completion of each in-kind transfer transaction, Chicago Trust will send the Second Fiduciary of each affected Plan written confirmation containing (a) the identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) [1]; (b) the price of each such assets for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such assets. Chicago Trust requests that the Department modify Section I(g) by clarifying that if no CIF assets have been valued for purposes of Rule 17a–7(b)(4), there is no need to provide this form of confirmation.

In response, the Department has revised paragraph (g) of Section I by adding the following language:

(The confirmation described in this paragraph I(g) is not required if no assets were valued in accordance with the last sentence of paragraph (f) of Section I.)

(2) *In-House Plan References.* Chicago Trust has requested that the Department revise Section III(f) of the Notice by revising references of the Chicago Trust Pension Plan and the Chicago Trust Savings and Profit Sharing Plan to the CT&T Pension Plan and the CT&T Savings and Profit Sharing Plan. In addition, in the list of In-House Plans Chicago Trust requests that the Department include a reference to the Celite Hourly Retirement Plan.

The Department has complied with these requests by amending Section III(f) of the Notice.

(3) *Description of Chicago Trust and Its Affiliates.* Chicago Trust wishes to modify Representation 1(a) of the Notice by amending previously-furnished information regarding the description of Chicago Trust and its affiliates as follows:

Chicago Trust is a wholly owned subsidiary of the Alleghany Asset Management, Inc. (AAM), which is a wholly owned subsidiary of Chicago Title & Trust Company (CT&T), which is a wholly owned subsidiary of the Alleghany Corporation (Alleghany) whose principal place of business is at 375 Park Avenue, New York, New York. As of December 31, 1995, CT&T had approximately $1.5 billion in consolidated assets and it engages in two principal lines of business, directly or through subsidiaries. In this regard, CT&T is the largest real estate title insurer in the world. In addition, Chicago Trust, a second-tier subsidiary of CT&T provides trustee, investment management and related services, primarily to high net worth individuals, families, tax- qualified pension and profit sharing plans (including plans subject to provisions of the Act), individual retirement accounts and insurance companies. As of December 31, 1995, Chicago Trust managed approximately $6 billion in client assets.

(4) *Description of Client Plans.* Chicago Trust points out that the first two sentences of Representation I(b) of the Notice should be revised, as follows, in order to clarify previously- furnished information:

The Client Plans consist of 239 separate employee benefit plan clients of Chicago Trust which are either employee pension benefit plans as defined in section 3(2) of the Act or plans covering only partners or proprietors and their spouses, as described in 29 CFR 2510.3 (b) and (c).

In addition, Chicago Trust notes that although represented in its original exemption application, it has no Client Plans that are IRAs. Therefore, Chicago Trust recommends that the Department delete the third sentence of Representation I(b).

The Department has made the aforementioned changes to the Notice.

(5) *Fees for Investment Advisory Services.* The last sentence of Representation I(d) of the Notice states that Chicago Trust has charged no fee for its investment advisory services to certain CIFs but it has received reimbursement for its expenses. For further clarification, Chicago Trust

[1] Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Chicago Trust.

requests that the Department revise this statement to read as follows:

Chicago Trust has charged no fee for its investment advisory services to these CIFs, and it has received reimbursement only for expenses of the annual audits of the CIFs.

(6) *Description of the CIFs.* Chicago Trust requests that the Department modify portions of Representation I(d) of the Notice as follows to update information: (a) The reference to the Chicago Trust Company Investment Trust for Employee Benefit Plans, appearing in the seventh and eighth lines of paragraph one, should be to the Chicago Title and Trust Company Investment Trust for Employee Benefit Plans; (b) the reference to the Index Fund in the next to the last line of this paragraph, as contained in the original exemption application, should be stricken to reflect the Index Fund was liquidated prior to the conversion transactions; (c) the reference to the Chicago Trust Stated Principal Value Investment Trust for Employee Benefit Plans, appearing in the ninth through thirteenth lines of paragraph two, should be to the Chicago Title and Trust Company Stated Principal Value Trust for Employee Benefit Plans and should also reflect the fact that the declaration of trust was restated on November 30, 1995; and (d) the reference to the Chicago Trust Company Short Term investment Trust for Employee Benefit Plans, appearing in the ninth through eleventh lines of paragraph three, should be to the Chicago Title and Trust Company Short Term Investment Trust for Employee Benefit Plans. The Department has made the requested revisions.

(7) *Description of the Funds.* Chicago Trust requests that Representation I(e) of the Notice be modified, in part, as follows to update information previously furnished the Department in its original exemption application: (a) The Funds presently offer eight separate, diversified series of shares of mutual fund portfolios and not seven; (b) the new Fund is the Chicago Trust Asset Allocation Fund, whose investment adviser is Chicago Trust and for which the investment advisory fee of 0.70 percent; (c) the Chicago Trust Intermediate Fixed Income Fund has been renamed the Chicago Trust Bond Fund; (d) the Chicago Trust Intermediate Municipal Bond Fund has been renamed the Chicago Trust Municipal Bond Fund; and (e) Montag & Caldwell is a wholly owned subsidiary of AAM and not of Chicago Trust. The Department has made the requested revisions.

(8) *Initial In-Kind Transfer Transaction.* Chicago Trust wishes to clarify the last sentence of the second paragraph of Representation 4 of the Notice to reflect the fact that while Chicago Trust stood ready to make cash payments to Plans which elected not to participate in the initial in-kind transfer transaction, no Plans made such an election. Therefore, no such cash payments were made. In addition, Chicago Trust states that since there were no non-conforming assets at the time of the September 21, 1995 in-kind transfer transaction, references to the initial conversion of such assets which appeared in the last sentence of paragraph 9 of Representation 4, the second sentence of paragraph 10 of Representation 4 and in Representation 9(c), should be deleted.

In response, the Department has made the requested revisions.

After giving full consideration to the entire record, the Department has decided to grant the exemption subject to the modifications or clarifications described above. The comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pacific Mutual Life Insurance Company (PM) Located in Newport Beach, California

[Prohibited Transaction Exemption 96–75; Exemption Application No. D–10258]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sale to employee benefit plans (the Plans) of a synthetic guaranteed investment contract (the Buy/Hold Synthetic GIC) offered by PM, which is a party in interest with respect to the Plans, provided the following conditions are satisfied: (a) Prior to the execution of such Buy/Hold Synthetic GIC, an independent fiduciary of such Plan receives a full and detailed written disclosure of all material features of the Buy/Hold Synthetic GIC, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves in writing the execution of the Buy/Hold Synthetic GIC on behalf of the Plan; (c) all fees and charges imposed under such Buy/Hold Synthetic GIC are reasonable; (d) each Buy/Hold Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Buy/Hold Synthetic GIC; (e) each Buy/Hold Synthetic GIC will specifically provide for an objective means for determining the interest rates to be credited periodically under the contract; (f) PM will maintain books and records of all transactions which will be subject to annual audit by independent certified public accountants selected by and responsible solely to the Plan; and (g) the Buy/Hold Synthetic GICs will only be marketed to Plans or collective investment funds which have at least $50 million in assets.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 22, 1996 at 61 FR 37928.

EFFECTIVE DATE: This exemption is effective September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the

fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of September 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–25145 Filed 10–1–96; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9627]

Hassan Zekavat, M.D., P.A. Money Purchase Pension Plan (the Plan) Located in Moorestown, NJ

AGENCY: Pension and Welfare Benefits Administration.

ACTION: Withdrawal of proposed exemption.

In the Federal Register dated January 31, 1996 (60 FR 3483), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of pendency concerned an application filed on behalf the Plan.

By a letter dated September 10, 1996, the applicant's representatives informed the Department that they wanted to withdraw the application from consideration.

Notice is hereby given that the Department has made a final decision to withdraw the notice of pendency for the proposed exemption from the Federal Register.

Accordingly, the notice of pendency is hereby withdrawn.

Signed at Washington DC, this 26th day of September 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–25144 Filed 10–1–96; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–296]

Tennessee Valley Authority; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Tennessee Valley Authority, (the licensee) for an amendment to Facility Operating License No. DPR–68 issued to the licensee for operation of the Browns Ferry Nuclear Plant (BFN) Unit 3, located in Limestone County, Alabama.

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to permit continued operation of BFN Unit 3 for up to 7 days with one reactor coolant recirculation loop out of service. This amendment was submitted on September 15, 1996 as an emergency request under the provisions of 10 CFR 50.91.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was verbally notified that the request would not be granted on September 15, 1996. Written notification of the Commission's denial of the proposed change was issued by a letter dated September 26, 1996.

By November 1, 1996, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated September 15, 1996, and (2) the Commission's letter to the licensee dated September 26, 1996.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 26th day of September, 1996.

For The Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–25176 Filed 10–1–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–6940]

Finding of No Significant Impact and Notice of Opportunity for a Hearing, Renewal of Source Material License SMB–920, Cabot Performance Materials Boyertown, PA

The U.S. Nuclear Regulatory Commission is considering the renewal of source Material License SMB–920 for the continued operation of Cabot Performance Materials (CPM) facility located in Boyertown, Pennsylvania. CPM processes tin slags, tantalite, and columbite ores to extract tantalum and niobium. The ores and slags contain uranium and thorium, and sludges resulting from the slag and ore processing contain in excess of 0.05 percent uranium and thorium. Therefore, the sludges are source material as defined and regulated by 10 CFR Part 40, and their possession by CPM is licensed by the Nuclear Regulatory Commission.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of CPM's source material license for five years. With this renewal, CPM will continue to operate the Boyertown facility to process tin slags, tantalite, and columbite ores, and will revise their process to use the stored sludges as supplemental feedstock in addition to new ores and ore concentrates. CPM is licensed to possess and use up to 400 tons of elemental uranium and thorium in slag, ores, and sludges.

Need for the Proposed Action

CPM performs a necessary service for the commercial electronics industry by extracting tantalum and niobium from slag and ores. Denial of the license renewal application is an alternative available to the NRC, but would require expansion of tantalum and niobium production capacity at an existing facility or transfer of extraction activities to a new facility. Denial of the

application to process the sludges would result in their continued storage on site.

Effluent Controls and Monitoring

The continued operation of the CPM facility will result in the continued release of low levels of radioactive constituents and fluorides. Under accident conditions, the facility could release higher concentrations over a short period of time. The facility uses a number of controls to reduce the release of radioactive materials and fluorides to the environment, and performs monitoring of effluents and the environment.

The CPM facility produces gaseous, liquid, and solid effluent streams. Gaseous effluents are controlled by minimizing the amount of airborne radioactive materials within the plant, and by the use of a dust collector, baghouse, and stack scrubber on specific processes. Liquid effluents are controlled by the use of waste water retention lagoons and treatment systems that reduce the concentration of radioactive materials prior to discharge to West Swamp Creek. Solid wastes are managed through a combination of reprocessing, off-site disposal, and recycling.

Stack scrubber performance is monitored by measuring the concentration of fluorine in the scrubber water and the flowrate of the scrubber recycle water. The performance of the gaseous effluent controls is further evaluated by the environmental air sampling program described below. Liquid effluents are sampled at the point of discharge to Swamp Creek, and the samples are analyzed for uranium and other constituents. Solid wastes are surveyed prior to off-site disposal.

CPM has performed and will continue to perform monitoring to detect accumulation of radioactive materials in the environment. This environmental monitoring program samples sediment and surface water in West Swamp Creek; and air and ground water at locations on or near the facility. Forage sampling for fluoride, which was performed under the previous license, will not be performed under the renewed license.

Two new air monitoring stations downwind of the plant were installed in 1995. Air samples will be collected continuously at these two locations, and the samples analyzed for radioactivity. In addition, CPM has committed to perform a temporary air monitoring program using a mobile air sampler at additional locations near the site boundaries. The purpose of this mobile sampling is to further assure that the most significant pathway for air effluents has been identified.

Environmental Consequences of Proposed License Renewal

Implementation of the proposed action, renewal of the CPM license, involves both beneficial and negative impacts. The beneficial impacts include support for production of economically valuable electrical components and processing of the stored sludge into a more stable form. The associated negative impacts from continued plant operations include releases to air and surface water from plant operation. Implementing either the proposed action or the alternative action, non-renewal of the license, involves decontamination and decommissioning (D&D) of the facility.

For the proposed action, the handling of materials and normal operations of the facility will result in the continued release of low levels of radioactive and non-radioactive constituents. Under accident conditions, the facility could release higher concentrations of materials over a short period of time. The facility will eventually be decontaminated and decommissioned at the end of its useful life, but the impacts of such decontamination and decommissioning are beyond the scope of this Environmental Assessment (EA), which deals only with the potential environmental impact of continued operations.

Normal operations at the CPM facility will involve groundwater withdrawals, discharges of fluoride and radionuclides to surface waters, discharges to the atmosphere, and generation of various solid and liquid waste streams. The impacts of normal operations are both radiological and nonradiological.

The radiological impacts of the continued operation of the CPM facility were assessed by calculating the radiation dose to the maximally exposed individual located at the nearest residence and the collective radiation dose to the local population living within 80 kilometers (50 miles) of the plant site.

The results of the dose assessments are summarized below, and a detailed description of the methodology and results is provided in the appendix to the EA.

Radionuclides which may be released to the environment include potassium-40 (K-40), uranium-238 (U-238), uranium-235 (U-235), thorium-232 (Th-232), and their decay daughters, including radon-222 (Rn-222). The sources of the releases are the main process building (Building 073) stacks, the ore storage pile, the sludge storage mausoleums, and the liquid waste system lagoons.

Potentially exposed individuals for the atmospheric releases are primarily residents along the northeast and north boundaries of the site. Atmospheric dispersion analysis established that the maximally exposed individual would be located on the northeast boundary of the site.

Liquid effluents are released into West Swamp Creek, a tributary of the Schuylkill River. Because of its low and irregular flow, West Swamp Creek is not a drinking water supply for area residents. Therefore, the analysis assumed that an individual along the Schuylkill River, and the surrounding population out to a distance of 80 kilometers (50 miles), used this potentially contaminated water.

The radionuclide doses were estimated using the Hanford Environmental Radiation Dosimetry Software System GENII computer code, except for radon. Atmospheric release exposure pathways included inhalation, ingestion of contaminated crops and resuspended dirt, and external exposure to the airborne plume and contaminated ground. Liquid release exposure pathways included ingestion of contaminated drinking water, fish, and irrigated crops; and external exposure during recreational activities. Because GENII does not simulate radon inhalation impacts, the NRC staff developed independent dose estimates using dose factors specific to radon-222. Details on the method of radiological impact analysis are presented in the appendix to the EA.

Potential radiation doses from releases to the atmosphere from the CPM facility are calculated for the maximally exposed individual and the population. These doses are expressed in terms of the 50-year committed effective dose equivalent (CEDE) from internal exposure from the intake of radionuclides for a period of one year. For the maximally exposed individual, the CEDEs for combined releases from Building 073 and the ore storage pile were estimated as 6.5×10^{-7} Sv/yr (0.065 mrem/yr), while the CEDE for release from the storage mausoleums was estimated as 2.5×10^{-5} Sv/yr (2.5 mrem/yr). The doses are a small fraction of background doses for both the maximally exposed individual and other members of the population; the external background radiation doses from cosmic and terrestrial sources are approximately 2.6×10^{-4} and 2.8×10^{-4} Sv/yr (26 and 28 mrem/yr), respectively. The doses from atmospheric releases are also a fraction of the 10 mrem/year limit set by 40 CFR 61 Subpart I, National

Emissions Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission.

Potential impacts for the maximally exposed individual and the population from releases to surface water were also calculated. The largest tissue doses are to the bone surface from ingestion of lead-210 (Pb-210), and external doses are a factor of 10,000 smaller than internal doses. The CEDE for the maximally exposed individual was estimated as 2.8×10^{-6} Sv/yr (0.28 mrem/yr). For both the maximally exposed individual and other members of the population, doses are a small fraction of background sources.

The NRC regulations (10 CFR 20.1301) require that the Total Effective Dose Equivalent (TEDE) for members of the public not exceed 1.0×10^{-3} Sv (100 mrem) per year. The TEDE is the sum of the effective dose equivalent (EDE) from exposure to external radiation for one year and the CEDE defined above. For atmospheric releases of radionuclides other than radon, Environmental Protection Agency (EPA) regulations (40 CFR Part 61, Subpart I) require that the annual effective dose equivalent not exceed 1.0×10^{-4} Sv (10 mrem). Doses from CPM facility operations are dominated by releases to the atmosphere. For the maximally exposed individual, the annual TEDE including dose from radon was estimated as 2.6×10^{-5} Sv (2.6 mrem). The largest annual tissue dose was estimated as 2.1×10^{-4} Sv (21 mrem) to the lung. This tissue dose is entirely due to radon releases from the storage mausoleums, which would be eliminated by implementing the planned sludge processing modifications. Estimated doses for all other releases are small fractions of applicable limits.

Continued operation of the facility is expected to have minor impacts on air quality, surface water, ground water, land use, and biota. Surface water, sediment, and groundwater monitoring during previous operations have indicated no significant impact from non-radiological constitutents, including fluoride. It is expected to have little or no impact on cultural resources, and to have a positive socioeconomic impact.

Normal operation of the CPM facility is not expected to have a significant effect on off-site nonradiological air quality, although fluoride concentrations measured in air have exceeded the State of Pennsylvania 24-hour maximum of 5 $\mu g/m^3$ on occasion. State-issued operating permits for processing activities include release limits for compounds of fluorides, and the State's compliance and enforcement program addresses any exceedence of the limits.

The primary potential impact on terrestrial resources is from fluoride released to the environment from the ore digestion process. Biannual monitoring of both corn and grasses since 1988 indicates that operation of the facility has resulted in elevated fluoride concentrations in forage crops growing adjacent to the plant.

There are no state or federal standards for fluoride concentration in forage. While there has been research in this area, as reported in the EA, no specific regulatory limits are currently applied to this aspect of the environment. Additionally, there are no federal ambient air quality standards for fluoride. There has been no increased degradation in off-site vegetation from fluoride since the previous assessment, and the expected releases will be the same as or less than those from previous operations. Therefore, no adverse impacts to the off-site environment are expected from the continued operation of the facility.

The handling, processing, and storage of material containing radioactive constituents at the CPM facility could result in uncontrolled release of radioactive material to the environment in the event of an accident. The relatively small quantities and low concentrations of the radioactive constituents constrain the radiological impacts of potential accidents. Use of hazardous chemicals in operations at the facility could also result in uncontrolled releases, posing a potential risk to workers and public health and safety.

The accident analysis identified potential hazards, reviewed potential accident initiators and release mechanisms, developed accident scenarios, and estimated consequences for a set of potential accident scenarios. The hazard review identified the primary hazards as radionuclides in the feed material, process equipment, and sludge storage mausoleums, and the hazardous chemicals stored on site. For radioactive material in solid form, the primary release mechanisms would be drop and resuspension during transfer, and failure of the filtration systems during processing. For radioactive material in liquid solution, the primary release mechanism would be equipment failure during processing and transfer. For hazardous chemicals, the failure of storage equipment is the scenario with the largest potential impact. Based on the above considerations, a feed ore spill during transfer, a large-scale leak of treated liquid radioactive waste, and release of anhydrous ammonia from tank storage were selected as representative accidents.

Feed ore is transferred to process equipment from a storage pile located near building 073. Equipment failure or improper operation could lead to inadvertent dumping of the load, resulting in an airborne release of 0.066 and 0.009 μCi of U-238 and Th-232, respectively. Based on dispersion analysis, the maximally exposed individual would be 205 meters (673 feet) northeast of building 073, and the CEDE for this release was estimated as 4.0×10^{-7} Sv (0.04 mrem), indicating insignificant risk to public health and safety.

Approximately 30,280 liters (8,000 gallons) of liquid radioactive waste are processed daily at the CPM facility. Radionuclides are removed as filtered solids during processing, and the resulting liquid is mixed with other liquid streams to generate an overall average daily flow of approximately 378,500 liters (100,000 gallons). The largest capacity tank in the system is a 378,500-liter (100,000 gallon) tank for storing treated liquid. Failure of this tank with release to surface water bounds potential accidents associated with the waste treatment system. The released liquid would be diluted in West Swamp Creek and the Schuylkill River, and the maximally exposed individual could receive a CEDE of 5.8×10^{-9} Sv (5.8×10^{-4} mrem). This dose is a very small fraction of normal background radiation, indicating insignificant risk to public health and safety.

Ammonia is stored under pressure as a liquified gas in a 37,850-liter (10,000 gallon) tank located on the southeast side of County Line Road. Failure of a transfer or relief line could cause an uncontrolled release with potential health and safety impacts. This event was represented as development of a 2.5-centimeter (1 inch) diameter hole in the tank vapor space, with isentropic escape through the hole. Under the assumed conditions, the release rate was estimated as 930 grams per second (2.05 pounds per second). The release time with no operator response could be as long as 6 hours. Dispersion analysis established that the maximally exposed individual would be located 330 meters (1,083 feet) north-northeast of the release point. Ambient ammonia concentrations were estimated as 1.3 grams per cubic meter (930 parts per million) at the location of the maximally exposed individual. Ammonia concentrations above 1,000 parts per million for an extended period of time can be lethal, while concentrations

between 25 and 200 parts per million produce transient irritation. The potential for this release to occur for an extended period of time is low because CPM would take response actions in accordance with their Preparedness, Prevention, and Contingency Plan.

Alternative to the Proposed Action

An alternative to the proposed action is non-renewal of the license. In this case, CPM would shut down the processes that involve source material, and would decontaminate and decommission (D&D) the site in accordance with an approved plan. Cabot would do a thorough survey of the site grounds and buildings and prepare a detailed D&D Plan. The environmental impacts of the D&D activities would be assessed during NRC review of the detailed D&D Plan.

Agencies and Persons Consulted

During the preparation of the EA, various state and local agencies were contacted for gathering information. These contacts included the Tri-County Area Chamber of Commerce for employment information, the Pennsylvania Department of Conservation and Natural Resources for threatened and endangered species information, the Pennsylvania Department of Environmental Protection for air quality information, and the Pennsylvania Registry of Historic Places for cultural resources information.

Conclusion

The staff concludes that the impact to the environment and to human health and safety from operations at this facility has been and is expected to remain minimal. Results of the environmental monitoring program conducted during the previous license period indicate no significant impact to the environment as a result of site operations. Radioactive materials in effluents released to the environment are well below regulatory limits. The total whole body dose received by the maximally exposed individual is below federal regulatory limits.

Finding of No Significant Impact

The NRC has prepared an EA related to the renewal of source Material License SMB–920. On the basis of this assessment, the NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a finding of no significant impact is appropriate.

Opportunity for a Hearing

Any person whose interest may be affected by the renewal of this license may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the publication of this notice in the Federal Register; must be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852) and on the licensee (Cabot Performance Materials, County Line Road, Boyertown, PA 19512); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation 10 CFR Part 2, Subpart L, ''Informal Hearings Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (e.g., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 25 day of September 1996.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 96–25175 Filed 10–1–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22252; 811–7027]

Putnam Research Analysts Fund; Notice of Application

September 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Putnam Research Analysts Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 3,1995 and amended on April 2, 1996 and September 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons 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. Applicant, One Post Office Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company under the Act and is organized as a business trust under the laws of Massachusetts. Applicant registered under the Act and filed a registration statement on Form N–1A on August 19,

1992. On November 2, 1992, the registration statement was declared effective and applicant commenced its initial public offering.

2. On January 6, 1995, applicant's board of trustees authorized applicant's liquidation based on then current market conditions. Putnam Investment Management, Inc., applicant's investment adviser (the ''Adviser'') owned a substantial majority of applicant's outstanding shares.

3. On or about February 6, 1995, applicant liquidated all of its 309,549.746 shares to its shareholders of record at net asset value for a total cash distribution of $2,587,834.96. After the final liquidation, $488 remained which applicant used to reimburse its Adviser for management fees and reimbursements. No expenses were incurred in connection with the liquidation and unamortized organization expenses were paid by the Adviser. Applicant disposed of its portfolio securities in the normal course of business incurring brokerage commissions in the amount of $1,902.90.

4. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. On August 15, 1995, applicant filed the necessary documentation with Massachusetts authorities to terminate its existence as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–25224 Filed 10–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37726; File No. SR–Amex–96–29; SR–CBOE–96–56; and SR–PSE–96–31]

Self-Regulatory Organizations; Proposed Rule Changes: American Stock Exchange, Inc., et al.

September 25, 1996

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 by the American Stock Exchange, Inc., Relating to Restrictions on the Available Exercise Prices for FLEX Equity Call Options and Elimination of the Requirement that Members Sign the Trade Sheet to Create a Binding FLEX Contract and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, by Chicago Board Options Exchange, Incorporated and Pacific Stock Exchange, Inc. Relating to Restrictions on the Available Exercise Prices for FLEX Equity Call Options

I. Introduction

On July 29, August 20, and August 26, 1996, the American Stock Exchange, Inc. (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), and the Pacific Stock Exchange, Inc. (''PSE'') (collectively the ''Exchanges'') respectively filed proposed rule changes with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to restrict the available exercise prices for FLEX equity call options. The Amex further proposes to eliminate the requirement that members sign the Trade Sheet when creating a binding FLEX contract.

Notice of the Amex's proposal was published for comment and appeared in the Federal Register on August 9, 1996.[3] No comment letters were received on the Amex's proposed rule change. The CBOE submitted to the Commission Amendment No. 1 on August 30, 1996.[4] The Amex submitted to the Commission Amendment No. 1 on August 29, 1996.[5] The Commission is approving the Amex's and CBOE's proposal, as amended, and the PSE's proposal. The Commission is also publishing this notice to solicit comments on the CBOE's proposed rule change, as amended, PSE's proposed rule change, and Amex's Amendment No. 1 to its proposed rule change from interested persons, and granting accelerated approval to the foregoing.

II. Description of the Proposal

On February 14, 1996[6] and June 19, 1996,[7] the Exchanges received approval to list and trade flexible options on individual stocks known as FLEX equity options. Similar to the FLEX index options, investors will be able to set the specific terms of each FLEX equity option contract. Among the terms that can be specified are: (1) The expiration date of the option; (2) the exercise price of the option; and (3) the exercise style of the option (American or European). The Exchanges, however, impose some limitations on these flexible terms. For example, the Exchange does not permit the expiration date of a FLEX option to be any business day that falls on or within two business days of the expiration date for standardized non-FLEX equity options.

Although the Exchanges have received approval to trade these products, they have not done so due to a concern that the flexible exercise price feature could result in an available call option that would not be eligible to be a qualified covered call (''QCC'') under Section 1092(c)(4) of the Internal Revenue Code, thus jeopardizing a modest tax benefit currently enjoyed by writers of standardized non-FLEX equity call options. Under the straddle rules of Section 1092 of the Internal Revenue Code, a loss on one position in a straddle is taken into account for tax purposes only to the extent that the amount of the loss exceeds unrecognized gain on the other position(s) in the straddle. In addition, if a taxpayer has held stock for less than the long-term holding period at the time the taxpayer acquires an offsetting position with respect to the stock, the taxpayer's holding period in the stock is forfeited until disposing of the position offsetting the stock.

Although stock and an offsetting option (*e.g.*, a short call) constitute a straddle for purposes of Section 1092, a straddle consisting solely of stock and a QCC has been exempted from these rules provided, among other things, that the call option is not ''deep-in-the-money.'' Under certain conditions a ''deep-in-the-money'' call option is defined to mean an option having an exercise price lower than the highest

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37522 (August 9, 1996), 61 FR 41669.

[4] In Amendment No. 1, the CBOE clarifies in Interpretation .01 to CBOE Rule 24A.4(c)(2) that the available exercise price intervals for FLEX equity call options are limited to the same exercise price intervals that are available for Non-FLEX equity call options pursuant to Rule 5.5 and Interpretations and Policies thereunder. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated August 28, 1996 (''CBOE Amendment No. 1'').

[5] In Amendment No. 1, the Amex proposed a technical clarification to its proposed rule change. Specifically, the Exchange makes clear that the available exercise prices available for FLEX equity call options, are those available pursuant to Amex Rule 903 for Non-FLEX equity call options. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, OMS, Market Regulation, Commission, dated August 28, 1996 (''Amex Amendment No. 1'').

[6] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (order approving SR–CBOE–95–43 and SR–PSE–95–24).

[7] *See* Securities Exchange Act Release No. 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996) (order approving SR–Amex–95–57).

available exercise price which is less than the previous day's closing price of the stock. For example, using standardized options, if stock XYZ closed yesterday at $54 and opened at that price today, the standardized exercise price of $50 for a call option would *not* be ''deep-in-the-money'' because $50 would be the highest available exercise price that is less than the applicable stock price. A standardized exercise price of $45, however, would be ''deep-in-the-money'' and would *not* be a QCC. Thus, if a FLEX equity call option were written with an exercise price of $53, the standardized exercise price of $50 might be considered ''deep-in-the-money'' because the FLEX equity call option with an exercise price of $53 could be considered the highest available exercise price and the only qualified covered call for that option. Another interpretation might consider any call option struck at or below $53¾ ''deep-in-the-money'' because FLEX Equity Call Option strikes of $53⅞ and $53¾ could be created.

While the Exchanges hope to petition the Treasury Department for relief from these latter interpretations of the straddle rules, in the interim, the Exchanges propose to go forward with the FLEX equity option program by prohibiting the writing of FLEX equity call options with exercise prices other than those exercise prices allowed for standardized non-FLEX equity call options.[8]

Although this proposal will place limitations on a product designed to be flexible and free of such standardized terms, the Exchanges believe that the proposed limitations appropriately balance the needs of investors with concerns that flexible exercise prices for FLEX equity call options could disrupt the existing framework for determining whether a standardized option is a qualified covered call. FLEX equity put options would have no restrictions placed on exercise prices because the exemption from the straddle rules is available only for call options. In addition, the Exchanges anticipate that they will seek to eliminate the proposed restriction on the exercise prices of FLEX equity call options when it receives guidance and relief from the Treasury Department.

The Amex further proposes to eliminate the requirement that acceptance of the best bid or offer will take place only when each party to the FLEX transaction signs a trade sheet, thus creating a binding contract. Since the Amex began trading FLEX Index Options in 1993, the fully manual process for executing transactions has been automated. Currently, trade information is input into the Amex's Intra-Day Comparison (IDC) System for FLEX Index Options after completion of a trade in a manner similar to that for non-FLEX options. IDC input results in the immediate comparison of FLEX option trades. The Exchange believes that requiring signed trade sheets is unnecessary and time consuming.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[9] Specifically, the Commission finds that the Exchanges' proposals strike a reasonable balance between the Commission's mandates under section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the Exchanges' proposals to restrict exercise prices as described above, reasonably balances the desire of sophisticated portfolio managers and other institutional investors to trade flexible equity options products, with the need to eliminate the potential that the trading of such options could inadvertently impact a tax benefit currently provided to writers of standardized call options that qualify as QCCs.[10] In approving the Exchanges' proposals, the Commission recognizes that the Exchanges will restrict the flexibility of investors in determining an essential term of FLEX equity call options contracts (*i.e.*, the exercise price). Nevertheless, investors will still be able to designate contract terms for exercise style (*i.e.*, American, European, or capped) and expiration date.[11] Based on this and the current tax framework for QCCs, the Commission believes the limitations imposed by the proposals are appropriate and should still provide investors with a more flexible product than one with standardized option terms while protecting investors in the standardized equity call options market.[12]

The Commission also believes that in light of Amex's development of the IDC system for FLEX options, as described above, it is reasonable for the Amex to eliminate the current requirement that each party to a FLEX transaction sign a trade sheet to create a binding FLEX contract.

The Commission finds good cause for approving the CBOE's proposed rule change, as amended, and PSE's proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Specifically, the Commission believes that the CBOE's and PSE's proposals conform its rules concerning available exercise prices for FLEX equity call options to the proposed rule change of the Amex and raises no new regulatory issues. Additionally, the Amex proposal was subject to a full notice and comment period, and no comments were received. Accordingly, the Commission believes, consistent with section 6(b)(5) of the Act, that good cause exists, to approve the CBOE's proposed rule change, as amended, and PSE's proposed rule change, on an accelerated basis.

The Commission finds good cause for approving Amendment No. 1 to Amex's proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Specifically, the Amex proposes to amend the proposed rule by clarifying that exercise price intervals available to Non-FLEX equity call options pursuant to Amex Rule 903, will be available for FLEX equity call options. The Commission believes that the Amex's amendment clarifies the scope of the proposed rule change and raises no new regulatory issues. Accordingly, the Commission believes, consistent with Section 6(b)(5) of the

[8] The Exchanges' proposals provide that exercise prices for FLEX equity call options may be fixed only at prices that are integer multiples of the applicable minimum interval, in order to assure that exercise prices for FLEX equity call options coincide with exercise prices for non-FLEX equity call options fixed by the Exchanges pursuant to their rules. For example, where 2½ point minimum intervals apply, exercise prices may be fixed only at numbers evenly divisible by 2½, such as 17½, 20, 22½, and 25. *See* Amex Amendment No. 1, *supra* note 5.

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that the Exchanges must file a proposed rule change with the Commission, pursuant to section 19(b) of the Act, to withdraw or modify this exercise price policy regarding FLEX equity call options.

[11] Of course, investors will also be able to designate exercise price for FLEX equity put options.

[12] The Commission notes that The Options Clearing Corporation must submit to the Commission a supplement to its Options Disclosure Document (''ODD'') that will inform investors of the limitation of exercise price intervals when writing FLEX equity call options. Accordingly, the Exchanges will only be allowed to trade FLEX equity call options pursuant to this proposal when the proposed supplement to the ODD becomes effective pursuant to Rule 9b-1 under the Act.

Act, that good cause exists, to approve Amendment No. 1 to Amex's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the CBOE's and PSE's proposed rule changes and CBOE Amendment No. 1 and Amex Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File Nos. SR–Amex–96–29, SR–CBOE–96–56, or SR– PSE–96–31 and should be submitted by October 23, 1996.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the Amex's proposed rule change (File No. SR–Amex–96–29), as amended, is approved, and the CBOE's and PSE's proposed rule changes (File Nos. SR–CBOE–96–56 (as amended) and SR–PSE–96–31) are approved on an accelerated basis.[14]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[FR Doc. 96–25153 Filed 10–1–96; 8:45 am]

BILLING CODE 8010–0–M

[13] 15 U.S.C. 78s(b)(2).

[14] *See supra* note 12.

[15] 17 CFR 200.30–3(a)(12).

[Release No. 34–37728; File No. SR–AMEX–96–10]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to the Implementation of a Wireless Data Communications Infrastructure

September 26, 1996.

I. Introduction

On March 27, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 60 and 220 and to adopt a policy regarding the use of wireless data communications devices at the Exchange (''Wireless Communications Policy'').[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 37161 (May 2, 1996), 61 FR 20871 (May 8, 1996). Two comment letters, from the same commenter, were received on the proposal.[4] The Amex submitted one letter supporting its proposal and responding to Comment Letter No. 1.[5] For the reasons discussed below, the Commission has decided to approve the Amex proposal.

II. Description of the Proposal

The Exchange has undertaken the development of an infrastructure (''Infrastructure'') to accommodate the use of hand-held wireless data communications devices on the Trading Floor. In connection with the implementation of the Infrastructure, the Exchange seeks to amend Rule 220 to explicitly provide that the Exchange may regulate communications between points on the Floor. The Exchange also seeks to adopt a Wireless Communications Policy regarding the use of wireless data communications devices at the Exchange. The Wireless Communications Policy will address the following issues:

1. The ability of the Exchange to administer wireless data communications on a real time basis (*e.g.*, the implementation of a protocol for prioritizing and/or managing message traffic during periods of extraordinary use);
2. Surveillance of wireless data communications;
3. Member, member firm and Exchange preservation of records of orders and trades;
4. Security with respect to confidential wireless transmissions and access to the Infrastructure;
5. Review and approval of member and member firm applications to use wireless data communications devices;
6. The fair allocation of a finite resource (*i.e.*, radio frequency bandwidth);
7. Exchange fees and allocation of expenses associated with the implementation, operation of, and enhancements to, the Infrastructure;
8. Sanctions for violations of the Exchange's Wireless Communications Policy;
9. Inspection and oversight of wireless data communications technology; and
10. The design and implementation of the Infrastructure.

In addition, the Exchange proposes to adopt new Commentary .03 to Rule 60 which will provide that, in connection with member or member organization use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange: (i) The Exchange may expressly provide in the contract with any vendor providing all or part of such electronic system, service, or facility to the Exchange, that such vendor and its subcontractors shall not be liable to members or member organizations for any damages sustained by a member or member organization growing out of the use or enjoyment of such electronic system, service, or facility by the member or member organization; and (ii) members and member organizations shall indemnify the Exchange and any vendor and subcontractor covered by subsection (i) above with regard to any third party claims relating to the member or member organization's use of such electronic system, service, or facility.

III. Summary of Comments

The Commission received two comment letters regarding the Wireless Communications Policy.[6] The commenter discussed the following aspects of the Wireless Communications Policy: (1) The requirement that all wireless communications that leave, enter or travel between points on the Floor must first pass through a Gateway Subsystem, (2) the fair allocation of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also submitted a letter discussing the impact of the Infrastructure on the Exchange's surveillance program. See Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Amex, to Jon E. Kroeper, SEC, dated April 4, 1996.

[4] See Letter from Bradford L. Jacobowitz, General Counsel, Interactive Brokers LLC, to Jonathan G. Katz, Secretary, SEC, dated May 29, 1996 (''Comment Letter No. 1''), and Letter from Bradford L. Jacobowitz, General Counsel, Interactive Brokers LLC, to Elisa Metzger, SEC, dated August 12, 1996 (''Comment Letter No. 2'').

[5] See Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Amex, to Elisa Metzger, SEC, dated July 11, 1996 (''Amex Letter'').

[6] See supra note 4.

radio frequencies, (3) the availability of wireless communications for Exchange members who have not acquired or developed their own system, and (4) the fee imposed for the use of this system.

The commenter raised several concerns regarding the required use of the Gateway Subsystem. The commenter believes that the Gateway Subsystem will slow the transmission of orders to the floor broker, and that this delay will ''retard price efficiencies, and make competitive efforts to enhance the speed of order routing useless * * *.'' [7] In addition, the commenter believes that the delay in transmitting orders caused by the Gateway Subsystem is not necessary for surveillance and recordkeeping purposes.

The commenter further stated that it is anti-competitive for the Exchange to require that all users of hand held terminals use the Gateway Subsystem. Specifically, the commenter believes that those members who spend the money to develop their own technology will be subject to the same disadvantages of the Gateway Subsystem as those members who do not develop their own system. Further, those members who develop their own system will not be able to fully benefit from their technological developments.

The Exchange responded to these comments stating that it anticipates a delay of only two seconds as a result of routing messages through the Gateway Subsystem. Further, any such delay will be imposed equally on all users of wireless technology. The Exchange also addressed the issue of audit trail information and stated that orders transmitted by wireless communication devices would be subject to the same audit trail requirements as all other orders.

The commenter also raised concerns regarding the exclusive use of the 2.4 GHz radio frequency. The commenter stated that the exclusive use of this frequency would limit the number of persons that could use the wireless system. As an alternative, the commenter suggested that the Exchange also permit the use of the 902 Mhz frequency and the use of infrared technology.

The Exchange explained that it rejected the use of the 902 Mhz frequency because the 902 Mhz frequency could only carry ten percent of the message traffic that the 2.4 Ghz frequency could transmit. In addition, the Exchange believes that it did not make economic sense to build two separate Wireless Infrastructures to accommodate two different frequencies, one of which is a more antiquated frequency. The Exchange also explained that infrared technology was not an option because infrared technology requires unobstructed sight lines, which is not easily accommodated on the Exchange's two trading floors.

The commenter raised issues regarding the anti-competitive implications of the Exchange providing wireless communications devices for Exchange members who have not acquired or developed their own systems. The commenter is concerned that those members who develop their own systems will be subject to the same time delays as those members who have not made such an investment. In addition, the commenter asserts that the fee that the Exchange plans to charge for the use of the Gateway Subsystem is ''tantamount to a double 'technology tax' and is a disincentive to the development of proprietary systems.'' [8] The commenter believes that this fee will require developers of technology to pay for their own system and the Gateway Subsystem.

The Exchange responded to these comments stating that there will be a separate fee for those members who use the Exchange's communications devices. In addition, members will be free to develop their own communications device that may be better and more efficient than the Exchange's communications devices. Further, the Exchange states that its wireless initiative will benefit the public by providing for appropriate management and surveillance of this new technology.[9]

IV. Discussion

After careful consideration of the comments and the Amex response thereto, the Commission has determined to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the Wireless Communication Policy should remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange. While the commenter raised concerns regarding the time delay caused by the requirement that all communications go through the Gateway Subsystem, it is anticipated that the time delay will consist of two seconds. Further, the requirement that all orders pass through the Gateway Subsystem and the proposed amendment to Rule 220 will permit the Exchange to continue regulating and monitoring communications between points on the Floor.

In addition, all users of wireless communications devices will be required to capture electronically, all information regarding their transactions on the Floor that is required by the Commission's rules and the Exchange's rules.[11] Accordingly, audit trail information should be more accurate than current information which is recorded manually on order tickets or trading cards.

The Commission believes that the Wireless Communications Policy, is consistent with the policy in Article IV, Section 1(e) of the Exchange Constitution which currently provides that the Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. This provision, as well as similar provisions at other exchanges, reflect the common understanding that exchanges should not bear the risk of liability associated with member firm use of their systems.

[7] See Comment Letter No. 1 at 2.

[8] See Comment Letter No. 1 at 3.

[9] Prior to submitting the proposed rule changes, the Exchange received three written responses to an Amex letter dated February 29, 1996, addressed to all members and member firms regarding the implementation of the Infrastructure and anticipated user fees for wireless data communications devices on the Floor. The three responses to the Exchange's letter concerned objections to the proposed fee structure. The Exchange decided that the specifics of the per device fee would not be determined until the fall of 1997, giving the Exchange a period of time to observe the Infrastructure in operation. A per device fee will not be imposed prior to that time. In addition, once imposed, the monthly fee will be capped at $250 per device.

[10] 15 U.S.C. 78f(b).

[11] The Commission notes that members, brokers, and dealers are subject to the Commission's recordkeeping and record retention rules, Rules 17a–3 and 17a–4 under the Act (17 CFR 240.17a–3 and 240.17a–4), and may retain required records in any medium acceptable under Rule 17a–4, including optical storage technology.

The Commission believes that the proposed commentary to Rule 60 regarding the disclaimer for vendor liability will provide needed protection for both the Exchange and vendors that may be retained by the Exchange to provide various services for use by member firms. If the Exchange does not have the ability to negotiate such liability protection, it would become increasingly difficult to find vendors willing to provide the Exchange with the essential services that it needs.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–96–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–25225 Filed 10–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37732; File No. SR–CBOE–96–29]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Exercise of American-style Index Options

September 26, 1996.

I. Introduction

On April 26, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to adopt new CBOE Rule 24.18 which prohibits the exercise of an American-style index option series after the holder has entered into an offsetting closing sale (writing) transaction.

Notice of the proposal was published for comment and appeared in the Federal Register on August 15, 1996.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

As noted in CBOE's Regulatory Circular RG 96–11,[4] the rules and procedures of The Options Clearing Corporation (''OCC'') permit a holder of an American-style option[5] to exercise that options at any time up to the exercise cut-off time on any day, other than the final trading day, even if the holder had entered into an offsetting closing sale transaction earlier that day. This result stems from the fact that on such days OCC processes opening purchase transactions and exercises before it processes closing sales transactions, so that option purchasers remain holders of their options on OCC's books for the purpose of exercise without regard to their closing sales that day.

The Exchange is concerned that this result may be confusing to investors—because it may give the appearance that investors are able to exercise the same options which they have previously sold—and lead to a perception that this result is unfair to writers of American-style index options that are in the money by subjecting them to a potentially increased ''timing risk'' of the type described under ''Special Risks of Index Options'' on pages 73–74 of the risk disclosure document entitled ''Characteristics and Risks of Standardized Options'' (February 1994).[6]

Additionally, the Exchange believes that the average retail customer might not understand how investors could exercise options which they believed they no longer owned. The Exchange represents that, during the period from November 1993, through December 1995, almost all of the gross exercises in customers' accounts were effected at one clearing firm on behalf of a single customer that is a foreign professional trading account. Accordingly, the Exchange believes that retail customers might view the gross exercise ability as giving professional traders an unfair advantage over retail customers and that such perception could lead to the diminished popularity of Standard and Poor's 100 (''OEX'') index options for retail customers.[7]

To eliminate this possible perception of unfairness, the proposed rule would prohibit CBOE members from effecting an exercise of an OEX options series (or any other American-style index option series subsequently listed by the Exchange), whether on the member's own behalf or on behalf of a customer, if the member knew or had reason to know that the exercise was for more option contracts than the ''net long position'' of the account for which the exercise is to be made. For this purpose, the ''net long position'' in an account is the net position of the account in options of a given series at the opening of business of the day of exercise, plus the total number of such options purchased on that day in opening purchase transactions up to the time of exercise, less the total number of such options sold on that day in closing sale transactions up to the time of exercise.

In order to prevent persons from circumventing the proposed rule by designating a sale as ''opening'' so as to maintain a net long position capable of being exercised, and then redesignating the sale as ''closing'' by means of an adjustment later in the day if in fact the long position has not been exercised, the rule would prohibit a member from adjusting the designation of an opening transaction to a closing transaction except to remedy mistakes or errors made in good faith.

A market maker's transactions are not required to be marked as opening or closing. Rather, a market maker's purchase and sales transactions are netted by OCC every day after exercises are processed. As a result, it is impossible to tell whether a particular transaction by a market maker is intended as an opening or closing transaction. Under OCC's processing procedures, unmarked market makers' transactions are in effect treated as opening transactions prior to the processing of exercises and as closing transactions thereafter. For the purpose of applying the prohibition of the proposed rule, every market maker transaction would be treated as a closing transaction to the extent the market maker has pre-existing positions (including positions resulting from transactions effected earlier that day) which could be netted against the transaction. For example, if a market maker is long 10 option contracts of a series and sells 15 contracts of that series, the sale will be deemed, under the proposed rule, to be a closing sale transaction for 10 contracts and an

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37540 (August 8, 1996), 61 FR 42455.

[4] *See* Securities Exchange Act Release No. 36797 (January 31, 1996), 61 FR 4691 (February 7, 1996) (File No. SR–CBOE–96–03).

[5] An American-style option may be exercised at any time prior to expiration.

[6] This document is generally known as the Options Disclosure Document or ''ODD''.

[7] *See* Letter from Michael L. Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated June 17, 1996. OEX index options are the only American-style index options currently traded at the CBOE. All other CBOE index option are European-style, with exercise only permitted upon their expiration.

opening sale transaction for 5 contracts, resulting in a net short position of 5 contracts. If the market maker then purchases 20 contracts, the purchase will be deemed a closing purchase for 5 contracts and an opening purchase for 15 contracts, resulting in a net long position 15 contracts. Under the proposed rule, the market maker would be permitted to exercise only those 15 contracts. In the absence of the proposed rule, the market maker would have been able to exercise 30 contracts, representing his gross long position, before netting against this position the 15 contracts sold.

The Exchange notes that the proposed rule is not intended to affect OCC's processing rules and procedures. If a member submitted an exercise notice to OCC in violation of the proposed CBOE rule, the exercise would be processed by OCC in accordance with its procedures. In that case, the proposed CBOE rule would be enforced solely through the Exchange's disciplinary procedures.

The Exchange emphasizes that the proposed rule has been adopted to eliminate the perception that a holder's ability to exercise options that had been the subject of closing transactions might create enhanced risk to writers of OEX options. However, it is not clear that the writers of in-the-money OEX options will, in fact, be subject to less risk as the result of the proposed rule. Such writers should continue to anticipate that they could be assigned an exercise of their options positions, especially as expiration approaches. (For example, the proposed rule would not prohibit the exercise of an OEX option held in a net long position before—even seconds before—an opening sales transaction in that option has been effected.) It is possible that the early exercise of OEX options will continue at the same level after the proposed rule becomes effective as before.

Upon the effectiveness of the proposed rule, the Exchange would modify Regulatory Circular RG 96–11 to describe the proposed rule. Three examples were given in the Regulatory Circular as originally published on January 17, 1996. These three examples would be modified to read as follows (italicized language is proposed to be added; language in brackets is proposed to be deleted):

Example 1: Investor X is long 15 call option contracts of a series at the opening of a trading day other than the final trading day. During that day, X purchases 20 contracts of that series in opening purchase transactions and sells 10 contracts in closing sale transactions. X will be able *under OCC's rules* to exercise 35 contracts of that series that day. *However, in the case of American-style index options only (i.e., OEX options), CBOE Rule 24.18 would prohibit a member who knows or has reason to know of the closing sale transactions from exercising on X's behalf more than the net long position of 25 contracts at any time at or after the closing sale of 10 contracts.*

Example 2: Investor Y is short 20 call option contracts of a series at the opening of such a trading day. During the day, Y purchases 20 contracts of that series in opening purchase transactions. Y will be able to exercise 20 contracts of that series that day, and will remain short the 20 contracts. *However, in the case of OEX option contracts, if Y's transactions had been effected in a market-marker's account, the purchase would have been deemed to have been a closing transaction for the purposes of CBOE Rule 24.18 and would have been offset by Y's short position, resulting in no net long position to exercise.*

Example 3: Market-maker Z is short 100 call options contracts at the opening of that trading day. During the day, Z purchases 100 contracts and sells 100 contracts of that series[, and Z does not mark the transactions as opening or closing]. Z will be able to exercise 100 contracts of that series that day *under OCC's rules. However, in the case of OEX option contracts, CBOE Rule 24.18 would prohibit Z from exercising any contracts without regard to the sale transactions, since the purchase transactions would be deemed to be closing transactions, and would be netted against his beginning short position, resulting in no net long position to exercises.*

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that it is reasonable for the Exchange to conclude that permitting holders of American-style index options series to exercise positions greater than their ''net long'' position, as described above, may lead to a possible perception of unfairness to retail investors and American-style index option writers. Effectively, the proposal creates an option exercise restriction upon holders of American-style index options, preventing such holders from exercising positions in excess of their net long position. The Commission believes that the imposition of a restriction on exercise requires a careful balancing of the Exchange's need for such a restriction with the impact that such a restriction will impose upon options market participants, including market professionals and individual investors.

Based on representations of the Exchange, the Commission believes that the proposed limited restriction on exercise is reasonable and should not adversely impact (1) the options exercise practices of existing OEX options market participants, (2) market participants' ability to utilize the options markets, or (3) trading in American-style index options generally. Particularly, the Commission believes that the Exchange has reasonably balanced the impact of the proposed rule change on option holders with its desire to eliminate the possible perception of unfairness on behalf of retail customers and American-style index option writers.

The Commission expects the Exchange to promptly modify Regulatory Circular RG96–11 to describe the proposed rule and distribute the new circular to its membership. Moreover, the Commission notes that the CBOE has established surveillance guidelines that should help to ensure compliance with the new policy.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–CBOE–96–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–25223 Filed 10–1–96; 8:45 am]

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[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–37718; File No. SR–Phlx–96–13]

Self-Regulatory Organizations; Proposed Rule Changes; Philadelphia Stock Exchange, Inc.

September 24, 1996.

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order

Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Trading Hours and Expiration Times for Customized Foreign Currency Options.

On May 7, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Adjust the time that all customized FCOs cease trading on expiration day from 9:00 a.m. and 2:30 p.m. until 8:00 a.m. (all time references are to eastern standard time); (2) adopt a uniform expiration time for all customized FCOs of 10:15 a.m. (instead of 11:59 p.m.); and (3) make all customized FCOs subject to pro-rata assignment.

Notice of the proposed rule change was published for comment and appeared in the Federal Register on June 18, 1996.[3] No comments were received on the proposal. On July 15, 1996, the Phlx submitted Amendment No. 1 (''Amendment No. 1'') to the filing.[4] This order approves the proposal, as amended.

I. Description of the Proposal

The Exchange has two types of customized FCOs: custom-dated FCOs and non-custom dated FCOs. Both types of these customized FCOs, however, have different expiration times and procedures and trading hours. Custom-dated FCOs (which expire on any trading day except a regular mid-month or end-of-month expiration) currently cease trading at 9:00 a.m., expire at 10:15 a.m. on their expiration date, and are subject to a pro-rata assignment process.

Non-custom dated FCOs do not have a custom date (*i.e.*, mid-month or end-of-month expiration date,[5] they cease trading at 2:30 p.m., expire at 11:59 p.m., and are subject to random assignment. The Exchange proposes to change this scheme to correspond to that of custom dated FCOs. Accordingly, Phlx proposes to alter the expiration times for non-custom dated FCOs so that they cease trading at 8:00 a.m.,[6] expire at 10:15 a.m. on their expiration date, and are subject to pro-rata assignment. As a result, all customized FCOs (*i.e.*, custom-dated and non-custom dated) will have the same expiration process regardless of when they expire.

According to Phlx, customized FCOs are mainly traded by institutional customers who often buy the options as a hedge against over-the-counter contracts. Because the over-the-counter options typically expire at 10:00 a.m., these customers cannot effectively hedge their risk with customized FCOs unless they know their assignment exposure at the same time. Thus, custom dated options have been a very useful trading vehicle for the institutional market due to their 10:15 a.m. expiration and pro-rata exercise notification at 10:00 a.m. Non-custom dated FCOs, however, have not been as useful for offsetting purposes since customers do not know their assignment exposure until the following day. Therefore, the Exchange believes that by having all customized FCOs expire at 10:15 a.m., and by implementing a pro-rata exercise regime, it will add liquidity to the market and encourage institutions to take advantage of all types of exchange traded FCOs. Furthermore, the Phlx believes that by revising the expiration times for non-custom dated FCOs, it will increase the volume for this type of customized FCO and thereby reduce the amount of paperwork at expiration.

Second, in order to facilitate back office processing, the Exchange proposes to extend by one hour the amount of time between the period when an FCO ceases trading and expiration. Accordingly, Phlx proposes to have all customized FCOs cease trading at 8:00 a.m. (rather than at 9:00 a.m.) on the day of expiration. Presently, member firms only have one hour (between 9:00 a.m. and 10:00 a.m.) to prepare and accept exercise instructions for custom-dated FCOs and submit them to the Options Clearing Corporation (''OCC''), which then processes and disseminates a preliminary indication of the percent of contracts exercised for each series. The contracts then expire at 10:15 a.m. and a pro-rata assignment process is used. By ceasing trading one hour earlier (8:00 a.m.), the firms would double the amount of time in which they have to process these instructions.

The Exchange proposes to implement these changes to the customized FCOs as follows: first, the portion of the rule filing which changes the time that custom-dated FCOs cease trading to 8:00 a.m. will be implemented immediately upon approval of this filling. Second, Phlx proposes to implement the changes to the non-custom dated FCOs (*i.e.*, cease trading at 8:00 a.m., expiration at 10:115 a.m., and switch to pro-rata assignment) upon subsequent Commission approval of a corresponding OCC filing (''corresponding OCC filing'').[7] However, if open interest exists in any series of non-custom dated FCOs at the time of approval of the corresponding OCC filing, these series will be exempted from the proposed new procedures and will continue to cease trading at 2:30 p.m., expire at 11:59 p.m., and be subject to random assignment.[8] This exemption will be noted in Phlx Rule 1000(b)(21)(iv) and will be publicized in numerous memoranda to the membership.[9]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that the proposal is designed to foster just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

Phlx proposes to move the cease trading time for custom-dated FCOs back one hour to 8:00 a.m. By extending the amount of time in which member firms have to process exercise instructions by one hour, the Commission believes that the clearing and settlement process relating to the exercise and assignment of FCOs should benefit and operate in a more efficient manner. Furthermore, upon Commission approval of the corresponding OCC filing, as discussed above, non-custom dated FCOs will

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 37287 (June 7, 1996), 61 FR 30932.

[4] *See* Letter from Michele R. Weisbaum, Phlx, to Stephen Youhn, SEC, dated July 15, 1996. Amendment No. 1 codifies a provision relating to pro-rata assignment of customized foreign currently options.

[5] Non-custom dated FCOs expire on the same day as standardized FCO expiration dates. An example of a non-custom dated FCO would be an FCO which has a custom strike price or is quoted as an inverse option.

[6] Although custom-dated FCOs currently cease trading at 9:00 a.m., the Phlx, as discussed below, proposes to amend this time such that all customized FCOs cease trading at 8:00 a.m.

[7] The OCC filing, which is expected to be filed in October 1996, will, among other things, propose changes in OCC rules to accommodate assignment procedures from random to pro-rata assignment for non-custom dated FCOs.

[8] Telephone conversation between Michele R. Weisbaum, Phlx, and Stephen Youhn, SEC on August 12, 1996.

[9] This transitional process will be similar to the one used when the Exchange changed the expiration from the Saturday preceding the third Wednesday of the expiration month to the Friday preceding the third Wednesday. *See* Securities Exchange Act Release No. 32452 (July 13, 1993).

have their cease trading and expiration times moved to 8:00 a.m. and 10:15 a.m., respectively, resulting in uniform tracing cut-off times and expirations for all customized FCOs. The Commission believes that these changes should serve to enhance liquidity in the FCO market and reduce the possibility of investor confusion creased by disparate trading cut-off times and expirations.

In addition, by switching the assignment methodology for non-custom dated FCOs from random to pro-rata assignment, the Commission believes that writers of non-custom dated FCOs will be able to more quickly gauge their exercise exposure. The Commission notes that OCC provides preliminary notification to members shortly before expiration as to the total amount of exercised contracts for each FCO series. Despite this notification, however, with random assignment, shorts do not know until the next day whether they have been assigned. Pro-rata assignment allows members to ascertain their exercise exposure in a more expedient manner. Accordingly, the Commission believes that pro-rata assignment may help increase liquidity in the FCO market and reduce the possibility of undue risk to investors. Also, this change will result in all customized FCOs having pro-rata assignment, which should also reduce the possibility of investor confusion created by disparate assignment procedures.

As discussed above, the Commission notes that the changes to the features of the non-custom dated FCOs will create uniformity for all customized FCOs (*i.e.*, 8:00 a.m. cease trading time, 10:15 a.m. expiration, and pro-rata assignment). These changes, however, will become effective only upon Commission approval of the corresponding OCC filing needed to accommodate the Phlx changes [10] and apply only to new series of non-custom dated FCOs opened after that date. Outstanding series of non-custom dated FCOs at the time of OCC approval will be ''grandfathered'' (*i.e.*, they will continue to cease trading at 2:30 p.m., expire at 11:59 p.m., and be subject to random assignment). Prior to implementation of these changes, Phlx will issue a circular to members that will clarify which series of FCOs will be affected by the proposal. The Commission believes this should ensure investors will be adequately apprised of these changes and the affected series.

In summary, the Commission believes the proposed changes will be implemented in a fair manner and will not result in changing the terms of outstanding contracts. Moreover, the Commission believes the proposal will foster investor protection and facilitate transactions in securities consistent with Section 6(b)(5) of the Act by achieving uniformity between the different types of customized FCOs. The Commission also believes the proposal may help to reduce the confusion attendant to disparate expiration times and assignment procedures for customized FCOs.

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission notes that the Amendment simply codifies a rule change that was previously discussed in the original proposal. As such, the Amendment does not raise any new or unique regulatory issues. Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists to approve Amendment No. 1 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–Phlx–96–13 and should be submitted by October 23, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–96–13) is approved, as amended. That portion of the rule filing which amends the cease trading and expiration times, as well as the assignment methodology for non-custom dated FCOs, is approved contingent upon subsequent Commission approval of a corresponding OCC filing.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–25154 Filed 10–1–96; 8:45 am]

BILLING CODE 8010–01–M

[10] *See supra* note 7.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

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. The information collection(s) listed below requires extension of the current OMB approval.

(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 collection(s).)

1. Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public—20 CFR 401 and 402;—0960–NEW. The respondents are individuals requesting access to their SSA records, correction of their SSA records and disclosure of SSA records. The information is required to:

(a) Identify individuals who request access to their records;

Number of Respondents: 10,000.

Frequency of Response: On occasion.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 1,833 hours.

(b) Designate an individual to receive and review a recordholder's sensitive medical records in accordance with 20 CFR 401.55, and for the disclosure of such records to the recordholder by his/her designee.

Number of Respondents: 3,000.

Frequency of Response: On occasion.

Average Burden Per Response: 2 hours (This includes the time needed for the designee to review the recordholder's medical records.)

Estimated Annual Burden: 6,000.

(c) Correct or amend records;

Number of Respondents: 100.

Frequency of Response: On occasion.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

(d) Obtain consent from an individual to release his/her records to others. Consents are submitted by letter in writing or by use of an SSA–3288;

Number of Respondents: 200,000.

Frequency of Response: On occasion.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 10,000 burden hours.

(e) Facilitate the release of information under the Freedom of Information Act (FOIA);

Number of Respondents: 15,000.

Frequency of Response: On occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,250 hours.

(f) Grant a waiver or reduction of fees for records requested under FOIA.

Number of Respondents: 400.

Frequency of Response: On occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 33 hours.

2. Report of New Information in Disability Cases—0960–0071. The information collected on form SSA–612 is needed by the Social Security Administration to determine whether an event or change in circumstances will affect an individual's disability benefits. The information will be used to determine continued eligibility for disability payments. The respondents are disabled social security beneficiaries or their representative payees.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 16,667.

3. Instructions for Completion of Federal Assistance Application Form SSA–96 for SSA Research and Demonstration Grant Programs—0960–0184. The information collected on form SSA–96 is needed by the Social Security Administration to evaluate and select grant proposals for funding. The respondents are applicants for federal assistance, including State and local governments, educational institutions and other nonprofit and for-profit organizations.

Number of Respondents: 200.

Frequency of Response: On occasion.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 2,800 hours.

4. Request to be Selected as Payee—0960–0014. The information collected on form SSA–11–BK is needed by the Social Security Administration to determine the proper payee for a Social Security beneficiary. The information is used to establish an applicant's relationship to the beneficiary, his/her justification and concern for the beneficiary, and the manner in which the benefits will be used. The respondents are applicants for representative payee of individuals receiving title II, title XVI and Black Lung benefits.

Number of Respondents: 1,709,657.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 313,437.

5. Supplemental Security Income Claim Information Notice—0960–0324. The information collected on form SSA–L8050–U3 will be used by the Social Security Administration to ensure that all sources of potential income which can be used to provide for an individual's own support and maintenance are utilized. The respondents are applicants for SSI and recipients who are potentially eligibility for benefits from other public or private programs.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

6. Supplemental Security Income—Quality Review Case Analysis; 0960–0133. The information collected on form SSA–8508–BK is used by the Social Security Administration to assess the effectiveness of SSI policies and procedures and to establish payment accurate rates. The respondents are a random sample of SSI recipients.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 14,000 hours.

7. Marital Relationship Questionnaire—0960–0460. The information collected on form SSA–4178 is needed by the Social Security Administration to determine whether unrelated individuals of the opposite sex who are living together present themselves to the public as husband and wife. The information is used to determine whether correct payment is being made to SSI couples and individuals.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

Written comments and recommendations regarding the information collection(s) 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.

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The information collections listed below, which were published in the Federal Register on August 2, 1996, have been submitted to OMB.

OMB Desk Officer: Laura Oliven.

SSA Reports Clearance Officer: Judith T. Hasche.

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.

8. Psychiatric Review Technique—0960–0413. The information collected on form SSA–2506 by the Social Security Administration is needed to assist in the adjudication of claims involving mental impairments. The information is used to identify the need for additional evidence for the determination of impairment severity; to

consider aspects of the mental impairment relevant to the individual's ability to work; and to organize and present the findings in a clear, concise manner. The respondents are State Disability Determination Services administering title II and title XVI disability programs.

Number of Responses: 796,346.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 199,087.

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: September 25, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–25186 Filed 10–1–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 2448]

Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. The purpose of this notice is to allow 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulations Part 1320.10.

1. SUMMARY: The Bureau of Consular Affairs (CA/VO/F/P) is requesting of OMB reinstatement of form OF–156 (Nonimmigrant Visa Application) with change. The OF–156 is used by aliens who desire to travel to the United States in nonimmigrant status. The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant visa.

The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating office—The Bureau of Consular Affairs.

Title of information collection—Nonimmigrant Visa Application.

Frequency—On occasion.

Form No.—OF–156.

Respondents—Aliens applying for Nonimmigrant Visas.

Estimated number of respondents—8,000,000.

Average hours per response—1 hour.

Total estimated burden hours—8,000,000.

44 U.S.C. 3405(h) does not apply.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Victoria Wassmer (202) 395–5871.

Dated: September 20, 1996.

Ralph Frank,

Acting Assistant Secretary for Administration.

[FR Doc. 96–25142 Filed 10–1–96; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. These ICRs include: 1. Defect/Noncompliance Report and Campaign Update Report, OMB Control Number 2115–0035; 2. Private Aids to Navigation Application and Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures, OMB Control Number 2115–0038; 3. Course Approvals for Merchant Marine Training Schools, OMB Control Number 2115–0111; 4. Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk, OMB Control Number 2115–0520; 5. International Oil Pollution Prevention (IOPP) Certificates, OMB Control Number 2115–0526; and 6. Barges Carrying Bulk Hazardous Materials, OMB Control Number 2115–041. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 24, 1996 [FR 61, page 38507–38507].

DATES: Comments must be submitted on or before November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard (USCG)

1. Title: Defect/Noncompliance Report and Campaign Update Report.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2115–0035.

Form Numbers: CG–4917 and CG–4918.

Affected Public: Manufacturers of boats and associated equipment.

Abstract: The collection of information requires manufacturers of boats and associated equipment to provide information to the Coast Guard when their products contain a defect or fail to comply with applicable safety standards and regulations.

Need for Information: Under Title 46 U.S.C. Chapter 43, the Coast Guard has the authority to monitor defect notification and recall campaigns being conducted by manufacturers of boats and associated equipment.

Estimated Annual Burden: The estimated burden is 495 hours annually.

2. Title: Private Aids to Navigation Application and Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2115–0038.

Form Numbers: CG–2554 and CG–4143.

Affected Public: Owners of Private Aids to Navigation.

Abstract: The Collection of Information requires respondents to provide to the Coast Guard on two applications (CG–2554 and CG–4143), vital information about private aids to navigation.

Need for Information: 33 CFR Parts 66 and 67 authorize the Coast Guard to collect and process the information furnished from the private aids applications to ensure that private aids to navigation appropriately mark the associated hazard or waterway.

Estimated Annual Burden: The estimated burden is 3,200 hours annually.

3. Title: Course Approvals for Merchant Marine Training Schools.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2115–0111.

Affected Public: Merchant Marine Training Schools.

Abstract: The collection of information requires the approval of course materials and the inspection of training facilities.

Need for Information: Title 46 U.S.C. 7315, authorizes the Coast Guard to review course materials from approved training schools and to inspect training facilities to ensure they meet the minimum standards.

Estimated Annual Burden: The estimated burden is 3,460 hours annually.

4. Title: Plan approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2115–0520.

Affected Public: U.S. and foreign tank vessel owners.

Abstract: The Collection of Information requires owners of U.S. vessels to submit documents such as plans, calculations, specifications and manuals to the Coast Guard for its review and that foreign vessel owners may also submit these documents in order to obtain Coast Guard certification that their vessels comply with the standards.

Need for Information: 46 U.S.C. 3703 provides the Coast Guard with general authority to regulate the design, construction, alteration, repair, maintenance, operation and equipping of vessels carrying oil in bulk.

Estimated Annual Burden: The estimated burden is 22 hours annually.

5. Title: International Oil Pollution Prevention (IOPP) Certificates.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2115–0526.

Affected Public: Ship owners/operators engaging in international voyages.

Abstract: The Collection of Information requires U.S. and foreign oil tankers of 150 gross tons and above and other ships of 400 gross tons and above (that are party to MARPOL 73/78), to be surveyed during inspection or reinspection and after a satisfactory survey, be issued an International Oil Pollution Prevention Certificate by the Coast Guard, to be maintained on board the ship.

Need for Information: Title 33 U.S.C. 1901–1911 gives the Coast Guard the authority to ensure that all ships engaging in international voyages comply with the International Oil Pollution Prevention Certificate requirements.

Estimated Annual Burden: The estimated burden is 125 hours annually.

6. Title: Barges Carrying Bulk Hazardous Material.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2115–0541.

Affected Public: Barges Carrying Bulk Hazardous Material.

Abstract: The Collection of Information requires tank barges to submit an application for inspection, new tank vessels over 300 feet in length must have loading information approved by the Coast Guard and new or modified barges stability calculations must be approved by the Coast Guard.

Need for Information: Under 46 U.S.C. 3703, the Coast Guard was delegated the authority to implement regulations to ensure the safe transport of bulk hazardous materials on tank barges.

Estimated Annual Burden: The estimated burden is 12,009 hours annually.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention OST Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 26, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–25134 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–62–P

DOT Partnership Council Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on October 31, 1996, at 2:00 p.m., at the U.S. Department of Transportation, Nassif Building, room 10234–10238, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Labor-Employee Relations Office, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9107, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to finalize the Council Operating Principles and address optimum approaches for achieving goals identified in the Council's charter.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Mr. John Budnik or Ms. Jean Lenderking at the address shown above. Comments should be received by October 22 in order to be considered at the October 31 meeting.

Issued in Washington, D.C., on September 24, 1996.

For the Department of Transportation.

John E. Budnik,

Chief, Office of Employee and Labor Relations.

[FR Doc. 96–25133 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on October 24, 1996, at 9:00 a.m. Arrange for oral presentations by October 20, 1996.

ADDRESSES: The meeting will be held at the Days Inn Downtown, 1201 K Street NW., Washington, DC., in the Franklin 1 room.

FOR FURTHER INFORMATION CONTACT: Jeanne Trapani, Office of Rulemaking (ARM–208), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7624.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking advisory committee to be held on October 24, 1996, at the Days Inn Downtown, 1201 K Street NW., Washington, DC., in the Franklin 1 room. The agenda for the meeting will include:

- Opening Remarks
- Working Group Reports
  Delegation System
  Parts
  Production Certification
  ICPTF
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 18, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 26, 1996.

Ava L. Robinson,

Assistant Executive Director, ARAC issues on Aircraft Certification Procedures.

[FR Doc. 96–25210 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 169, Aeronautical Data Link Applications

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–169 meeting to be held October 22–23, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Plenary Administration: Chairman's Introductory Remarks; Review and Approval of Meeting Agenda; Review and Approval of Minutes from the Previous Meeting; Review of Outstanding Action Items; (2) Plenary Business: Resignation of Chairman; Discussion of Future of SC–169 Work Efforts; (3) Working Group (WG) Progress: WG–1, Air/Ground Air Traffic Service Applications; WG–2, Systems Architecture/ Performance; WG–3, Flight Information Services Applications; WG–4, International Coordination; WG–5, Ground/Ground Traffic Flow Management Applications; WG–6, Human Factors Guidelines; (4) Document Approvals: DO–219/Change 1; Human Engineering Guidance for Data Link Systems; Traffic Information Service MOPS; (5) Other Business; (6) Plenary Administration Wrap-Up: Work Plan Modifications; Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–25129 Filed 10–1–96; 8:45 am]

BILLING CODE 4810–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 1, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Roberts, Airport Director, Indianapolis International Airport at the following address: Indianapolis International Airport, 2500 S. High School Road, Box 100, Indianapolis, IN 46241–4941.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Indianapolis Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Indianapolis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 19, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Indianapolis Airport Authority was substantially complete within the requirements of section

158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 28, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2005.

Proposed charge expiration date: February 1, 2008.

Total estimated PFC revenue: $36,622,175.

Brief description of proposed project(s):

a. Construct Deicing Materials Storage Facility.

b. Prepare NPDES (Storm Water) Permit.

c. Construct Storm Water Control Basin.

d. Construct Parallel Taxiway Access Stubs.

e. Update Airport Master Plan.

f. Update FAR Part 150 Noise Compatibility Plan.

g. Construct Parallel Taxiway B.

h. Extend Connecting Taxiway R.

i. Rehabilitate and Extend Airport Service (Tug) Roads.

j. Remove Abandoned Runway 5L/23R Pavement.

k. Construct Parallel Taxiway N.

l. Construct High Speed Taxiway Exit to Taxiway N.

m. Update Environmental Assessment.

n. Construct Hush House.

o. Purchase Snow Removal Equipment.

p. Construct International Arrivals Gate.

q. Complete Airport Perimeter Road Connection.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Indianapolis International Airport, 5th Floor Administration Office.

Issued in Des Plaines, Illinois on September 24, 1996.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–25130 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. MC–96–45]

Winter Home Heating Oil Delivery State Flexibility Program; Hours of Service

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; Request for comment.

SUMMARY: The FHWA is requesting comments on the development and implementation of a Winter Home Heating Oil Delivery State Flexibility Program (Heating Oil Program) for motor carriers making intrastate home heating oil deliveries within a 100 air-mile radius of a central terminal or distribution point. As mandated by the National Highway System Designation Act of 1995 (NHS Act), the FHWA must select up to 5 States to participate. These States would permit drivers of commercial motor vehicles (CMVs) making intrastate home heating oil deliveries to end any period of 7 or 8 consecutive days with the beginning of an off-duty period of 24 or more consecutive hours. The program will begin November 1, 1996, and end April 30, 1997.

DATES: Comments must be received on or before November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan C. Root, Office of Motor Carrier Research and Standards, (202) 366–8759, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, DOT, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

I. The NHS Act of 1995

Section 346 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568, 615, November 28, 1995, 49 U.S.C. 31136 note) requires the Secretary of Transportation to develop and implement a Winter Home Heating Oil Delivery State Flexibility Program (Heating Oil Program). The program would permit any period of 7 or 8 consecutive days to end for any driver who has been off-duty for a period of 24 or more consecutive hours for the purposes of determining maximum on-duty time under 49 CFR 395.3(b) for drivers of vehicles making intrastate home heating oil deliveries within 100 air-miles of a central terminal or distribution point of the delivery of such oil. The NHS Act allows the Secretary to approve up to 5 States to participate in the program during the winter heating season beginning November 1, 1996, without jeopardizing Motor Carrier Safety Assistance Program (MCSAP) funding to those States. The participating States would have to meet criteria set forth in the NHS Act. This includes having a substantial number of citizens relying upon home heating oil, indicating the current hours-of-service regulations may endanger the welfare of these citizens by impeding timely deliveries of home heating oil, and ensuring that participating motor carriers maintain a level of safety equal to or greater than that produced by compliance with the current regulations through proper monitoring of their safety performance and reporting their performance to the FHWA.

Under the Heating Oil Program, the States will limit participation to those motor carriers with CMVs that make intrastate home heating oil deliveries within a 100 air-mile radius of a central terminal or distribution point. The relief provided by the program will be effective for 15-day or 30-day increments during the period from November 1, 1996 to April 30, 1997. Participating States must submit a plan to the FHWA describing the conditions of eligibility for participating carriers and the means the State will employ to monitor performance, mitigate safety risks, and evaluate the merits of the program. Each State would accept responsibility for monitoring the performance of the motor carriers it determines to be eligible and for enforcing the conditions it imposes.

Participating States will allow drivers making intrastate home heating oil deliveries within 100 air-miles of a central terminal or distribution point to end any period of 7 or 8 consecutive days after having been off-duty for a period of 24 or more consecutive hours for the purposes of determining maximum on-duty time under 49 CFR 395.3(b), or the equivalent State requirement. This will effectively allow drivers and motor carriers to ''restart'' calculations for the 60-hour and 70-hour rules after an off-duty period of 24 or more consecutive hours. This concept is commonly referred to as a ''24-hour restart.''

The NHS Act directs the FHWA to initiate a rulemaking within 90 days after completion of the program to determine, based in part on the results of the program, whether granting waivers of the hours-of-service regulations to motor carriers of home heating oil within the borders of a State, or to amend the hours-of-service regulations to provide flexibility to

motor carriers delivering home heating oil during winter periods of peak demand, would be consistent with safety.

II. Hours of Service Regulations

The hours-of-service regulations are intended to provide motor carriers and drivers with a framework for ensuring driver alertness. The first hours-of-service regulations for the motor carrier industry were promulgated in the late 1930's by the Interstate Commerce Commission. The last substantive changes to the hours-of-service regulations as we know them today (the 10-hour, 15-hour, and 60/70-hour rules) occurred in the early 1960's. These rules were adopted by the FHWA in 1966 when the Congress created the Department of Transportation. Currently, drivers may not drive more than 10 hours following 8 consecutive hours off-duty, nor may drivers drive for any period after having been on-duty 15 hours following 8 consecutive hours off-duty. These are the 10-hour and 15-hour rules. For motor carriers that *do not* operate CMVs every day of the week, drivers may not drive after having been on-duty 60 hours in any 7 consecutive days. For motor carriers that *do* operate CMVs every day of the week, their drivers may not drive after having been on-duty 70 hours in any period of 8 consecutive days. The 70-hour motor carriers may, at their option, designate drivers that do not operate every day of the week to utilize the 60-hour rule instead. These are the 60/70-hour rules.

The Federal Motor Carrier Safety Regulations (FMCSRs) generally serve to increase the safety of all classes of motor carriers and CMV operators. However, during the winter months, home heating oil deliverers find it difficult to deliver an essential product in a timely manner under the current hours-of-service regulations. During the winter months, home supplies of heating oil typically run low and home heating oil deliverers are more likely to run into conflicts with the hours-of-service regulations. The same severe weather also hinders deliveries of heating oil by slowing the rate of travel for traffic in general, thereby extending the time required to make deliveries of home heating oil and aggravating hours-of-service conflicts.

III. State Flexibility

Motor Carrier Safety Assistance Program

The FMCSRs, including the hours-of-service restrictions, generally apply to interstate transportation. The Motor Carrier Safety Assistance Program (MCSAP) was established by the Congress in 1982 to encourage States to adopt and enforce these regulations by providing grants to participating States. The intended effect is to expand the enforcement of Federal safety standards for interstate transportation and to make similar standards applicable to intrastate CMVs and drivers through compatible State regulations. The States must agree to adopt and enforce generally uniform safety regulations as a condition for the receipt of funds. The MCSAP funds are used to support salaries, equipment, and training of State enforcement officers. The data collected by the States are shared on a national basis and used by the FHWA as the basis for its safety rating, review, and enforcement programs. Through the MCSAP, the FHWA and its State partners have developed a uniform program of safety compliance and enforcement for drivers and CMVs that has brought about substantial decreases in CMV-related crashes since the program's inception.

Great strides have been made in achieving motor carrier regulation uniformity in all States. The Heating Oil Program will allow a limited number of States that depend heavily on fuel oil for residential heating to grant limited relief from the 60-hour and 70-hour rules during the winter months without jeopardizing their MCSAP funding. This relief would only apply to the intrastate delivery operations of participating motor carriers. Drivers operating in interstate commerce would not be able to participate. Some flexibility in the application of the FMCSRs to intrastate transportation is currently provided in the Tolerance Guidelines (49 CFR Part 350, Appendix C). The data gathered during this program will be used to determine whether a limited exception to the hours-of-service rules for the heating oil industry during the winter months has a significant adverse impact upon public safety.

Initiation and Termination of Heating Oil Program

The NHS Act directs the Secretary to select up to 5 States to participate in the program for an initial period of 15 days during the winter heating season. If the Secretary finds that a State's continued participation in the program has not resulted in a significant adverse impact upon public safety and is in the public interest, the Secretary shall extend the State's participation in the program for 30-day periods. Accordingly, the FHWA will require each participating State to submit a preliminary report of its evaluation of carrier performance after the initial 15 days. A State's participation in the program may be suspended at any time if: (1) The State has not complied with any criteria established for participation in the program; (2) The motor carriers found eligible by the State are causing a significant adverse impact upon public safety; or (3) The State elects to end its participation in the program on its own initiative.

Participating States must monitor the safety performance of participating motor carriers and periodically report this information to the FHWA. The FHWA may suspend the program in any individual State where the motor carriers in the program are causing a significant adverse impact upon public safety. Such a determination may be made at any time during the program. Each participating State would similarly suspend program involvement of motor carriers that fail to continue to meet certain safety levels *at any time* during the program. Each State will need to determine what safety levels motor carriers must maintain to continue operating under this program.

Given the fact that program participation may be suspended at any time during the program for individual carriers or for an entire State, the FHWA requests comment on the requirement that extensions be granted to the States every 30 days. How burdensome would this process be? Is there any value added to the program or to public safety by requiring extensions be granted every 30 days for States to continue administering regulatory relief to program carriers?

Safety Performance Monitoring Activities

Participating States must monitor and evaluate the performance of motor carriers involved in this program. Each State should be able to present data indicating any changes in safety levels of participating motor carriers at the end of the initial 15-day period, at the end of each 30-day period, and at the completion of the program. These evaluations may be accomplished by comparing safety performance levels of the motor carrier during the program to past performance in the previous winter(s), safety performance of other similar industries during the same period, or by using a study control group among the participating motor carriers. Any other method of producing a reliable and accurate evaluation of performance during the waived period may be used. Each participating State must indicate the method(s) that will be used to monitor and evaluate safety performance when they apply to the FHWA to participate in the program.

IV. State Participation

The NHS Act directs the Secretary to approve a State for participation in the Heating Oil Program only if the State's application demonstrates the following:

1. A substantial number of the citizens of the State must rely on home heating oil for heat during winter months;

2. The current maximum on-duty time regulations may endanger the welfare of the State's citizens by impeding timely delivery of home heating oil;

3. The level of safety with respect to home heating oil deliveries will be equal to or greater than the level of safety resulting from compliance with the current hours-of-service regulations under 49 CFR 395.3(b);

4. The State agrees to monitor the safety of home heating oil deliveries while participating in the program and issue program status reports to the FHWA on a periodic basis to be defined in an agreement with the FHWA;

5. The home heating oil carriers covered by the program will agree to make all safety data required as a condition of participation available to the State and the FHWA;

6. The participating motor carriers must meet the eligibility criteria indicated below in Section VI (Motor Carrier Eligibility).

Pilot programs of this nature are ideally comprised of States representative of the various regions of the U.S. However, the single most limiting criteria from the NHS Act is the first: a substantial number of the citizens of the State must rely on home heating oil for heat during winter months. For the purposes of the Heating Oil Program, the FHWA proposes to define ''a substantial number of citizens relying on home heating oil'' to be at least 20% of the households in a State relying on home heating oil. The FHWA believes less than 20%, or one out of every five households in a State relying on home heating oil, would not qualify as substantial. The FHWA welcomes comments upon this level being used to define a ''substantial number of citizens relying on home heating oil.''

The Energy Information Administration of the U.S. Department of Commerce published a document entitled *Fuel Oil and Kerosene Sales 1994,* which reports the number of gallons sold to residential consumers in each State. The U.S. Census Bureau has documented numbers of persons and households for each State. The Consumer Energy Council of America Research Foundation (the Council) also published a technical support document for a consumer decision-making guide on fuel switching and home energy conservation (revised January 31, 1994). In this document, the Council estimated that an average low efficiency house consumes approximately 857 gallons of heating oil per year (120 million BTU). The Council also estimated an average high efficiency house consumes approximately 607 gallons per year (85 million BTU). Sales data for 1994 showing total gallons of fuel oil sold for residential consumption by State, divided by these two heating oil consumption figures, provides upper and lower boundaries for the estimated number of households per State that rely upon heating oil. An approximate percentage of homes that depend upon heating oil may be derived by comparing this data with 1990 U.S. Census data reporting the total number of households per State.

The table below shows calculations for the States with the highest volume of fuel oil sales to residential consumers. A copy of the documents referred to above will be placed in the public docket MC–96–45 for review. A copy of the document *Fuel Oil and Kerosene Sales 1994* (September 1995; GPO Stock No.: 061–003–00928–0) may also be obtained from the Government Printing Office at (202) 512–1800. Data from the U.S. Census may be obtained from the U.S. Census Bureau's *1990 Census Lookup,* accessible via the internet at http://venus.census.gov/cdrom/lookup on the World Wide Web.

State	1,000s gallons sold to residential consumers 1994 data	1990 Census: # Households	Estimated households depending on heating oil, 1994 (to nearest 100)	Estimated households depending on heating oil (percent)
ME	236,631	465,729	276,000–390,000	59–84
CT	526,930	1,203,243	615,000–868,000	51–72
VT	90,930	210,633	106,000–150,000	50–71
RI	147,504	377,080	172,000–243,000	46–64
NH	159,963	411,387	187,000–264,000	45–64
MA	828,893	2,244,406	967,000–1,366,000	43–61
NJ	517,534	2,794,316	604,000–852,000	22–31
PA	830,250	4,492,958	969,000–1,368,000	22–30
NY	1,122,298	6,634,434	1,310,000–1,849,000	20–28
WI	201,247	1,824,252	235,000–332,000	13–18
VA	206,078	2,294,722	241,000–340,000	11–15
MN	141,937	1,648,825	166,000–234,000	10–14
NC	136,622	2,517,098	159,000–225,000	6–9
OH	205,280	4,089,312	240,000–338,000	6–8
MI	169,100	3,424,122	197,000–279,000	6–8

Based upon this data, the FHWA estimates that less than 20% of the households of any State outside the Northeast region depend on home heating oil. Participating States would therefore be limited to the Northeast region. The FHWA has already received letters of interest from New Jersey, New York, and Pennsylvania in advance of this notice. The FHWA invites these States and others to comment upon the criteria proposed for State participation.

V. State Application

States that meet the eligibility criteria and wish to participate must submit an application to the FHWA that includes an implementation plan describing the conditions of eligibility for a motor carrier to participate. Applications should be sent during the comment period, or as soon as possible after the comment period has closed, to the USDOT/FHWA, Office of Motor Carrier Research and Standards, 400 Seventh Street, SW., Washington D.C. 20590, Attention: HCS–10. The minimum conditions stated in Section VI (Motor Carrier Eligibility) must be met and may be expanded upon. The plan must also include the means a State will employ to monitor performance of participating

carriers, mitigate safety risks, and evaluate the merits of the program in their State. As part of the implementation plan, each State would accept responsibility for monitoring the performance of the motor carriers it determines to be eligible and for enforcing the conditions it imposes.

The proposed implementation plan requirements meet the conditions imposed by the NHS Act, in that States would be required to ensure a level of safety for home heating oil deliveries equal to or greater than the level of safety resulting from compliance with the current 60-hour and 70-hour rules. The States would also be required to monitor the safety of home heating oil deliveries while participating in the program. The FHWA welcomes any comments on the appropriateness, suitability, or burden of these requirements.

VI. Motor Carrier Eligibility

To be eligible for participation, a motor carrier would have to be actively engaged in making intrastate deliveries of home heating oil within a 100 air-mile radius of a central terminal or distribution point. Additionally, a motor carrier could not have a current safety rating of ''Unsatisfactory'' assigned by the FHWA, or a State-assigned equivalent rating. Participating States would be allowed to establish any additional criteria for participation.

VII. Final Evaluation of the Program

The NHS Act requires the FHWA to conduct an evaluation at the conclusion of the program. The principal objective of the evaluation is to provide input to a zero-based review of the need for, and the cost and benefits of, the hours-of-service regulations as they apply to home heating oil delivery operations during the winter months. The NHS Act requires the FHWA to initiate rulemaking to determine, based in part upon the results of the program, whether to continue State-granted waivers of the hours-of-service regulations to motor carriers transporting home heating oil during the winter months, or to amend the hours-of-service regulations to provide flexibility to motor carriers delivering home heating oil during winter periods of peak demand.

VIII. Conclusion

After the FHWA reviews the timely comments to this Notice, it will publish a Notice of Final Determination finalizing all aspects of this Project.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: September 25, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–25183 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Florida East Coast Railway

FRA Docket Number RSRM–96–1

The Florida East Coast Railway (FEC) seeks a waiver of compliance from 49 CFR Part 221—Rear End Marking Device—Passenger, Commuter and Freight Trains. The FEC is requesting a waiver of compliance to continue to operate trains if the rear end marking device becomes defective enroute, past West Palm Beach and Ft. Lauderdale, Florida. The stopping of trains at West Palm Beach blocks several public road crossings and is considered a dangerous area. FEC feels that time sensitive southbound trains that have an inoperative rear end marking device approaching Ft. Lauderdale should continue to Ft. Pierce, Florida. Ft. Lauderdale is a busy intermodal facility with road crossings at each end which prohibit a train movement, requiring the crew member to walk the entire length of the train.

All defective rear end marking devices would be changed at Ft. Pierce, Florida which is 57 miles north of West Palm Beach and 12½ miles south of Ft. Lauderdale.

Title 49 CFR 221.17 ''Movement of Defective Equipment'' states in part: (a) Whenever the marking device prescribed in this part becomes inoperative enroute, the train may be moved to the next forward location at where repairs can be made or replaced.

FEC operates 360.7 miles of freight railroad between Jacksonville and Miami, Florida. FEC maintains an Automatic Train Control (ATC) signal system that reduces the possibilty for train collisions.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number—RSRM–96–1, and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days from the publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's temporary relocation at 1120 Vermont Avenue NW., room 7051, Washington, DC 20005.

Issued in Washington, DC on September 27, 1996.

Phil Olekszyk,

Acting Associate Administrator for Safety.

[FR Doc. 96–25239 Filed 10–1–96; 8:45 am]

BILLING CODE 4910–06–P

Surface Transportation Board [1]

[STB No. MC-F–20900]

Antelope Valley Bus, Inc.—Control—Desert Stage Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Antelope Valley Bus, Inc. (Antelope), has filed an application under 49 U.S.C. 14303 to acquire control of Desert Stage Lines, Inc. (Desert). Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) 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. 14303.

DATES: Comments are due by November 18, 1996. Applicants may reply by December 3, 1996.

EFFECTIVE DATE: November 18, 1996.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MC-F–20900 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, send one copy of comments to applicants' representative: Eldon M. Johnson, 825 Van Ness Avenue, Suite 601, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Antelope holds 48–State authority (MC–125057) to transport passengers in special and charter operations.[2] Desert holds authority (MC–140919 Sub 1) to transport passengers in charter or special operations, beginning and ending in Riverside and San Bernardino Counties, CA, and extending to points in Arizona, Nevada, New Mexico, and Utah.

Applicants state that their aggregate gross operating revenues, for the 12-month period that ended on December 31, 1995, exceeded $2,000,000. They assert that the proposed transaction will preserve motor service because Antelope's financial resources are adequate to ensure that Desert will continue to operate when its owner retires. Additionally, they assert that the transaction's fixed charges will be nominal, that there will be no need to reduce service or increase rates, and that all of Desert's employees will be retained with increased pay and improved benefits.

Applicants certify that: (1) both Antelope and Desert hold satisfactory safety ratings; (2) Antelope maintains sufficient liability insurance to meet the established fitness requirements and is neither domiciled in Mexico nor owned or controlled by persons of that country; and (3) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicants' representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

We find, that the proposed acquisition of control is consistent with the public interest and that it should be authorized. If any opposing comments are timely filed, this finding will be deemed as having been vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 18, 1996, unless timely opposing comments are filed.

Decided: September 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–25212 Filed 10–1–96; 8:45 am]

BILLING CODE 4915–00–P

[2] Antelope also controls Airport Bus of Bakersfield, Inc., an interstate motor common carrier of passengers. The acquisition of control was exempt from ICC approval because the combined revenues of the two carriers at the time was less than $2 million.

DEPARTMENT OF THE TREASURY

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 Specific Export Bond, Distilled Spirits or Wine.

DATES: Written comments should be received on or before December 2, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 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 Mary Wood, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Specific Export Bond, Distilled Spirits or Wine.

OMB Number: 1512–0142.

Form Number: ATF F 2734 (5100.25).

Abstract: ATF F 2734 (5100.25) is used to ensure the payment of taxes on shipments of wine and distilled spirits. The form describes the taxable articles, the surety company, the specific conditions of the bond coverage and the persons that are accountable for tax payment.

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.

Estimated Time Per Respondent: 1.

Estimated Total Annual Burden Hours: 1 hour.

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: September 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–25177 Filed 10–1–96; 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 Brewer's Bond and Brewer's Bond Continuation Certificate.

DATES: Written comments should be received on or before December 2, 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 Charles Bacon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Brewer's Bond and Brewer's Bond Continuation Certificate.

OMB Number: 1512–0081.

Form Number: ATF F 5130.22, ATF F 5130.23.

Abstract: The Brewer's Bond is executed by a brewer and surety company to ensure payment of the excise tax on beer removed from the brewery. The Brewer's Bond Continuation Certificate is executed by a brewer and surety company to continue in effect the coverage of a Brewer's Bond by the surety company.

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: 280.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 280.

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 these forms.

Dated: September 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–25178 Filed 10–1–96; 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 Application For an Industrial Alcohol User Permit and Industrial Alcohol Bond.

DATES: Written comments should be received on or before December 2, 1996 to be assured of consideration.

ADDRESS: 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 Mary Wood, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For an Industrial Alcohol Users Permit and Industrial Alcohol Bond.

OMB Number: 1512–0137.

Form Number: ATF F 5150.22, ATF F 5150.25.

Abstract: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations. ATF F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.

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: 738.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 1,476.

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 these forms.

Dated: September 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–25179 Filed 10–1–96; 8:45 am]

BILLING CODE 4810–31–P

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

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

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under § 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by § 333 of the Uruguay Round Agreements Act.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Michael Compeau, Branch Chief, Seizures and Penalties Division, at 202–927–0762. For information regarding any of the legal aspects, contact Ellen McClain, Office of Chief Counsel, at 202–927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA)(Public Law 103–465, 108 Stat. 4809)(signed December 12, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a § 592A (19 U.S.C. 1592A), which authorizes the Secretary of the Treasury to publish in the Federal Register, on a biannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities have been issued a penalty claim under § 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the Customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to § 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of substantial transformation is made, has the importer ascertained that the named party actually substantially transforms the merchandise?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a biannual publication of the names of the foreign entities. On March 29, 1996, Customs published a Notice in the Federal Register (61 FR 14204) which identified 8 (eight) entities which fell within the purview of § 592A of the Tariff Act of 1930.

592A List

For the period ending September 30, 1996, Customs has identified 14 (fourteen) foreign entities that fall

within the purview of § 592A of the Tariff Act of 1930. This list reflects the addition of 6 new entities to the 8 entities named on the list published on March 29, 1996. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 14 foreign parties which have been assessed penalties by Customs for violations of § 592 are listed below pursuant to § 592A. This list supersedes any previously published list. The names and addresses of the 14 foreign parties are as follows:

Azmat Bangladesh, Plot Number 22–23, Sector 2 EPZ, Chittagong 4233, Bangladesh.
Bestraight Limited, Room 5K, World Tech Centre, 95 How Ming Street, Kwun Tong, Kowloon, Hong Kong.
Cotton Breeze International, 13/1578 Govindpuri, New Delhi, India.
Hangzhou Tongda Textile Group, Room 918, Hangzhou Mansion, No. 1 Wulin Square, Hangzhou, China.
Hanin Garment Factory, 31 Tai Yau Street, Kowloon, Hong Kong.
Hip Hing Thread Company, No. 10, 6/F Building A, 221 Texaco Road, Waikai Industrial Centre, Tsuen Wan, N.T. Hong Kong.
Hyattex Industrial Company, 3F, No. 207–4 Hsin Shu Road, Hsin Chuang City, Taipei Hsien, Taiwan.
Li Xing Garment Company Limited, 2/F Long Guang Building, Number 2 Manufacturing District, Sanxiang Town, Zhongshan, Guandgong, China.
Meigao Jamaica Company Limited, 134 Pineapple Ave., Kingston, Jamaica.
Meiya Garment Manufacturers Limited, No. 2 Building, 3/F, Shantou Special Economic Zone, Shantou, China.
Poshak International, H–83 South Extension, Part-I (Back Side), New Delhi, India.
Topstyle Limited, 6/F, South Block, Kwai Shun Industrial Center, 51–63 Container Port Road, Kwai Chung, New Territories, Hong Kong.
United Fashions, C–7 Rajouri Garden, New Delhi, India.
Yunnan Provincial Textiles Import & Export, 576 Beijing Road Kunming, Yun Nan, China.

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229.

Additional Foreign Entities

In the March 1996 Federal Register notice, Customs also solicited information regarding the whereabouts of 37 foreign entities, which were identified by name and known address, concerning alleged violations of § 592. Persons with knowledge of the whereabouts of those 37 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1301 Constitution Avenue, Washington, D.C. 20229.

In this document, a new list is being published which contains the names and last known addresses of 38 entities. This reflects the addition of one new entity to the list.

Customs is soliciting information regarding the whereabouts of the following 38 foreign entities concerning alleged violations of § 592. Their name and last known address are listed below:

Bahadur International, 250 Naraw Industrial Area, New Delhi, India.
Madan Exports, E–106 Krishna Nagar, New Delhi, India.
Gulnar Fashion Export, 14 Hari Nagar, Ashram, New Delhi, India.
Janardhan Exports, E–106 Krishna Nagar, New Delhi, India.
Morrin International, E–106 Krishna Nagar, New Delhi, India.
Jai Arjun Mfg. Co., B 4/40 Paschim Vihar, New Delhi, India.
Eroz Fashions, 535 Tuglakabad Extension, New Delhi, India.
China Artex Corp. Beijing Arts, 132–16 Changan Avenue, Beijing, China.
Shenzhen Long Gang Ji Chuen, Shenzhen, Long Gang Zhen, China.
Traffic, D1/180 Lajpat Nagar, New Delhi, India.
Raj Connections, E–106 Krishna Nagar, Delhi, India.
Bao An Wing Shing Garment Factory, Ado Shi Qu, Bao An Shen Zhen, China.
Guidetex Garment Factory, 12 Qian Jin Dong Jie, Yao Tai Xian Yuan Li, Canton, China.
Dechang Garment Factory, Shantou S.E.Z., Cheng Hai, Cheng Shing, China.
Guangdong Provincial Improved, 60 Ren Min Road, Guangdong, China.
Kin Cheong Garment Factory, No. 13 Shantan Street, Sikou Country, Taishan, Kwangtong, China.
Gold Tube Ltd., No. 55 Hung To Road, Kwun Tong, Kowloon, Hong Kong.
Sam Hing Bags Factory, Ltd., #35 Tai Ping West Road, Jiu Jaing, Ghangdong, China.
Luen Kong Handbag Factory, 33 Nanyuan Road, Shenzhen, Guangdong, China.
Changping High Stage Knitting, Yuan Jing Yuan, Chau Li Qu Chang, Guangdong, China.
Arsian Company Ltd., XII Khorcolo, Waanbaatar, Mongolia.
Kin Fung Knitting Factory, Block A&B, 4th Flr Por Mee Bldg., 500 Castle Peak Rd., Kowloon, Hong Kong.
Cahaya Suria Sdn Bhd, Lot 5, Jalan 3, Kedah, Malaysia.
Crown Garments Factory Sdn Bhd, Lot 112, Jalan Kencana, Bagan Ajam, Malaysia.
Glee Dragon Garment Mfg., Ltd., 328 Castle Peak Rd., Room G 10Fl, Tsuen Kam Centre, Kowloon, Hong Kong.
Richman Garment Manufacturing Co., Ltd., 7th Fl, Singapore Industrial Bldg., 338 Kwun Tong Road, Kowloon, Hong Kong.
Herrel Company, 64 Rowell Road, Suva, Fiji.
Belwear Co., Ltd., Flat C, 3rd Floor, Yuk Yat Street, Kowloon, Hong Kong.
Hambridge Ltd., 9 Fl., Lladro Building 72–80, Hoi Yuen Road, Kwun Tong, Kowloon, Hong Kong.
Kingston Garment Ltd., Lot 42–44 Caracas Dr., Kingston, Jamaica.
Moderntex International Inc., 3941, Kowloon, Hong Kong.
Poltex Sdn, 8 Jalan Serdang, Kedah, Malaysia.
Sam Hing International Enterprise, 5 Guernsey St., Guilford NSW, Australia.
Societe Prospere De Vetements S.A., Lome, Togo.
Confecciones Kalinda S.A., Zona Franca, Los Alcarrizos, Santo Domingo, Dominican Republic.
Royal Mandarin Knitworks Co., Flat C 21/F, So Tau Centre, 11–15 Sau Road, Kwai Chung, N.T., Hong Kong.
Wong's International, Nairamdliyn 26, Ulaanbaatar 11, Naaun, Mongolia.
Lin Fashions S.A., Lot 111, San Pedro de Macoris, Dominican Republic.

If you have any information as to a correct mailing address for any of the above 38 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Dated: September 27, 1996.

A. W. Tennant,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 96–25193 Filed 10–1–96; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1996 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Oriska Insurance Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under Sections 9304 to 9308, Title 31, of the United States Code, effective September 11, 1996. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34302, to reflect this addition:

ORISKA INSURANCE COMPANY. *BUSINESS ADDRESS:* P.O. Box 400, Oriskany, NY 13424. PHONE: (315) 736–0816. UNDERWRITING

LIMITATION *b*/: $381,000. SURETY LICENSES *c*/: NY. INCORPORATED IN: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/6872/6953/7034/8608. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–7102.

Dated: September 27, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–25247 Filed 10–1–96; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 61, No. 192
Wednesday, October 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37591; File No. SR–MSRB–96–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

August 21, 1996.

Correction

In notice document 96–21816 beginning on page 44098 in the issue of Tuesday, August 27, 1996, in the second column, in the first line, the release number should appear as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Program Administration

49 CFR Part 173

[Docket No. HM-181H; Amdt. Nos. 171-147, 172-150, 173-255, 178-177]

RIN 2137-AC66

Performance-Oriented Packaging Standards; Final Transitional Provisions

Correction

In rule document 96–24398 beginning on page 50616 in the issue of Thursday, September 26, 1996, make the following corrections:

§ 173.28 [Corrected]

On page 50625, in the first column, in § 173.28(b)(4)(ii), the formulas should read as follows:

Formula for Metric Units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{Rm_1 \times A_1}}$$

Formula for U.S. Standard Units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{(Rm_1 \times A_1)/145}}$$

BILLING CODE 1505–01–D

Federal Register

Wednesday
October 2, 1996

Part II

Department of Health and Human Services

Food and Drug Administration
Office of the Secretary

21 CFR Part 50, et al.
45 CFR Part 46

Protection of Human Subjects; Informed Consent and Waiver of Informed Consent Requirements in Certain Emergency Research; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50, 56, 312, 314, 601, 812, and 814

[Docket No. 95N–0158]

RIN 0910–AA60

Protection of Human Subjects; Informed Consent

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its current informed consent regulations to permit harmonization of the Department of Health and Human Services' (DHHS) policies on emergency research and to reduce confusion on when such research can proceed without obtaining an individual subject's informed consent. This regulation provides a narrow exception to the requirement for obtaining and documenting informed consent from each human subject, or his or her legally authorized representative, prior to initiation of an experimental intervention. The exception would apply to a limited class of research activities involving human subjects who are in need of emergency medical intervention but who cannot give informed consent because of their life-threatening medical condition, and who do not have a legally authorized person to represent them. FDA is taking this action in response to growing concerns that current rules are making high quality acute care research activities difficult or impossible to carry out at a time when the need for such research is increasingly recognized.

EFFECTIVE DATE: These regulations are effective November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Glen D. Drew, Office of Health Affairs (HFY–20), Food and Drug Administration, Rockville, MD 20852, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of September 21, 1995 (60 FR 49086), the Secretary of Health and Human Services and the Commissioner of Food and Drugs proposed to amend FDA's current informed consent regulations to permit emergency care research. FDA proposed this action in response to growing concerns that current rules are making high quality acute care research activities difficult or impossible to carry out at a time when the need for such research is increasingly recognized. By permitting certain adequate and well-controlled clinical trials to occur that involve human subjects who are confronted by a life-threatening situation and who also are unable to give informed consent because of their medical condition, the agency expects the clinical trials to allow individuals in these situations access to potentially life-saving therapies and to result in advancement in knowledge and improvement of therapies used in emergency medical situations that currently have poor clinical outcome.

FDA allowed 45 days for comment on the proposal of September 21, 1995. Written comments received in response to the proposal are on file in the Dockets Management Branch. Comments were received from clinical investigators, institutional review boards, patient advocacy groups, trade associations, professional societies, drug and medical device companies, and private citizens. The substantive comments received and FDA's responses are discussed below.

Approximately 90 comments were received on the proposed rule. The vast majority of these comments supported the proposal, although many of these comments contained suggestions or requests for clarification. A number of the comments that supported the proposal came from organizations and associations representing large numbers of members. These included the Brain Injury Association, the National Stroke Association, the American Academy of Orthopaedic Surgeons, the Coalition of Acute Resuscitation and Critical Care Researchers, Applied Research Ethics National Association, Pharmaceutical Research and Manufacturers of America, Health Industry Manufacturers Association (HIMA), the American Academy of Pediatrics, the American Heart Association Emergency Cardiac Care Committee, the American College of Emergency Physicians, the American Medical Association, the American College of Cardiology, the Society of Critical Care Medicine, the National Association of EMS Physicians, the American College of Obstetricians and Gynecology, and the American College of Physicians.

A number of the comments in favor of the proposal cited how it will facilitate research in this patient population, provide the necessary safeguards to ensure responsible and ethical research with protection of the human subjects, and ultimately speed the wide availability of products proven efficacious to individuals in life-threatening situations. For example, the American College of Physicians and the Project on Informed Consent of the University of Pennsylvania Center for Bioethics commented that they ''applaud these proposed regulations as a much needed step in the advancement of vital emergency research with careful attention to the rights and welfare of human research subjects.'' The American Heart Association commented that ''We are particularly pleased with the balance that appears to have been struck between the need for conducting high quality clinical research in an effort to develop better treatments for critically ill patients and the protection of human subjects.'' The American Medical Association commented that ''The proposed rules are far superior to their inadequate antecedents in balancing the need for emergency research with respect for the paramount concern for patient safety, welfare and comfort.'' The Brain Injury Association commented that ''* * * this rule is a major step towards increasing the available therapies and medical care available for those individuals who are critically ill or injured.'' The Coalition of Acute Resuscitation and Critical Care Researchers commented that ''* * * this proposed rule is a significant step forward towards advancing the medical care of critically ill or injured patients for whom current therapies are unsatisfactory or unproven.'' The National Stoke Association commented that ''* * * once in practice it will help to appropriately expedite study enrollments thus allowing for earlier study completion, analysis, and ultimately will speed the availability of those drugs proven efficacious to the one-half million people who suffer stroke each year.''

These comments are addressed in more detail in sections II and III of this document.

Generally, the 16 comments opposed to the proposed rule were from individuals who were not convinced by the agency's description of the legal and ethical basis for the rule, and these comments concluded that informed consent should not be waived under any circumstances. Some of these comments suggested that the agency was proceeding hastily and under undue pressure from the research community. In section II of this document, we address the general comments first, followed by the more specific comments.

II. General Comments

A. Need for the Rule

1. One comment questioned the need for the rule and whether there were hard data documenting the number of

subjects eligible for these types of research activities who are lost to enrollment due to an inability to obtain informed consent from the subject or the subject's authorized representative. Another comment questioned the need for this rule based on the DHHS waiver granted in July 1995 for a hypothermia study, arguing that: (1) The waiver was not needed to complete a reasonable preliminary sample, (2) the criteria for participation were needlessly inclusive, (3) the investigator used questionable tactics to achieve waiver, (4) the provisions for oversight were inadequate, and (5) the provisions for monitoring were inadequate. This comment went on to discuss ''the overarching considerations'' for the rule, arguing that it is not in the subject's interest to prevent death in order to linger in a vegetative state; that the high percentage of families agreeing to continuing participation in the research after the fact demonstrates how ill-informed they are about the possibility of negative outcomes, e.g., prolonged vegetative state, dissipation of financial resources, court challenges to terminate life support; that subjects will be misenrolled in ''an abundance'' of life-threatening situations; that the rule does not address or provide for followup or special circumstances for terminating life support for ''saved'' individuals in these studies; and that it is not clear who will bear the cost and burden to sustain an individual who has been ''saved'' from a life-threatening medical condition by being on a research study.

The preamble to the proposed rule extensively discussed why this rule is needed and why this limited class of research has been unable to proceed under existing requirements. The purpose of this rule is to permit the study of potential improvements in the treatment of life-threatening conditions where current treatment is unproven or unsatisfactory, in order to improve interventions and patient outcomes. It is not the goal of this rule to leave study subjects in vegetative states or to have any of the other negative outcomes outlined in the comments. The risks to patients of having these negative outcomes exist now with interventions that are unproven or unsatisfactory. If interventions are improved, patient outcomes will be improved. The possibility of worsened outcome or adverse reactions will be assessed before the clinical investigation begins by the IRB and during the investigation by the data monitoring committee that is required under the regulation. The regulations require the institutional review board (IRB) to ensure that risks to subjects are minimized and to determine that risks to subjects are reasonable in relation to anticipated benefits to subjects (see § 56.111(a)(1) and (a)(2) (21 CFR 56.111(a)(1) and (a)(2)), respectively). The rule does not address the issue of terminating life support because this is dictated by State law and is implemented through such standard procedures as ''do not resuscitate'' orders.

B. Ethical Objections to the Rule

2. Several objections to the proposed rule noted that the major protection from research risks remains informed consent and that without this procedure, potential abuse of research subjects will always remain unacceptably high; that it is unethical for patients who cannot consent to receive nonstandard care; that overriding individual autonomy and not obtaining informed consent is unacceptable; that therapeutic intent is not sufficient to obviate consent when there are no data or when there is uncertainty or disagreement. Some of these comments mentioned the recent report of the President's Advisory Committee on Human Radiation Experiments, in which radiation experiments without the subjects' consent are condemned as a wrongful use of persons as means to the ends of others; others mentioned examples from Nazi Germany, Stalin's U.S.S.R. and other totalitarian regimes. Some of these comments noted that it is particularly objectionable that there is no way to avoid involvement as a subject in this research if, as an individual, one objects to the research.

The agency acknowledges that the waiver of informed consent is a serious matter. That is why it has developed a regulation that requires additional protections when informed consent is waived. The purpose of this rule is to ensure such protections.

The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research states in *The Belmont Report* that:

> Respect for persons incorporates at least two basic ethical convictions: first, that individuals should be treated as autonomous agents, and second, that persons with diminished autonomy are entitled to protection. The principle of respect for persons thus divides into two separate moral requirements: the requirement to acknowledge autonomy and the requirement to protect those with diminished autonomy.

This rule, § 50.24 (21 CFR 50.24) in part 50 (21 CFR part 50), can be invoked for emergency research in which it is not feasible to obtain informed consent from prospective subjects. As such, these subjects have diminished autonomy and are entitled to protection. *The Belmont Report* states that:

> The extent of protection afforded [to individuals with diminished autonomy] should depend upon the risk of harm and the likelihood of benefit. The judgment that any individual lacks autonomy should be periodically reevaluated and will vary in different situations.

The Belmont Report, thus, states that: (1) Subjects with diminished autonomy are entitled to protection; (2) the extent of protection should depend upon the risk of harm and the likelihood of benefit; and (3) the judgment that any individual lacks autonomy should be periodically reevaluated. This regulation incorporates each of these principles.

The regulation recognizes that subjects with diminished autonomy are entitled to protection. These additional protections include the requirements in the regulation for consultation with representatives of the communities from which the subjects will be drawn; public disclosure of the clinical investigation and its risks and expected benefits prior to initiation of the investigation; public disclosure of sufficient information following completion of the investigation to apprise the community and researchers of the results of the investigation; the establishment of a data monitoring committee to exercise oversight of the investigation; and, if consent is not feasible and a legally authorized representative is not available, providing an opportunity for a family member to object to a subject's participation in the investigation, if feasible within the therapeutic window.

The regulation recognizes that the extent of protection should depend upon the risk of harm and the likelihood of benefit to the subjects. The regulation requires the IRB to find and document that appropriate animal and other preclinical studies have been conducted; that the information derived from those studies and related evidence support the potential of providing a direct benefit to the individual subjects; and that the risks associated with the investigation are reasonable in the light of what is known about the prospective subjects' medical condition, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.

The regulation recognizes that the judgment that any individual lacks autonomy should be periodically reevaluated. This is reflected in two requirements: (1) The IRB must review and approve informed consent

procedures and an informed consent document for use with subjects or their legal representatives in situations where use of such procedures and documents is feasible; and (2) at the earliest feasible opportunity, each subject (or a legally authorized representative or family member) will be informed of the subject's inclusion in the research, the details of the research, and that the subject (or representative or family member) may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

In response to the comments that expressed concern about the ability of an individual to avoid involvement as a subject in this research, the agency thinks that the opportunity for individuals to express objections to the research may be optimized in a number of ways. Comments suggested making available medical bracelets that record refusal to participate in the research, and publicizing the existence of the bracelets; and excluding from participation those individuals with advance directives rejecting such research (most feasible for hospitalized patients). The agency encourages IRB's, investigators, and sponsors to work together to maximize the ability of individuals to prevent their inclusion in research to which they would object. The agency does not believe that this rule creates a situation that differs significantly from other emergency situations warranting intervention in that individuals in life-threatening situations are often unable to direct decisions concerning their health care and are, therefore, unable to consent or object to a particular treatment. Yet they are routinely treated by State-licensed medical practitioners. This inability to exercise autonomy is not unique to the subjects who will be eligible for this research—it is common to the majority of individuals who may be in these life-threatening situations.

FDA thinks that the protections contained in this rule including IRB review, the requirements for obtaining informed consent when it is feasible, and for community consultation and disclosure will prevent unethical research from occurring.

FDA expects these procedures involving waiver of informed consent to be used infrequently. As noted, the research carried out under such a waiver must present the potential of direct benefit to the individual subjects. It should be initiated only after appropriate animal and other preclinical studies have been conducted, and it is clear that the information derived from those studies and related evidence support the potential of direct benefit to the individual subjects.

3. One comment stated that the proposal violates the American Hospital Association's ''Patient's Bill of Rights'' to fully informed consent.

The agency has reviewed the AHA's Patient's Bill of Rights and concludes that there is no conflict between this rule and that document. In particular, the agency notes that the Patient's Bill of Rights recognizes that an exception occurs ''in emergencies when the patient lacks decision-making capacity and the need for treatment is urgent.''

4. Another comment questioned the agency's discussion of respect for persons in the preamble to the proposal and the agency's supposed conclusion that if individuals capable of exercising their autonomy refuse to enroll in research, this justifies diminished protection to those individuals who lack the capacity for autonomous choice. This comment defined the informed consent doctrine as: (1) Promoting individual autonomy; (2) respecting human dignity; (3) encouraging professional self-scrutiny; (4) promoting rational decisionmaking; (5) avoiding deceit and coercion; and (6) educating the public. It then concluded, that by exempting emergency research from informed consent, the agency was concluding that these values have no relevance to decisions made in the context of emergency research.

This comment misrepresents the agency's discussion of the principle of respect for persons. In the preamble to the proposed rule, the agency described:

> [H]ow the principle of respect for persons incorporates two general rules of ethical behavior: (1) Competent individuals must be treated as autonomous agents * * *; and (2) persons whose autonomy is absent or diminished may participate in research only if additional protections are provided for them.

(60 FR 49086 at 49093, September 21, 1995)

This rule, in fact, incorporates the values described in the comment to the extent that they are relevant to decisions made in the context of emergency research.

5. A number of comments misinterpreted the agency's description of the principle of justice in the preamble to the proposed rule, and were offended by the idea that it is acceptable for a researcher to waive consent because if consent were requested, it would be refused. One comment suggested that the agency clarify that it meant that it is often easier to locate legal representatives from white populations than from minority populations, and for that reason if consent were required from a legally authorized representative, the requirement could prevent equitable numbers of minority patients from having the opportunity to participate in emergency research. The Indian Health Service recommended that the agency supplement its discussion of justice by adding the following:

> Waiving informed consent will increase justice only in communities or sub-communities with a low percentage of people who would refuse to participate if asked. Many minority or economically disadvantaged communities distrust research more, and have higher percentages of refusers, than white middle class communities; in such communities, the ethical principle of justice would favor maximizing self-determination (i.e., informed consent) over achieving high rates of participation. Justice would also require the public disclosure to and consultation with those communities as required in the Proposed Rule; if those communities do not agree to be sites, consideration should be given to doing the research elsewhere.

The Indian Health Service, in supporting the intent of the rule, articulated two aspects of the problem: (1) Finding legally qualified surrogates for individuals who lack telephones, for example, which is a socioeconomic barrier; and (2) a surrogate's unwillingness to enroll a relative in the research, based on distrust of research and researchers. If certain communities have a higher prevalence of refusers than others, the ethical harm of inadvertently enrolling people in research against their will would fall on those communities with a higher prevalence of refusers. Thus, the Indian Health Service (IHS) concluded that while it may be appropriate to waive informed consent based on socioeconomic barriers, it is not appropriate to waive informed consent in communities in which there are lower rates of obtaining surrogate consent due to the unwillingness of surrogates, i.e., high refusal rates. Another comment noted that if the community in which an emergency research study is carried out has a large minority and lower income population, then the likelihood of the community agreeing prospectively to participate in the study would be small or nonexistent; ethically this would violate the principle of justice in that such communities would be unlikely to share the burdens and benefits of participation in such research.

The agency's comments concerning justice, in the preamble to the proposed rule, concerned the ability of health care delivery personnel to locate legally authorized representatives. The agency agrees with the IHS articulation of the

two aspects of the problem. The agency would not consider writing a rule that would permit the waiver of informed consent in a situation where if consent were requested, it would be refused. Such an action would violate ethical principles.

The agency has implicitly addressed the problem of a surrogate's unwillingness to enroll a relative in research through the rule's requirement for community involvement, including consultation with and disclosure to the community, and by providing that consent from the subject or the subject's legally authorized representative be obtained or an opportunity for a family member to object be provided when it is feasible.

If an IRB decides that its community should not participate in research, the agency does not believe that decision would violate the principle of justice. Justice, in this context, requires only that the community have the opportunity to participate in the research if asked.

C. Harmonization

6. A number of comments applauded the intent of FDA and DHHS to harmonize regulations in this area. Concern was expressed, however, that because FDA and DHHS did not propose regulations simultaneously, the two regulations may not ultimately be identical, thus thwarting a major objective of this endeavor. One comment expressed concern that the DHHS waiver might follow the specific project waiver for hypothermia research that was published in July 1995, that, according to the comment, was not sufficiently protective of subject rights. Another comment suggested that for studies that do not involve drugs or devices, DHHS develop an analogous mechanism to FDA's requirement that studies be submitted for agency review. Another comment suggested that the two sets of regulations not be in total harmony in this regard, because a greater degree of protection of subjects is necessary for studies of drugs and devices that are not yet FDA-approved, than for those involving drugs or devices that have received approval. One comment encouraged FDA and the Office for Protection from Research Risks (OPRR) to work together to ensure that current Multiple Project Assurances remain valid and not require renegotiation as a result of this rule.

DHHS has committed to consistency between the FDA final rule and the Secretarial waiver of the DHHS regulations in all critical respects. Elsewhere in this issue of the Federal Register is the Secretarial waiver of the DHHS regulations for the protection of research subjects for emergency research. The agency notes that FDA's rule requires investigational new drug applications (IND's) and investigational device exemptions (IDE's) for all clinical investigations involving drugs and devices seeking an exception to the requirement for informed consent, including both those that have received marketing approval and those that have not.

7. Other comments asked for clarification as to whether the requirement contained in § 50.24(d) would apply to studies that attempt to elucidate a pathophysiologic explanation (e.g., blood drawing studies); studies that use interventions of different techniques (e.g., two different methods of bystander CPR); research designed to explore basic pathophysiological mechanisms in emergency situations; studies to compare the timing of standard fluid administration for shock and surgical techniques; etc. If FDA's regulation did not apply, these comments asked if the DHHS ''harmonized'' regulation would apply to these studies and require prior DHHS review or whether some other agency would be responsible for prior review of the proposed research.

These regulations are applicable only to clinical investigations involving products that are regulated by FDA. The DHHS regulations apply to research supported or conducted by the Department or conducted in an institution that has agreed to review all research, regardless of its funding source, in accord with the DHHS regulations. The ''harmonized'' regulations have compatible criteria; their basic requirements are in agreement. FDA includes terms specific to the type of research covered by FDA regulations (e.g., it uses the term clinical investigation instead of research). Both the DHHS and FDA recognize that there may be research that is neither regulated by FDA nor supported or conducted by DHHS; for that research, it is possible that neither regulation will apply.

D. Comment Period and Effective Date

Several comments opposed to the regulation objected to the 45-day comment period and the agency's proposal that the final rule will be effective upon publication.

8. One comment suggested that the effective date of the regulations should be 30 days after publication of the final rule. This comment noted that this research has been halted since mid-1993, that all parties will need time to develop adequate policies and procedures to comply with the new rule, and that distribution of the policy to those affected will take up to 30 days.

The agency agrees with this comment and has made the effective date of the final rule 30 days after its publication in the Federal Register. The agency notes that the Secretarial waiver of the DHHS regulations, published elsewhere in this Federal Register, is also effective 30 days after its publication. IND's and IDE's that intend to invoke this rule may be submitted to the agency on or after its publication date and should include a description of how the clinical investigation proposes to meet the conditions of this regulation. These investigations cannot begin until the rule is effective, the agency has reviewed the investigation against the requirements contained in this final rule, a letter has issued to the sponsor advising the sponsor that the investigation may proceed, the investigation has been reviewed and approved by an IRB, and the community consultation and disclosure required by this rule have occurred.

9. Comments objecting to the 45-day comment period suggested that there was inadequate time to discuss the proposed changes in the regulation at length with a broader audience, that the IRB community is ill-informed about the proposed rule change and therefore the comment period should be extended, the issue revisited, and the rule reconsidered. One of these comments stated that the process leading to development of the rule was flawed and that it appears that the comment period is irrelevant, that no significant review of the basic issues will occur, and, thus, the rule is a fait accompli.

As described in detail in the preamble to the proposed rule, the issues associated with this rule were debated at length at conferences, during FDA and NIH cosponsored Public Forum on Informed Consent in Clinical Research Conducted in Emergency Circumstances, at a congressional hearing, and in various articles. The agency received no formal request for a general extension of the comment period; instead, it received numerous thoughtful comments and has modified the proposed rule as a result of those comments. 21 CFR 10.40(b)(2) states that a proposed rule ''* * * will provide 60 days for comment, although the Commissioner may shorten or lengthen this time period for good cause. In no event is the time for comment to be less than 10 days.'' In the proposed rule, the agency explained why the Commissioner determined that there was good cause to shorten the comment period from 60 to 45 days.

In order to encourage comments on this rule, the agency conducted a number of out-reach efforts to publicize publication of the proposal. The agency provided information on the proposed rule to national media and trade press contacts. The agency mailed copies of the proposal to all registrants at the January 1995 Public Forum on Informed Consent in Clinical Research Conducted in Emergency Circumstances and to over 1,000 IRB's and over 250 health professional organizations and consumer groups. FDA also distributed copies at workshops and at national meetings of IRB organizations. The agency invited consumer, health professional, and industry organizations to briefing meetings where the proposal was described and questions could be answered. The agency encouraged the submission of comments to the administrative record maintained by the Dockets Management Branch whenever possible.

E. Preemptive Effect

10. In the preamble to the proposed rule, FDA requested comment on the need to preempt local and State regulations. The agency received a number of comments both for and against the need for preemption.

Comments received that were opposed to preemption included the following: There is no legitimate (constitutional) over-riding Federal concern that requires the Federal Government to preempt local and State requirements; it is inappropriate to remove the ability of citizens to enact State and/or local laws that would require additional protections for research subjects, or to restrict the conduct of this type of research if citizens find it objectionable based on community standards; it is not logical to prohibit local action when the regulation itself emphasizes community involvement and deference to community standards.

The IHS objected to Federal preemption because it would: (1) Counter the long-standing Federal policy not to place restrictions on tribal sovereignty; (2) be an unnecessary limitation, because retaining tribal sovereignty would have no measurable adverse effect on the nation or on emergency research as a whole; (3) give American Indian and Alaska Native (AI/AN) people and governments one more reason to distrust the Federal Government, because they would see the rule as putting AI/AN people at risk for the good of non-AI/AN people and communities; and give AI/AN people and governments one more reason to distrust research, because they would see the rule as overriding a patient's or family's desire not to participate in research—a desire more common in AI/AN communities than in white middle class communities.

Other comments noted that the proposal did not recognize tribal sovereignty and that it undermines the tribal government's authority to implement stricter requirements for biomedical research conducted on persons residing in tribal jurisdictional boundaries. Comments noted that the tribal review process is in place to protect tribal members from unnecessary or undesirable research.

Another comment opposed to preemption noted that the rule would preempt State and local laws for the minimum protections acceptable for emergency research involving waiver of informed consent; however, without preemption, it permits greater protections to be imposed at the State or local levels. One comment suggested that in lieu of preemption, FDA and IRB's should track how States, local, or tribal governments retain or amend their laws in response to public discussion by researchers with those governments and assess the various reactions after 3 years.

Other comments supported the need for preemption in order to ensure national uniformity; to prevent or limit liability of universities, hospitals, IRB members, clinical investigators, and sponsors for failure to provide informed consent under State law or in the event of a poor subject outcome; and to enhance the ability to conduct valuable research with critically ill subjects. These comments stated that the subject protections included in the proposed regulation are substantial enough to justify Federal preemption of State and local law, and that current State laws (e.g., in the State of Florida) would preclude research that otherwise could be authorized by IRB's under these rules. Several comments supported the need for preemption, noting the difficulty caused by differing State laws that define who may serve as a legal representative or that are ambiguous on this issue. Another comment noted that without Federal preemption, Federal uniformity in the application of waiver of informed consent in a specific setting will not occur. This comment argued that Federal preemption would: (1) Forestall wasteful State court litigation to explore whether the scope of the privilege of emergency action without consent is consistent with the proposed Federal rule, and any related potential liability; and (2) implement congressional intent to create nationally uniform criteria for informed consent and research involving human subjects.

The Coalition of Acute Resuscitation and Critical Care Researchers surveyed a number of State representatives regarding State regulations for informed consent for research and identification of surrogates. The results of that survey (with 19 States represented) indicate that there are very few States that have specific legal requirements pertaining to waiver of consent for research.

The agency has carefully considered each of these arguments in support of, and opposed to, preemption of State law. The agency has concluded that it would be inappropriate to preempt State law at this time. Preemption of State law would prevent the application of State or local law that requires additional protections to research subjects and, as such, would be inconsistent with the existing Federal policy for the Protection of Human Subjects and the DHHS regulations (45 CFR 46); in addition, it would be inconsistent with the notion of community norms, upon which this regulation is based.

F. Followup/Reassessment

11. One comment recommended that the implementation of this rule be assessed in 3 years and that any pending questions be addressed during the assessment. Another comment asked the agency to announce its intent to survey and analyze the experience with the rule following 3 years of implementation. The comment recommended that the rule encourage IRB's and researchers to track implementation information including: The number of times the researcher was able to contact legally authorized representatives within the allowed therapeutic window time period; problems with the documentation and procedures used for the consent process with those representatives; the percentage of subjects or legally authorized representatives who wanted to discontinue the intervention or to remove their data from the research database in the posthoc debriefing; problems with documents and procedures used to give the community the preresearch public information and the post-research information; and problems with the documents and procedures for consulting with community representatives. This comment suggested that this information be described both as seen by the IRB and by the experienced researcher.

The agency agrees that it will be important to assess implementation of this rule and, thus, the agency intends to evaluate implementation of this rule

on an ongoing basis. The agency believes that a sponsor's IND or IDE and new drug application (NDA), product license application (PLA), or premarket approval application (PMA) should contain sufficient information under the agency's existing reporting and recordkeeping requirements for the agency to assess how well this rule is working without requiring additional information collection and recordkeeping by researchers and IRB's of their experiences under the rule. The agency, however, encourages IRB's, researchers, and sponsors to share their experiences under this rule, for example, in publications and at conferences, so that the research community and public can benefit from their experiences. The agency notes that for research that is regulated by FDA, although subjects, legally authorized representatives, or family members may elect to withdraw from continued participation in the clinical investigation, they may not remove previously collected data from the research database because it is critical that FDA obtain and be able to consider all data on a product's use in order to be able to determine its safety and efficacy.

G. Scope/Applicability

1. Special Populations

12. One comment questioned the applicability of this rule to specific special patient populations. This comment recommended that FDA rule state that it does not apply to research involving prisoners or fetuses; and urged that the decision about its applicability to emergency research targeting pregnant women be made after the DHHS regulations have been revised and the 3 year period in which experience of implementing the rule will be obtained and analyzed. This comment recommended that pregnant women should not be excluded from emergency research. This comment also recommended that the rule state that it does not apply to children now; rules for pediatric emergency research should be developed by the end of the 3 year period of experience and assessment; and noted that the process of Secretarial waiver is available if an exception for a specific pediatric emergency protocol must be made before then.

Taking a contrary view, the American Academy of Pediatrics stated that:

> * * * it is important that children be included in research protocols, including those on emergency treatments, so that the safety and efficacy of various treatment methods can be determined in a scientific manner. We believe that this proposed regulation will help to further that objective while protecting children as much as possible by requiring that a consent document be available in cases where surrogate permission can be obtained in a timely manner.

The agency believes that it would be inappropriate to exclude any special subject population from this regulation. Moreover, for research regulated by FDA, a Secretarial waiver of the informed consent requirement may not be an option. Thus, the agency is not limiting the applicability of this regulation to exclude any special subject population. The agency notes that it is the general responsibility of the IRB, where some or all of the subjects are likely to be vulnerable to coercion or undue influence, to ensure that appropriate additional safeguards have been included in the clinical investigation to protect the rights and welfare of these subjects. (See 21 CFR 56.111(b).) The subject population covered in this rule is, in a sense, a particularly vulnerable population, by having no capacity to decide about medical treatments. The additional safeguards in the rule are included for this reason.

2. Existing Regulations

13. One comment asked the agency and DHHS, respectively, to explicitly state, when this rule is finalized, that FDA will retain § 50.23(a) (21 CFR 50.23(a)) and the DHHS will retain 45 CFR 46.116(d).

Both FDA and DHHS will retain these sections in the Code of Federal Regulations. These sections will continue to be useful in situations not otherwise covered by this regulation.

14. Another comment suggested that the regulations address compensation or medical treatment available in the event of unanticipated injuries or death.

The agency agrees that it is important for all subjects in a clinical investigation to be provided with the basic information required by § 50.25, including § 50.25(a)(6) that requires that information be provided to each subject about whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained. As a result, the agency has modified § 50.24(a)(6), previously numbered § 50.24(a)(5), to make it clear that the IRB-approved informed consent document must be consistent with § 50.25. The agency has also modified § 50.24(b) to make it clear that when prospective informed consent cannot be obtained, the subject, or the subject's legally authorized representative or family member is to be informed, at the earliest feasible opportunity, of the subject's inclusion in the clinical investigation, the details of the investigation, and other information contained in the informed consent document.

15. A third comment requested the agency to retain two protections previously established by the agency that are not contained in the proposed rule: (1) That the intervention be in the health interest of the subjects; and (2) that an attempt to obtain informed consent be made and documented for enrolled research subjects by a physician unaffiliated with the research activity.

The agency thinks that the concerns expressed by the first protection are addressed in § 50.24(a)(3), which requires that participation in the research hold out the prospect of direct benefit to the subjects. The second protection is similar to that contained in § 50.23(a), which requires, in effect, a second opinion from a physician who is not otherwise participating in the clinical investigation that the conditions for waiving informed consent are met. This protection is performed for the class of subjects in this research by the requirement in § 50.24(a)(2) that a determination be made that obtaining informed consent is not feasible and that this determination receive the concurrence of a licensed physician who is either an IRB member or a consultant to the IRB, and who is not otherwise participating in the clinical investigation (§ 50.24(a)). The agency notes that § 50.24(b) requires that at the earliest feasible opportunity, each subject is to be informed of the subject's inclusion in the clinical investigation, the details of the investigation and other information contained in the informed consent document. The agency also notes that under new § 50.24(a)(5), the researcher is required to describe the efforts made to obtain informed consent and make this information available to the IRB at the time of continuing review.

3. Foreign Data

16. One comment noted that the rule was silent as to its potential impact on the acceptability of data generated in emergency research studies that are not subject to the proposed rule—i.e., studies conducted outside the United States and outside the scope of the IND and IDE regulations. This comment asked FDA to make it clear that such studies will continue to be considered acceptable in terms of providing evidence of safety and effectiveness and could be treated as pivotal trials, even though they may not meet some of the proposed requirements for the conduct

of emergency research. This comment stated that if this clarification is not consistent with the agency's intent, then the proposal effectively establishes a new, inappropriate standard concerning the adequacy of clinical studies for purposes of providing evidence of safety and effectiveness that would require specific notice-and-comment rulemaking.

Sections 312.120 and 814.15 (21 CFR 312.120 and 814.15) describe the criteria for acceptance by FDA of foreign clinical investigations not conducted under an IND and IDE, respectively. In general, FDA accepts such clinical investigations provided they are well designed, well conducted, performed by qualified investigators, and conducted in accordance with ethical principles acceptable to the world community. FDA will accept such emergency research investigations provided that they meet the requirements of § 312.120 and § 814.15. This rule does not change the requirements of § 312.120 and § 814.15.

17. One comment noted that the International Conference on Harmonisation Draft Guideline on Good Clinical Practice (GCP) (60 FR 42948, August 17, 1995) states that ''the rights, safety, and well-being of the trial subjects are the most important considerations and should prevail over [the] interests of science and society.'' This comment suggested that the main argument for the proposed rule is for the benefit that the new drugs and devices will bring to science and society, rather then recognizing, as the GCP does, the value of the individual and subject rights.

The agency disagrees that this rule is inconsistent with the ICH Draft Guideline and has emphasized in the preamble to this regulation that the basic rationale for this rule is that it holds out the prospect of direct benefit to the subjects. The agency is committed to protecting the rights of research subjects. In addition, FDA recognizes that this rule may also serve society by making available more drugs and devices for use in emergency, life-threatening situations. The agency notes that the draft GCP cited specifically acknowledges the need for waivers of informed consent in some circumstances.

4. Independent IRB's

18. One comment expressed concern about FDA's continued acceptance of reviews by ''independent'' IRB's. This comment questioned the ability of a nonlocal, independent IRB to have local insight and knowledge necessary for comprehensive review and continuing oversight, and suggested that unless there is monitoring of independent IRB's by OPRR, they should not be allowed to approve research under this rule. The agency received other comments asserting that independent IRB's are well-qualified to maintain the requisite oversight and responsibilities of emergency research trials and that independent IRB's can maintain ethical standards equivalent to dependent IRB's.

As previously discussed in the preamble to the proposed rule, the agency thinks that independent IRB's can properly review this type of research. The agency thinks that duly constituted IRB's can ensure that the rights and welfare of research subjects are protected by fulfilling the requirements of part 56 (21 CFR part 56) and § 50.24, including § 50.24(a)(7) requiring public disclosure as well as consultation with the communities from which the subjects will be drawn. FDA anticipates that this type of research will usually be performed in an institution with an IRB. In that case, the IRB for the institution has the responsibility and authority to review all studies performed in the institution. This review responsibility may not be delegated to another IRB unless the institution and the IRB for the institution agree to the delegation and the agreement is documented in writing.

5. Conflicts with Statutes, the Constitution, and Other Standards

19. One comment stated that the rule conflicts with State common law—that is, a physician who performs research without obtaining consent for that research will be liable under common law for malpractice and battery, and is likely to lose his or her license. This comment stated that by adopting the proposed rule, FDA is overstepping its authority by attempting to regulate the practice of medicine and by attempting to override State law, and that FDA lacks the authority to permit anyone in the medical profession to practice without obtaining consent.

FDA disagrees with the comment. This rule does not attempt to regulate the practice of medicine. Rather, as discussed more fully in the preamble to the proposed rule, FDA is regulating investigational products under the statutory authority contained in the Federal Food, Drug, and Cosmetic Act (the act). FDA also disagrees with the comment that FDA is overriding State law. As stated elsewhere in this preamble, FDA is not changing the existing Federal policy that recognizes the continuing validity of applicable State or local laws and regulations on human subject protections. With regard to physician liability for performing research under this regulation, FDA disagrees with the comment's blanket conclusion that physicians participating in such research are committing malpractice and battery. FDA notes that this rule does not override existing State and local laws and regulations that may apply to such research. Institutions wishing to participate in such research may wish to consult their attorneys regarding any State and local restrictions that preclude such research. As with other research, physician liability for activities engaged in during emergency research will vary from State to State because of different laws on human subject protections. FDA notes that an existing regulation § 50.23 permits waiver of informed consent in certain limited emergency situations. FDA is unaware of any research conducted in accordance with that regulation that has resulted in physician liability for malpractice or battery.

20. One comment stated that the proposal violates Federal law under the Patient Self-Determination Act of 1990.

FDA disagrees with the comment. The Patient Self-Determination Act of 1990 defines an advance directive as ''a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.'' (42 U.S.C. 1395cc(f)(3).) That act imposes obligations on certain facilities (hospitals, skilled nursing homes, home health agencies, and hospice programs) participating in the Medicare program regarding advance directives. (42 U.S.C. 1395cc.) The Patient Self-Determination Act requires these facilities to give information to patients about their rights under State law to accept or refuse treatment and to make advance directives. These facilities also are required to document in the patient's medical records whether the patient has executed an advance directive and to ensure compliance with State laws on advance directives. The comment did not explain how he believed the rule violates the Patient Self-Determination Act; nothing in this rule prevents facilities from continuing to act in compliance with the requirements contained in that act.

21. Another comment questioned the validity of the claim in the proposal that ''the proposed rule gives double weight to the statutory 'necessitates' criterion'' because ''(1) intervention is needed because of the medical condition, and (2) the collection of valid data is needed

because of the absence of proven satisfactory available treatment for the condition.'' This comment stated that the context of the ''necessitates'' clause makes it clear that what is necessary is the use of a device to preserve the life of the subject—that the relationship of necessity is between the intervention and the subject's condition. This comment stated that it is a perversion of the statutory language to claim that it uses ''necessitates'' to refer to the relationship between the collection of data and proven treatment. The comment noted further that randomly assigning subjects to a treatment that some researchers consider unsatisfactory and to a treatment researchers think may be an improvement is not necessitated by the subject's life-threatening condition and, further, a placebo can never be necessitated to preserve a subject's life.

The agency agrees that the ''necessitates'' clause focuses on the relationship between the treatment and the subject's condition. The idea that an intervention using an investigational product is ''necessary'' may, at first, appear to be contradictory. It does not mean the product is safe and effective and that it must be given to everyone. Read this way the exception would apply to products that are not investigational and it would be irrelevant. The device amendments to the act are referring to an investigational intervention that is not known to be beneficial, and ''necessitate'' means that because available therapy is inadequate, potentially beneficial intervention is needed. Thus, there is no obligation to give everyone the investigational intervention despite the patient's need for some better treatment; it is possible to give only some subjects the intervention, leaving others to the care they would get were there no study. In the absence of an obligation to give every patient the investigational intervention, it is possible to consider other factors, such as the need to evaluate the intervention and learn from the exposure, which potentially may benefit the subject in the study, the community, and future patients with the disease. The critical and potentially difficult concept is that the intervention is given because the patient/subject needs it, yet enough is not known about the intervention to support giving it to everyone as therapy.

It is clear, despite the uncertainty, that the investigational intervention is intended to be beneficial and that there is conceptual, preclinical, and possibly clinical (e.g., other settings, preliminary results) evidence that the hoped for benefits outweigh the potential risks, all of which leads the investigator (and the pertinent IRB) to hope for, even anticipate, benefit. Such anticipation is compatible with the state of clinical equipoise needed to allow a clinical investigation. Indeed, true neutrality is rarely present at the start of an investigation; in the absence of expectation that an intervention may represent an improvement, or a belief that a standard therapy might not work, there is little incentive to proceed. The experienced clinical investigator, however, also knows that expectations are not the same as knowledge and that disappointments are too common to ignore. Therefore, despite optimistic expectations, one can be in the state of equipoise needed to allow a clinical investigation to be conducted.

In the current rule, addressing the special case of nonconsenting subjects, the agency is asking for more than the usual assurances that the investigational intervention is promising, and that accumulating results have not taken us all the way past equipoise (through the data monitoring committee's considerations). This extra assurance is necessary because it must be possible to state honestly that the intervention is for the patient's benefit, at least at the level of being promising, and is not a project only for pure science, future generations, or the community, although it will, of course, benefit those too.

Therefore, if there are available only unproven or unsatisfactory therapies and appropriate animal and other preclinical studies support the potential of benefit to subjects from a new intervention, the agency thinks it can be said that the subject's condition ''necessitates'' alternative treatment. In the case under consideration, where the new intervention is not known to be of value, although it is promising and has been evaluated in animals and in less emergent settings, it is reasonable to randomize to a standard therapy not yet shown inferior to the new intervention. The subject receiving standard therapy is no worse off than if there had been no clinical investigation.

22. Another comment considered the rule contrary to the Nuremberg Code and to the U.S. Constitution; it stated that the agency's reliance on *Doe* v. *Sullivan* is inappropriate. Another comment suggested that the decisions of the U.S. Supreme Court in *Cruzan* v. *Director Mo. Department of Health*, and *Griswald* v. *State of Connecticut* present constitutional barriers to the proposal to eliminate the requirement of informed consent in biomedical research involving emergency conditions. This comment also analyzed an attorney's observations at the Public Forum with respect to State law and criticized the proposal for not addressing these. Another comment stated that the rule denies persons with disabilities equal protection under the law and their rights to due process in that it treats competent and incompetent patient-subjects in a distinct, unequal manner.

FDA disagrees with these comments and with the assertions that the cases cited present constitutional barriers to the issuance of this rule. FDA strongly endorses the concept of informed consent. Obtaining informed consent is not always possible, however, as Congress has recognized in enacting amendments to the Act. Congress explicitly has authorized exceptions from the requirement for informed consent in research in limited situations. (See preamble to the proposed rule for a more detailed discussion of authority in the act for permitted exceptions from informed consent (60 FR 49086)).

Unlike situations involving a failure to inform a competent person of the risks and consequences associated with participating in research (see *In Re Cincinnati Radiation Litigation*, 874 F. Supp. 796, 800–01 (S.D.Ohio 1995)), this rule seeks to maximize an individual's access to potentially beneficial drugs and devices at a time when, due to an emergency which causes incompetency, informed consent cannot be obtained. The issuance of this rule does not result in the automatic entry of an individual in a clinical investigation without informed consent. Rather, it contains important protections that must be met before such a clinical investigation may proceed. Decisions on whether an investigation may proceed will be made on a case-by-case basis by individual IRB's and need the concurrence of a licensed physician.

Contrary to the comment's suggestion, the Supreme Court's decision in *Cruzan* v. *Director Mo. Department of Health* does not create a hurdle to the issuance of this rule. In *Cruzan* v. *Director Mo. Department of Health*, 497 US 261 (1990), the Supreme Court, in reviewing a Missouri statute which required clear and convincing evidence of an incompetent person's wishes as to whether or not life-sustaining treatment should be employed, balanced a State's interest in the preservation of life with an individual's wish to terminate life support rather than remain in a vegetative state. Unlike *Cruzan*, this rule focuses on the preservation of life when an individual's wishes are unknown. As in other emergency situations, where an individual is incompetent, if it is feasible to obtain informed consent from the individual's legally authorized

representative, then such consent should be obtained. FDA notes that it is possible that an individual may have previously issued advance directives on life-sustaining treatment. FDA believes that, where feasible, attempts should be made consistent with State law to identify the existence of such directives prior to enrolling an individual into a clinical investigation without informed consent. FDA recognizes, however, that in many life-threatening instances it may not be feasible to learn of the existence of any existing directives prior to taking potentially life-saving intervention and that in many instances, an individual may not have issued such advance directives. In such cases, FDA believes that interventions consistent with this rule are constitutionally permissible.

H. Clarifications

23. HIMA noted that it was one of the organizations that endorsed the October 25, 1994, consensus document on Informed Consent in Emergency Research from the Coalition Conference of Acute Resuscitation and Critical Care Researchers.

The agency acknowledges that HIMA endorsed the consensus document on Informed Consent in Emergency Research from the Coalition Conference of Acute Resuscitation and Critical Care Researchers.

24. HIMA also suggested that FDA recognize the diversity of opinion on ''deferred consent'' and its history of successful use from approximately 1980 until mid-1993, rather than simply disregard this concept as ''post-hoc ratification'' unworthy of ''genuine'' informed consent.

FDA disagrees and thinks that its earlier rejection of ''deferred'' consent was appropriate. As described in the preamble to the proposed rule, posthoc ratification is not genuine consent because the subject or representative has no opportunity to prevent the administration of the test article, and cannot, therefore, meaningfully be said to have consented to its use.

III. Specific Comments on the Proposed Regulation

A discussion of the specific comments received in response to this proposal follows:

A. Definitions

25. Four comments requested clarification of the proposed definition of family members in § 50.3. Two comments questioned what one should do if there is disagreement among family members. One asked whether a family member could provide informed consent for emergency research if State law does not explicitly provide for consent from family members. Another questioned whether family members, even those who do not possess power of attorney for health care rights, can provide informed consent for emergency research under this rule.

One individual suggested that it may be unwise to provide a new definition for such a familiar expression as ''family member'' and suggested that the phrase ''any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship'' be used in its place. Another comment commended the agency for including in its definition those individuals whose relationship resemble family relationships.

One comment suggested that the hierarchy of the decision-making authority of family members should be clearly stated. This comment questioned whether one family member could overrule the decision of another and questioned whether all family members must agree.

The agency thinks that it is appropriate to retain the phrase ''family member'' and its definition. The agency has specifically included family members under this rule because the opportunity for an available family member to object to a potential subject's participation in such a clinical investigation provides an additional and an important protection to these individuals. Otherwise, if consent from a subject or the subject's legally authorized representative were not feasible, the eligible individual could be enrolled into the investigation. Thus, by permitting a family member (even one who is not a legally authorized representative) to object to an individual's inclusion in the investigation, a further protection is provided to that individual. This rule has been modified to make clear that a family member must be provided an opportunity to object to the potential subject's participation, if feasible within the therapeutic window when obtaining informed consent from the subject is not feasible and a legally authorized representative is not available. The agency recognizes that this may not constitute legally effective informed consent if the family member is not a legally authorized representative under State law. FDA is not establishing a hierarchy of family members although an IRB may consider the need for creating a hierarchy in reviewing individual investigations. Under this rule only one family member would need to be consulted and agree or object to the patient's participation in the research. If family members were to disagree, the researcher and family members would need to work out the disagreement.

26. One individual, who was opposed to the entire rule, suggested that by not providing a definition of ''emergency,'' FDA's quest for harmony and uniformity would be defeated by the various definitions provided by State law. He suggested that without such a definition, too much discretion is delegated to medical researchers and IRB's; that the agency will have little basis to monitor the activities carried out by these researchers; and that the exception will be used to exempt all emergency research from consent, even when it is feasible to prospectively identify and secure the consent of hospitalized individuals. Finally, he noted that the Health Care Financing Administration has issued regulations under the Emergency Medical Treatment and Active Labor Act which define the term ''emergency medical condition;'' this act's regulations link an emergency medical condition to the manifestation of ''acute symptoms of sufficient severity * * * such that the absence of immediate medical attention could reasonably be expected to result in: (a) Placing the health of the individual * * * in serious jeopardy; (b) serious impairment to bodily functions; [or] (c) serious dysfunction of any bodily organ or part.'' He suggested that health care professionals will be confused by the different use of the term ''emergency'' in this regulation and under the Emergency Medical Treatment and Active Labor Act.

The agency disagrees with these comments. Sufficient guidance is given in the regulation in § 50.24, particularly in § 50.24(a)(2)(iii), to ensure that there is a clear understanding of what constitutes a life-threatening situation that could invoke this rule and to ensure that it is not used routinely in all emergency research. In addition, each clinical investigation will be reviewed by FDA and the IRB to help ensure that this exception from informed consent is not used for research for which it was not intended. Further, emergency room personnel should not be confused because they should know when they are participating in FDA regulated research. The agency notes that the purpose of the Emergency Medical Treatment and Active Labor Act is different from this rule. This informed consent exception is intended to allow certain FDA-regulated research to proceed without informed consent provided specific conditions are met. Entities that deal with both regulations

will be able to understand whether one or the other regulation applies.

B. Exception Criteria

1. Section 50.24(a)

27. One comment suggested that additional conditions be added to § 50.24(a) to reinforce the statement in the preamble to the proposed rule that appropriate evidence is available to document clinical equipoise and to ensure that efforts are made to obtain consent from a legally authorized representative whenever possible. The two proposed additional sections would read: ''[a]ppropriate animal and preclinical trial studies have been completed, and the information derived from those and related studies support the likelihood of providing a direct benefit to the individual subjects'' and ''[t]he IRB finds that the researcher defined the length of the therapeutic window based on scientific evidence, will try to contact the legally authorized representative within that window of time, and will ask each representative contacted for consent within that window rather than waive consent. The researcher will track the number of representatives contacted and provide that information to the IRB.''

The agency agrees that these are important concepts that should be contained explicitly in the regulation. It has incorporated these comments in the regulation, with slight modification to the language proposed in the comment. The agency has added a new paragraph to § 50.24(a)(3) to read as follows: ''(ii) Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects.'' The agency also has added a new paragraph § 50.24(a)(5) and a new paragraph § 50.24(a)(7)(v). The new paragraph § 50.24(a)(5) reads as follows: ''(5) The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative contacted for consent within that window rather than proceeding without informed consent. The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the IRB at the time of continuing review.'' The new paragraph § 50.24(a)(7)(v) reads as follows: ''(v) If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the investigator has committed, if feasible, to attempting to contact within the therapeutic window the subject's family member who is not a legally authorized representative, and asking whether he or she objects to the subject's participation in the clinical investigation. The investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.'' The agency notes that if the window of time is narrow, it will be difficult or impossible to identify a legally authorized representative or family member, especially for potential subjects whose identities are unknown at the time of presentation.

28. One comment suggested that, in order to prevent abuses, the agency provide all IRB's with standardized forms that strictly define the circumstances and process for an IRB to invoke the waiver of informed consent.

The agency does not think that standardized forms would be useful or practical. The regulation provides sufficient information and allows flexibility for each IRB to develop procedures and methods (and forms, if necessary) to fulfill its requirements.

29. Several wording changes were suggested to clarify § 50.24(a). Two comments suggested that § 50.24(a) be revised to add ''prior to initiation of research'' after the words ''without requiring that informed consent be obtained'' in order to stress that consent is being waived for the necessary immediate intervention.

The agency thinks this change is unnecessary. This is clear from § 50.24(a)(2) and new § 50.24(a)(5).

30. One comment suggested the addition ''of all research subjects'' following the phrase ''without requiring that informed consent'' and modifying the parenthetical phrase in the next sentence to read: ''(with the concurrence of a licensed physician voting member of the IRB or the concurrence of a licensed physician who serves as a consultant).''

The agency has incorporated this language, with minor changes, to emphasize the need for concurrence by a licensed physician who is either an IRB member or consultant and who is not otherwise participating in the clinical investigation. The agency recognizes that in some instances it will be possible to obtain informed consent from some individuals or their legal representatives, or contact a family member when this exception is invoked for a clinical investigation. The agency has not included the term ''voting'' because it does not believe that it is necessary to explicitly require that this licensed physician who concurs be a voting member of the IRB because concurrence by this licensed physician is required by the regulation. Since 1981, FDA has stated its expectations that an IRB that reviews investigational new drug studies will include at least one physician. (See 46 FR 8942 at 8966, January 27, 1981.) This expectation is not changed by this rule.

31. Other comments were received on the ''concurring licensed physician member or consultant.'' Three comments felt that this physician member or consultant would add nothing to the process because of pressure to endorse the study; one comment suggested that the interests of subjects would be better served if this physician or consultant were independent of the IRB; two comments suggested that the physician be independent of the investigator (i.e., have no ties to or be in the same department or supervised by, the investigator).

The requirement for a concurring licensed physician is contained in the Medical Device Amendments of 1976 and, thus, it must be retained. The agency agrees with the need for this individual to be independent from the clinical investigation but disagrees with the suggestion that the physician be independent of the IRB. Thus, the agency has amended the language in § 50.24(a) to make clear that the licensed physician must be one who is not otherwise participating in the clinical investigation. This language parallels the language contained in § 50.23(a).

32. One of these comments suggested that an independent ombudsman who is aware of the acute risks of the specific research, the long term risks of the research for the individual, family, and society, based on the condition of the potential subject be appointed to oversee the study.

The agency does not agree. There is no need for a special requirement for an ombudsman for these clinical investigations. Current § 50.25(a)(7) requires the consent form to contain an ''explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.'' It may be the IRB or some other designated individual who performs these ombudsman-type functions for these investigations.

2. Section 50.24(a)(1)

33. A few comments expressed concern about the phrase contained in § 50.24(a)(1) that ''available treatments are unproven or unsatisfactory.'' One comment suggested that ''unproven'' be changed to ''ineffective.''

The agency disagrees with this suggestion because one may have insufficient data to know whether a treatment is ineffective. One may, however, know from the limited data available that it is ''unproven.''

34. Another comment suggested that the phrase ''available treatments are unproven or unsatisfactory'' be changed to read ''the efficacy of available treatments has not been demonstrated, or is regarded as unsatisfactory.''

The agency does not believe this change is necessary or desirable. Available treatments need to be assessed in terms of both safety and effectiveness. The agency believes that the change proposed in the comment focuses solely on effectiveness.

35. Another comment expressed concern that nonscientific members of IRB's will have a particularly difficult time making determinations about whether available treatments are unproven or unsatisfactory.

The agency disagrees. Current § 56.107(a) requires the IRB membership to possess the professional competence necessary to review specific research activities. Further, current § 56.107(f) permits an IRB to invite ''* * * individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the IRB.'' Thus, the IRB should have sufficient information from its own professional expertise, or from consultants, to make determinations about whether available treatments are unproven or unsatisfactory.

36. One comment suggested that guidance on the criteria for determining that current therapy is unsatisfactory should be provided or that the rule should explicitly recognize that IRB's have the discretion to make independent decisions on this point. One comment suggested that a study be allowed to proceed if there is an alternative therapy, provided that equipoise exists between the investigational product and current therapy.

It is clear from the existing wording in § 50.24(a) that it is the IRB's responsibility to make decisions as to whether the criteria in the rule are met. The agency notes that it will also be reviewing these clinical investigations and will evaluate whether these investigations meet the criteria in this regulation. There is nothing in this rule that would prohibit an investigation from proceeding if there is an alternative therapy where the alternative therapy is unproven or unsatisfactory. The agency expects that in most clinical investigations under this rule, the experimental intervention will be added to standard therapy. That is, subjects in the investigation would receive standard therapy, with a portion of the subjects receiving the investigational product in addition. In some clinical investigations, some subjects may receive standard therapy, while others may receive the investigational product instead of standard therapy because, for example, use of the investigational product precludes use of the standard treatment. In these latter investigations, the IRB may need to look more closely at why standard therapy is unproven or unsatisfactory, and may want to review additional preclinical data or results in less ill human subjects that the intervention is promising, because the standard care will not be provided to a portion of the subject population.

37. Other comments suggested that without clear definitions for ''unsatisfactory'' and other terms used in the proposal's preamble to describe clinical equipoise, i.e., 'unknown,'' ''believe,'' and ''reasonable minority,'' that abuse of the consent exception is likely.

The agency disagrees with these comments. The agency has explained this provision in more detail in the preamble to the proposed rule and believes that such definitions are unnecessary. The agency also notes that the conduct of this research will be carefully monitored and will be subjected to public scrutiny through the requirements for community consultation and community disclosure. In the preamble to the proposed rule, the agency stated that ''[w]hen the relative benefits and risks of the proposed intervention, as compared to standard therapy, are unknown, or thought to be equivalent or better, there is clinical equipoise between the historic intervention and the proposed test intervention. Clinical equipoise would exist * * * whenever at least a reasonable minority of medical professionals believe the experimental treatment would be as good as, or better than, the standard treatment.'' (60 FR 49086 at 49093, September 21, 1995.) The agency thinks that this description provides sufficient guidance to IRB's and that it is appropriate to allow IRB's to determine when clinical equipoise exists.

38. A number of comments suggested that the scope of the research covered by the proposed rule and contained in § 50.24(a)(1) be extended to conditions beyond those that are immediately life-threatening so that conditions that result in permanent disabilities, such as a long-term or permanent coma, or conditions that would result in other serious irreversible injury are included under the rule. One example given was a near-drowning patient resuscitated in the prehospital setting who arrives at the Emergency Department comatose; the acute injury may no longer be immediately life-threatening, but the chances that the patient will regain consciousness again are highly unlikely. One comment noted that FDA has in the past interpreted ''life-threatening'' to include threats of serious disability and, if this is intended in the proposed rule, it would be helpful to add this interpretation to the supplementary information. Another comment suggested that both stroke and head injury do not necessarily immediately result in death and that potentially effective treatments are being developed for these conditions which may leave the patient with profound deficits. This comment proposed that such emergencies be covered under the final rule. Two comments suggested that ''life-threatening'' be defined and limited to include only those situations believed to be immediately life-threatening. Another comment suggested that ''emergency privilege'' is limited and should extend to care needed to stabilize or prevent further deterioration of the patient's condition as well as care necessary to prevent death or serious bodily injury or harm. Therefore, the care justified must be balanced with the emergent nature of the patient's condition, the patient's potentially transient incompetence to make decisions and give consent, and the time needed to make a reasonable effort to contact and involve the patient's family.

The agency notes that the Medical Device Amendments limit this exception to life-threatening situations; the agency and the IRB will need to judge each clinical investigation to ensure that it meets the criteria of the statute and regulations. Specifically, the IRB must conclude that the intervention to treat a life-threatening condition must be administered before consent can be obtained.

The criteria contained in the rule do not require the condition to be immediately life-threatening or to immediately result in death. Rather, the subjects must be in a life-threatening situation requiring intervention before

consent from a legally authorized representative is feasible. Life-threatening includes diseases or conditions where the likelihood of death is high unless the course of the disease or condition is interrupted. (See § 312.81.) People with the conditions cited in the examples provided in the comments—e.g., long-term or permanent coma, stroke and head injury—may survive for long periods but the likelihood of survival is not known during the therapeutic window of treatment. People with these conditions are clearly at increased risk of death due to infection, pulmonary embolism, progression of disease, etc. The rule would apply in such situations if the intervention must be given before consent is feasible in order to be successful. The informed consent waiver provision is not intended to apply to persons who are not in an emergent situation, e.g., individuals who have been in a coma for a long period of time and for whom the research intervention should await the availability of a legally authorized representative of the subject.

39. The agency received a number of comments on the reference to placebo-controlled trials in § 50.24(a)(1). One comment stated that it was vitally important to retain the reference. Other comments requested that the reference be removed. Reasons given for its removal included concern that placebo-controlled studies will not meet the requirement of clinical equipoise unless the placebo control is the standard of care for the situation or there is absolutely no standard therapy; that this conflicts with agency statements that the use of a placebo is not necessary when the end-point is clear and reasonably predictable; it is inappropriate for the agency to specify one study-design among many; and that unless the potential subject or legally authorized representative can consent, a placebo should not be an alternative.

Some of the comments appear to presume that in a placebo-controlled trial, the placebo group would be untreated. In virtually all cases, when a placebo is used, standard care, if any, would be given to all subjects, with subjects randomized to receive, in addition, the test treatment or a placebo. An exception to this would be the situation in which the test is to determine whether standard treatment is in fact useful. In that case, there must be a group that does not receive it. The agency believes that it is important to recognize in the regulation that placebo-controlled trials may be conducted under this emergency research provision; thus, it is retaining the wording in this section. Different kinds of controls are described in FDA's regulations. For example, FDA regulations for drugs (§ 314.126) describe five kinds of study designs that can be used in carrying out the well-controlled investigations needed under law to provide the ''substantial evidence of effectiveness'' needed to market a drug. They are: Placebo concurrent control, dose-response concurrent control, no-treatment concurrent control, active treatment concurrent control, and historical control. In any given year, drug approvals will be based on clinical investigations using each of these designs. The study design used must, however, be adequate to the task of providing evidence that the drug or device will have the effect claimed.

40. Two comments suggested changing the wording of § 50.24(a)(1) from ''what particular intervention is most beneficial'' to ''the safety and efficacy of a particular intervention'' in order to provide greater flexibility. Another comment suggested that ''most beneficial'' be followed by the clarifying phrase ''to patients in the life-threatening situation.''

The agency agrees that it would be more precise to indicate that the clinical investigation is necessary to determine whether a particular intervention is safe and effective and it has modified the wording in the regulation accordingly.

3. Section 50.24(a)(2)

41. A number of comments on § 50.24(a)(2)(ii) recommended that ''or family members'' be added to ''legally authorized representatives'' at each occurrence in the proposal and in its conforming amendments in order to ensure that the exception is used only in those cases where it is not feasible to contact the legally authorized representative or a family member.

The agency generally agrees with these comments for the reasons previously stated and has modified the regulations accordingly.

42. Two comments requested that a definition of the term ''legally authorized representative'' be provided. One comment suggested that the language be clarified to read ''* * * consent from the subjects' legally authorized representatives is feasible.''

''Legally authorized representative'' is currently defined in § 50.3(m) to mean ''an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.'' This definition is being retained in the regulation. The agency has added the clarifying language that it is ''the subject's'' legally authorized representative.

43. One comment questioned whether one should seek oral consent/assent from a family member or other individual in those instances in which there may only be a few moments to convey the nature of the intervention, precluding full informed consent. If such assent is not given, the comment requested clarification on options available to the researcher.

If it is feasible to obtain informed consent for some potential subjects, informed consent is required for those individuals. If there is insufficient time to obtain informed consent for some potential subjects, but there is sufficient time to convey some basic risk and benefit information about the clinical investigation, then that information should be provided to the subject, the subject's legally authorized representative, or the subject's family member. If the subject, legally authorized representative, or family member objects to the individual's inclusion in the investigation based upon the information provided, then that individual should be excluded from participation in the clinical investigation. If only partial information was conveyed, then the information described in § 50.24(b) is to be provided at the earliest feasible opportunity.

44. Another comment suggested that there be a requirement that the determination that a subject cannot provide informed consent and efforts made to obtain informed consent from the subject's legally authorized representative be documented and notarized by an individual not directly involved in the research. This comment suggested that without such a requirement, investigators are likely to make little effort to obtain consent from subjects prior to enrollment. This concern was echoed by another comment, which suggested that the investigators' documentation of efforts to obtain informed consent would encourage researchers to expend greater efforts to obtain informed consent for these activities. Another comment suggested that this documentation be made by an individual not affiliated with the study team.

The agency expects the IRB to determine, based on the specific details of the individual clinical investigation (including the window of opportunity for treatment), the procedures the investigator must follow to attempt to obtain informed consent before enrolling a subject in an investigation without such consent. The agency has added a new paragraph § 50.24(a)(5) that requires the investigator to attempt to

contact a legally authorized representative for each subject within the therapeutic window and, if feasible, ask for consent within that window rather than proceeding without consent. The agency also has added a new paragraph § 50.24(a)(7)(v) that requires the investigator to attempt to contact a family member within the therapeutic window and ask whether the family member objects to the subject's participation in the clinical investigation, if informed consent is not feasible and a legally authorized representative is not available. IRB's may create a hierarchy of family members or impose other conditions to increase the protections provided to research subjects. These paragraphs further require the investigator to summarize efforts made to contact representatives and family members and to make this information available to the IRB at the time of continuing review. The agency believes that these procedures will ensure that appropriate efforts are made by the investigator to obtain consent from subjects prior to enrollment. The agency expects these procedures to be documented in the protocol and/or by the IRB, and the efforts made by investigators to be documented in the material presented to the IRB for its continuing review. The agency believes that this documentation provides the necessary protections suggested by these comments.

45. One comment suggested that § 50.24(a)(2)(iii) be modified to read ''There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the research study,'' omitting the remainder of the sentence.

The agency agrees that the last phrase in the proposal that read ''because the emergence of the condition to be studied cannot be predicted reliably in particular individuals'' is not needed and it has therefore deleted this phrase from the final rule as suggested.

46. Although two comments stressed the importance of retaining the word ''reasonable'' in order to allow IRB's to exercise the judgment necessary to make satisfactory decisions about application of the exception in particular contexts, another comment suggested that the term ''reasonable'' may provide more flexibility than is desirable.

The agency thinks that IRB's must be allowed to make responsible judgments when they review clinical investigations, and that it is important to retain the term ''reasonable'' in order to permit the IRB to judge the particular circumstances surrounding each investigation under review.

47. One comment asked how to document the case where prospective individuals have been notified and prior consent for participation has been sought in an institution with several co-investigators or where more than one institution in the area may be participating in the research. The comment asked further whether only those subjects with the condition who gave prior consent could be enrolled and whether those who did not render a decision would be excluded from participation in the study.

Generally, the agency recommends that when prospective consent is being sought in an institution, the documentation that a potential subject consented or refused to consent be placed prominently in the subject's medical file. Consent will typically be documented through a signature on the consent form. It is the responsibility of the clinical investigator to determine how to identify prospective subjects who have agreed or refused to participate in a clinical investigation if they should become eligible in order to help ensure that their decisions are followed. When an IRB determines that it is not appropriate to waive the requirement of informed consent because there is a reasonable way to identify prospectively the individuals likely to become eligible for the clinical investigation, then only those subjects with the condition who gave prior consent may be enrolled in the investigation. Those individuals who either did not make a decision or who refused would be excluded from participation in the investigation.

48. Another comment noted that if a subset of the general population can be identified as potential subjects, anticipatory informed consent must be obtained, even if the subset is a very small percentage of a large patient population. For example, where a small percentage of patients undergoing a standard procedure may suffer a complication that would render them unconscious and make them potential subjects, informed consent should be obtained for that clinical investigation. The comment went on to note that if that procedure carries some known risk for a complication, the potential subjects would need to be informed of that risk in any event, and obtaining anticipatory consent for the investigation should therefore not be burdensome.

The agency generally agrees with the concept that obtaining anticipatory consent from a target population where the complication rate is modest often would be feasible. As the complication rate grows small and the population hard to identify, this strategy becomes problematic. Each clinical investigation must be judged individually by FDA and the IRB.

49. Another comment suggested that the Coalition Conference Consensus Statement wrongly discounted the value of securing and the ability to secure prospective consent from identifiable individuals at high risk for study enrollment, particularly those in hospitals, and that neither the consensus statement nor the proposed rule mentioned the role of advance medical directives in guiding enrollment decisions. This comment, supported by others, suggested that a good faith effort should be mandated to locate advance directives and that the regulation should include a new paragraph, as follows: ''Any individual likely to be eligible for a research protocol under this section may not be enrolled in the research if the investigators know, or reasonably should know, that the individual did not want to receive medical interventions of the type under study.'' Another comment suggested that, although advance directives have been addressed in clinical practice, their application to the conduct of clinical research has not received much scrutiny. This comment described the difficult task for potential subjects to imagine the kind of research they would want should they suffer a catastrophic illness; it went on to recommend that either FDA clarify how it intends clinical investigators to adopt the practice of advance consent, or this statement should be deleted. It further suggested that FDA consider requiring the use of consent auditors whose role would be to determine whether the subject truly understands the consent process.

The agency does not believe that these comments require a change in this regulation. The agency recognizes that it may be possible in some situations to secure prospective consent from identifiable individuals at high risk for study enrollment, particularly if they are inpatients. It is for that reason that the agency has included § 50.24(a)(2)(iii), which requires the IRB to determine that there is no reasonable way to identify prospectively the individuals likely to become eligible for the clinical investigation. Both the American Hospital Association's Patient Bill of Rights and section 4206 of the Omnibus Budget Reconciliation Act of 1990 recognize a patient's right to participate in and direct health care decisions affecting the patient. The agency agrees, particularly for clinical investigations involving inpatients, that

appropriate efforts be made to review the patient's medical file to determine whether there exists an advance medical directive or other indication of the patient's desires (e.g., do not resuscitate order). However, the agency also recognizes that, for at least some of the research that will be eligible for this exemption, there will be insufficient time to search for or locate such directives. The IRB should be knowledgeable about an institution's procedures regarding the use of advance medical directives and assess whether the proposed clinical investigation is consistent with those procedures.

As discussed previously, if an IRB determines that it is not appropriate to waive the requirement of informed consent because there is a reasonable way to identify prospectively the individuals likely to become eligible for the clinical investigation, then only those subjects with the condition who gave prior consent may be enrolled in the investigation. Those individuals who either did not make a decision or who refused would be excluded from participation in the investigation. For research where individuals can give informed consent prospectively, the individual's consent or refusal should be documented in such a way to ensure that the individual's determinations are followed. As in other research that is reviewed by an IRB, it is up to the IRB to determine whether there is a need for a consent auditor.

50. Another comment recommended that the question of whether prior consent of subjects must be obtained should be resolved by considering the following questions: (1) From which populations will subjects be drawn; (2) what is the probability that any particular member of the at-risk population will become a potential subject; (3) where is the population from which subjects will be drawn; (4) how much effort is needed to inform the population of the study; and (5) what is the most effective communications media or mechanism to reach the population. Based on these questions, this comment recommended that a new section be added that would state: ''When individuals likely to become eligible for the research are members of identifiable and accessible populations of the community at large, reasonable effort to target communications to those sub-populations should be made.''

This comment suggests what may be a reasonable thought process for an IRB to follow. However, it combines two different concepts: communication with the community and prior consent of individual subjects. As the agency has previously stated, if one can obtain prior consent of subjects, that should be done. Examples of situations where it may be feasible to obtain prior informed consent include: use of a surgical procedure with a known severe consequence; administration of a drug product with a known serious adverse reaction; identification of a population with a particular disease or condition who are at an extremely high risk for a serious event. In each of these instances, it may be feasible to identify in advance the specific patient population susceptible to the condition being studied and obtain consent. The agency believes that it would be inappropriate to add the suggested section to the regulation because it confuses efforts to inform the community with efforts to obtain prior consent of the individual.

51. Another comment recommended that the agency require preliminary studies of new products in patients admitted to intensive or critical care units who are able to consent or who have a legal representative who can consent on their behalf. This comment suggested that this would strengthen an inadequacy in the existing regulations that permits studies (with subjects unable to provide informed consent) to begin, without any knowledge regarding the clinical performance of the drug/device.

Given the nature of the product and the medical condition, this suggestion may not be feasible for many of these clinical investigations. The agency, in its review of these investigations, will review the adequacy of the information about the proposed intervention to help ensure that there is sufficient knowledge, including clinical performance in other settings when possible, of the drug or device to justify its use in such investigations. In addition, the regulation has been modified to specify that evidence from appropriate animal and other preclinical studies support the potential for the intervention to provide a direct benefit to the individual subjects.

4. Section 50.24(a)(3)

52. A number of comments suggested deleting the phrase ''is in the interests of the subjects'' in § 50.24(a)(3) in part because this phrase requires that a judgment be made about subjects whose interests may be largely, if not totally, unknown to the IRB and to the investigators. Some comments argued that there would be no possible benefit to the subject, but only to society at large if the experimental intervention were shown to be effective; the goal of the research is not to benefit subjects in the research, but rather to benefit science in the pursuit of knowledge. Others suggested that § 50.24(a)(3) be modified to read: ''The opportunity to participate in the research holds out the prospect of direct benefit to the subjects because * * *.'' Other comments objected to the word ''opportunity'' as being disingenuous and paternalistic and suggested that this section be modified to read: ''Participation in the research * * *.''

The agency agrees that § 50.24(a)(3) should be modified in response to some of these comments. The first comment points out that one cannot really know about all the interests of a person in these situations. The modification would make clear that the clinical investigation holds out the prospect of direct benefit to the subjects. The agency does not agree with the second comment that there would be no possible benefit to the subject, but only to society at large. To justify the use of this exception the IRB must believe that participation in the study holds out the prospect of direct benefit to the subjects. It is also true, but not the basis for the exception, that the interests of society will be served by the waiver because the research will produce valuable knowledge, applicable to future patients, that would otherwise never be obtained; an IRB should not approve a clinical investigation that is poorly designed and, thus, unable to answer the scientific question posed. In response to the third suggestion, the agency is clarifying any mis-impression that it would be the ''opportunity'' rather than the actual ''participation'' in the research that is beneficial. The agency intended that participation in the research should hold out the prospect of direct benefit to the subject and has revised the rule accordingly.

53. Another comment noted that if the null hypothesis is plausible, that is, if the effect of the investigational intervention is no different from that of the standard treatment, the subject has little to gain by being in a randomized trial rather than being treated by whichever arm of the study is standard. This comment recommended that historical controls be used when investigators or potential subjects are not ''indifferent'' to the treatment alternatives.

If the use of a historical control is appropriate for the clinical situation being studied, that control may be used, but the difficulties of this design are well-known and it cannot reliably assess small, but potentially meaningful benefits and is frequently associated with false positive results. The comment related to the null hypothesis is not unique to emergency research. Rather, it reflects a fundamental ethical dilemma

in all clinical trials. This dilemma, however, has not been considered by most bioethicists as an impassable obstacle for the conduct of controlled trials. This is because continuing an intervention, even one thought to have promise, without determining that it does provide benefit, is not a responsible alternative. The investigational intervention in these clinical investigations must be promising, but one does not know that it is in fact safe and effective. Further, in these investigations, the standard treatment being compared to the investigational product or to which the investigational product is added will be of unproven benefit or unsatisfactory.

54. One comment suggested that an additional condition be added to 50.24(a)(3) which would require that the weight of scientific evidence be sufficient to support the likelihood that the individual subjects will receive a direct benefit. Another comment suggested that the rule require a progression of research from less severe medical cases to more severe and only permit the inclusion of patients unable to consent if there is an ombudsman independent from the research activity.

As previously described, FDA has added a new § 50.24(a)(3)(ii) which requires that ''Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects.'' There is nothing in this rule that would preclude research from being conducted in subjects with less severe medical conditions (not in a life-threatening situation) before being conducted in subjects with more severe medical conditions provided that informed consent is obtained from the research subjects with the less severe conditions. When this exception is invoked for a particular clinical investigation, however, the FDA, sponsor, clinical investigator, and IRB will be responsible for ensuring that the subject population is appropriate; that is, that the subjects are in a life-threatening situation.

55. One comment recommended that § 50.24(a)(3)(i) be reworded to clarify that ''subjects are facing a life-threatening situation that necessitates intervention.''

The agency agrees with the comment and has modified this section accordingly.

56. One comment suggested that proposed § 50.24(a)(3)(ii) be reworded to clarify that the rule is addressing the ''prospective subjects' condition'' and that ''current therapy'' equates to ''standard therapy.'' This comment suggested that proposed § 50.24(a)(3)(ii) be rewritten to state ''risks associated with the intervention are reasonable in the light of what is known of the prospective subjects' medical condition, the risks and benefits of standard therapy * * *.''

The agency has renumbered proposed § 50.24(a)(3)(ii) to be § 50.24(a)(3)(iii) in the final rule. The agency agrees with the comment and has modified this section accordingly. The risk and benefit assessment that is required by § 50.24(a)(3)(iii) will be conducted for future subjects meeting the entry criteria for the clinical investigation; therefore, it is appropriate to refer to these subjects as the ''potential class of subjects.'' The agency intended that the risks and benefits of ''standard'' therapy be considered; it recognizes that ''current'' therapy may be too broad.

57. Several comments requested a definition of ''reasonable.'' One comment noted that the rule requires a complex judgment about risks and benefits and yet lacks specificity as to how this judgment is to be made. This comment noted that in most research, an IRB can rely on the risks and benefits being explained to the subject and the subject judging whether they are reasonable. In the case of the research covered by this regulation, that recourse is not available.

It is not possible to be specific about how to make the judgment about risks and benefits because, as the comment notes, the judgment to be made is complex, with different information and considerations determined by the particular clinical investigation. The agency thinks that sufficient clarity is contained in § 50.24(a)(3)(iii) to allow an IRB to understand that it must consider: (1) What is known about the medical condition, (2) what is known about standard therapy, and (3) what is known about the proposed intervention or activity. The risks of the investigation must be considered reasonable in relationship to all of this information. The agency does not think that this requirement needs further explanation.

58. Two comments suggested that proposed § 50.24(a)(3)(ii) be modified to incorporate the Coalition of Acute Resuscitation and Critical Care Researcher's concept of ''appropriate incremental risk'' stating that this would better protect the rights of subjects. One of these comments suggested that the 1981 FDA regulatory requirement that ''there is available no alternative method of approved or generally recognized therapy that provides an equal or greater likelihood of saving the life of the subject'' is the standard that should be used in this regulation.

The agency disagrees with both suggestions. The protections provided by the rule are substantial and sufficient without these changes. The standard for risks, described in the regulation, are that they be ''reasonable'' in relationship to what is known of the medical condition of the potential class of subjects, the risks and benefits of standard therapy, if any; and what is known about the risks and benefits of the proposed intervention. The term ''appropriate incremental risk'' does not have a clearly different meaning, although it may imply greater precision than usually exists. In order to invoke this exception, the available treatments must be unproven or be regarded as unsatisfactory.

5. Section 50.24(a)(4)

59. Several comments suggested deleting or clarifying § 50.24(a)(4) concerning the ''practicability'' of conducting the research without the waiver. One comment requested clarification as to whether ''practicability'' only referred to whether there is sufficient time to obtain consent from a subject's legally authorized representative; and recommended that if this is the sole basis for determining practicability, it should be added to the regulation. Another comment noted that ''practicability'' should not refer to convenience, cost, or speed. One other individual commented that although certain institutions may be unable to perform specific acute injury research because of logistical considerations, it is likely that most research projects could be designed such that performance under existing rules for nonconsenting subjects would be possible in other locations. This comment cited a multicenter trial where only one institution requested a waiver.

One comment suggested that § 50.24(a)(2)(ii) is sufficient for determining whether a study can be done; this comment stated that the primary reason that it would not be practical to carry out the research without the waiver would be because it is not feasible to contact the legally authorized representative or family member before the intervention must be administered.

Another comment objected to § 50.24(a)(4) and argued that the rule should state that if there are any potential subjects otherwise eligible for a trial for whom consent from a legally authorized representative cannot be obtained, the provisions of § 50.24(a) may be utilized to include them, even if the trial could be carried out without

their participation, so long as all of the requirements for that section are met. This comment noted that if this section meant only that consent should be obtained wherever it can be, even when most subjects in a study do not have an available legally authorized representative, it would be unexceptionable, but the section goes beyond that to proscribe participation in a trial by patients without consent when the majority of eligible patients do have such consent available because in that case the study can be carried out ''practicably'' without those patients. This comment noted that it is the value of participation to the subject that permits an exception to the informed consent requirement; that implicit in the proposal is the view that most patients would choose a chance to receive promising rather than standard therapy that is known to have an often unsatisfactory outcome. Thus, to exclude patients unable to consent from this research is unethical, even if the study could be conducted with subjects for whom surrogate consent is possible.

The agency has carefully considered these comments, particularly the latter comment that in effect contended that the ''practicably'' requirement is inconsistent with the ethical basis for the rule because it implies that the exception to consent is available to serve the community's needs rather than the individual's. The agency included this requirement not because it thought the research was not in individual patients' interests, but because research without informed consent represents a more difficult and complex situation than research with consent, in that it is a kind of research with greater than usual ethical issues that should be taken only when necessary. This is because the agency believes it is generally preferable to obtain case-by-case consent even from a representative of the individual. Just as consent by the subject is preferable to consent by their representative, consent by the subject's representative is preferable to the procedure in this regulation. This does not mean that these procedures are inadequate or unethical; rather, it recognizes within the realm of ethically proper actions a hierarchy of values and that we should seek the highest level of those values feasible in this situation.

Similar considerations have arisen in the past. The National Commission for the Protection of Research Subjects of Biomedical and Behavioral Research argued that (wherever possible) clinical trials intended to benefit young children should first involve adult subjects, later older children as subjects, and finally trials in younger children (who cannot consent or assent). This is not because the trials in younger subjects are considered inappropriate or ethically doubtful. The agency understands the Commission to be saying that the principle of respect for persons of diminished autonomy applies in such a way that the less autonomy a subject possesses, the less suitable that subject is for research, even if the research shows promise. The Commission did not say to never involve persons with minimal or no capacity to exercise autonomy, but to do so only as a last resort.

It is critical to recognize that an investigation of a promising (but unproven) intervention is not carried out universally, i.e., studies are conducted in particular places. Similarly, although a parent of a young child could argue that his or her child should not have to wait for the trial in adults and older children to be completed before having an opportunity to participate in research, the Commission was not persuaded by that argument (although, in some cases, early trials in young children might be carried out). The Commission did not recognize the right of a needy person to gain access to a research protocol. In choosing among sites for a clinical investigation, for example, it is usual to select those in which the skills of investigators and availability of subjects appear to predict an ability to carry out the investigation successfully. Similarly, it is reasonable to consider, in deciding where or in whom to conduct an investigation, the ability of subjects to consent (or have consent given for them). Widely accepted ethical principles indicate that a decision to participate or not to participate in an investigation should, if at all possible, be made by a competent subject who should (as stated in the Nuremberg Code) be free of all force, fraud, fear, or coercion. An exception from the requirement for informed consent should be rare and narrow, confined to cases where consenting subjects are not reasonably available. In addition, participation in the research must hold out the prospect of direct benefit to the subjects and the investigation must be one that is capable of providing useful scientific/medical information.

If serving the interests of the subjects were considered sufficient alone, that would imply that potential subjects have a right to participate in the trial, an inappropriate consideration for an investigational use and unrealistic, because studies cannot in fact be carried out at all potential sites and in all patients.

The agency thus agrees with the comment that it is necessary for there to be value to the subject from participating in the research; but, given the general principle of obtaining informed consent where possible, does not think that such potential benefit is sufficient justification to include nonconsenting patients when it is reasonably possible to conduct the clinical investigation in subjects who can consent.

Therefore, if scientifically sound research can be practicably carried out using only consenting subjects (directly, or in most cases for the research contemplated in the rule, with legally authorized representatives), then the agency thinks it should be carried out without involving nonconsenting subjects. By practicable, the agency means, for example, (1) That recruitment of consenting subjects does not bias the science and the science is no less rigorous as a result of restricting it to consenting subjects; or (2) that the research is not unduly delayed by restricting it to consenting subjects.

6. Section 50.24(a)(5)(i)-(a)(5)(iii)—Community Consultation and Public Disclosure

The greatest number of comments were received on § 50.24(a)(5)(i) through (a)(5)(iii), which have been renumbered § 50.24(a)(7)(i) through (a)(7)(iii) in this final rule in order to have a more logical presentation of information. To assist readers, these sections will be referred to as § 50.24(a)(7)(i) through (iii) in the discussion that follows. While most comments supported the requirement for community consultation and public disclosure, many requested clarification, offered suggestions, or concluded that fulfilling these requirements would be impossible. Other comments questioned whose responsibility it would be to disclose—the clinical investigator, sponsor, or IRB. These comments are discussed in more detail below.

60. A number of comments suggested alternatives to the requirement for § 50.24(a)(7)(i) for consultation with representatives of the communities from which the subjects will be drawn. These included limiting this provision to only those diseases for which a patient advocacy organization exists; relying on the existing IRB mechanism that already requires inclusion of an individual not otherwise affiliated with the institution; requiring that IRB's have a community member or an ad hoc community consultant who is intimately involved with the projected research population; permitting an IRB to determine that balanced community consultation is not feasible and documenting and reporting

this determination to the sponsor and to FDA; increasing public participation in the IRB process by specifying acceptable kinds of individuals (e.g., clergy, local commissioners, police, paramedics) who should be added to the IRB (limited to two); having the IRB membership include individuals from the community groups from which subjects would come and ensuring that the preferences of those members were followed; establishing a standing community advisory board that would reflect the diverse values and beliefs of the community. This board could serve several IRB's within the same community. Another comment stressed that the IRB must take into account the diverse religious and community beliefs and attitudes about treatment of the dying and of research.

None of the suggested alternatives to § 50.24(a)(7)(i) would by themselves provide the protections of broad community consultation of this section. While an IRB may appropriately decide to supplement its members with consultants from the community, broader consultation with the community is needed for this type of research. The agency expects the IRB to provide an opportunity for the community from which research subjects may be drawn to understand the proposed clinical investigation and its risks and benefits and to discuss the investigation. The IRB should consider this community discussion in reviewing the investigation. Based on this community consultation, the IRB may decide, among other things, that it is appropriate to attempt to exclude certain groups from participation in the investigation; or that wider community consultation and discussion is needed. As described in the preamble to the proposed rule (60 FR 49086, September 21, 1995), IRB's should consider, for example, having a public meeting in the community to discuss the protocol; establishing a separate panel of members of the community from which the subjects will be drawn; including consultants to the IRB from the community from which the subjects will be drawn; enhancing the membership of the IRB by adding members who are not affiliated with the institution and are representative of the community; or developing other mechanisms to ensure community involvement and input into the IRB's decisionmaking process. It is likely that multiple methods may be needed in order to provide the supplemental information that the IRB will need from the community to review this research.

61. Another comment noted that tribal approval and not just consultation should be required and suggested that for American Indian/Alaska Native tribal governments, the regulation require approval by the tribal government for all research done within its jurisdiction. This comment suggested that the regulation permit a recognized government of the political community to disapprove research.

This regulation does not restrict or have an impact on any existing authority of tribal governments to review and approve or disapprove research that would otherwise be conducted on persons residing in tribal jurisdictional boundaries. If existing tribal authorities require tribal government approval of such research before it proceeds, then the tribal governments continue to have that authority. Thus, the agency thinks that adopting this suggestion is unnecessary.

62. Comments opposed to the community consultation required in § 50.24(a)(7)(i) suggested that the current requirement for a community representative on the IRB (56.107(a)) was adequate; that this would be burdensome for noncommercially sponsored studies; that it was an insurmountable goal and that there is no guarantee that an IRB could reach all impacted individuals. Other comments suggested that only a central agency such as FDA or the Public Health Service should decide because the clinical investigator will bias the outreach meetings to a disinterested community that would be unable to make knowledgeable decisions, and the community will be biased because the research would bring funding support to the community, and because it is difficult to define the community, especially for those institutions that receive patients from a large region or State. A number of comments suggested that community consultation could lead to IRB liability on the basis of failure to solicit adequate community participation in the decision process. Other comments noted that disclosure to the community does not substitute for consent and that unless one included information about the subject's right to refuse and how to exercise that right, community consultation would be inadequate.

As discussed previously, the agency does not think that the current IRB membership requirements adequately substitute for the community consultation called for in this rule. The agency thinks that community consultation provides a very important protection for research subjects and, therefore, every effort should be made by the IRB to involve, and consult with, the community from which research subjects may be drawn.

63. Other comments stated that without clear definition of terms, the vagueness of the requirement would lead to inadequate consultation and disclosure. Another comment noted that if minority or lower income populations were unlikely to agree to the research and they represented a large proportion of the potential research population, then the conduct of the research would violate the principle of justice because these populations would not share in its benefits or burdens.

The agency thinks that IRB's will ensure, through their review and oversight activities, adequate consultation and disclosure. It is impossible, without conscription, to ensure that each subpopulation shares both the benefits or burdens of all research. Achieving the principle of justice is a goal that must be balanced by other principles. In the case of a population that is unwilling to agree to participation in a research activity, honoring this population's unwillingness is, in effect, permitting the community to express its views.

64. A number of comments requested clarification of this requirement. These comments asked how the consultation should take place (newspaper, institutional newsletter, advertisement, local radio stations, meeting); who in the community needs to be informed and who may be legitimate representatives of the community; what the IRB does with the community response (e.g., can a community veto research, what if a small or a large number oppose the research, what is the sponsor or IRB's responsibility to respond to questions or requested changes in the research); how is an IRB to assess the effectiveness of the consultation (e.g., if there is a poor turnout at an adequately publicized meeting, is the IRB obliged to do more)? Another comment requested clarification of what the public representatives and representatives of the population at risk would be asked to do. One comment urged the agency to refrain from providing precise definitions for the various terms in § 50.24(a)(7)(i) through (a)(7)(iii) in order to permit IRB's adequate flexibility in making judgments.

Community consultation is likely to be multifaceted and to use a number of the mechanisms suggested by the comments. As described earlier, the IRB needs to provide an opportunity for broad community discussion. If, for example, there is poor turn-out at a meeting to discuss the research, an IRB may consider targeting specific

community representatives for inclusion in an additional meeting, or it may decide that the research was not found by the community to be objectionable. The IRB is responsible for listening and considering the community's support, concerns, etc., and then ultimately deciding whether the investigation should be modified, approved, or disapproved. The community is expected to provide input to the IRB on its support for or concerns about the research activity.

65. A number of comments requested clarification on who is responsible for the community consultation and disclosure requirements contained in § 50.24(a)(7)(i) through (a)(7)(iii). Most comments suggested that the IRB should be responsible for reviewing and approving the content and method of consultation and disclosure; the sponsor should be responsible for developing the plan for consultation with the community and for disclosure and provide this information to the IRB to review for adequacy.

Although a sponsor may provide to an IRB model information for use in consultation with the community and for disclosure, just as it may now provide a model consent form for a clinical investigation, it is the responsibility of the IRB to ensure the adequacy of the community consultation and disclosure requirements contained in § 50.24(a)(7)(i) and (a)(7)(ii).

66. Another comment recommended that the sponsor and clinical investigator should pay for the costs associated with the disclosure requirements.

The agency does not dictate the entity responsible for the costs related to research. However, the agency anticipates that the sponsor would normally incur the costs associated with disclosure to and consultation with the community.

67. Several comments on § 50.24(a)(7)(ii) suggested that for multicenter trials, disclosure be required once for each metropolitan area and that the disclosure be made by the sponsor or a designated institution in a notice that would list all institutions, investigators, and IRB contacts.

The agency would not object to such centralized disclosure if all of the responsible IRB's agreed that this is appropriate and acceptable.

68. Another comment suggested that instead of requiring disclosure prior to the commencement of the study, disclosure occur at periodic time intervals (e.g., every 2 years) and include a public notice of general issues, specific projects, results of the research, and permit public input.

It is the responsibility of the IRB to consider how to maintain the flow of information to the community. In addition to requiring disclosure to the community prior to the initiation of the clinical investigation, the IRB may determine that it is appropriate to require further disclosure at periodic intervals of time.

69. Another comment requested that the regulation specifically ban ''general disinformation campaigns'' by sponsors performing the research.

The agency thinks that such a ban is unnecessary and that IRB involvement in the disclosure process helps to eliminate the possibility that biased or misleading information will be disseminated. The information disseminated will be reviewed by the IRB to ensure its adequacy and balance.

70. A number of comments were opposed to the requirements for disclosure contained in § 50.24(a)(7)(ii). The comments suggested that they would take an exhaustive amount of time; could prevent valuable research because the investigator and institution could be targets of a poorly informed community; the investigator may not be the best individual to discuss the study; they could cause persons to not seek care; they would be burdensome for noncommercially sponsored studies; for parties with an interest in the research, a requirement for disclosure could lead to either a dishonest or incomplete disclosure of information; the regulation requires disclosure of less information than that which would be given to a research subject; that it is essential to include information about financial and economic incentives for the research; and that it is essential to permit public participation in the disclosure sessions.

As discussed previously, it is the IRB's responsibility to determine the information to be disclosed. As described in the preamble to the proposed rule, the IRB should consider how best to publicly disclose, prior to the commencement of the clinical investigation, sufficient information to describe the investigation's risks and benefits, e.g., relevant information from the investigator's brochure, the informed consent document, and investigational protocol. Initial disclosure of information will occur during the community consultation process. Disclosure of this information to the community will inform individuals within the community about the clinical investigation and permit them to raise concerns and objections.

71. Another comment suggested that the release of confidential information required by this section could serve as a disincentive for sponsors to conduct the research and that it would create a precedent that could affect companies not otherwise affected by the regulation.

The agency disagrees with this comment. While it is true that much information relating to clinical investigations is normally treated as confidential by sponsors, the agency believes that when a sponsor chooses to invoke the exception from informed consent contained in this rule that it is essential that reasonable disclosure occur to the community. The agency believes that the benefit to a sponsor of invoking the rule will outweigh concerns that a sponsor will have about disclosing information about the investigation. Because this disclosure is made only when the exception from informed consent is invoked, it will not create any precedent for companies not invoking the exception.

The agency notes that sponsors release research information to investigators and IRB's (for example, through the protocol and investigators brochure) and to potential subjects in the research through the informed consent process and informed consent form; this rule states that the same information should be released to the community so it can be informed as it considers the research.

FDA believes that American Indian and Alaska Native Tribal governments and communities currently require both presentation of the research protocol and reporting results to the community before they permit any research to occur on their reservation. Recent Phase 2 and Phase 3 trials of several vaccines (e.g., Haemophilus B, Hepatitis A, and rotavirus vaccines) have been done on reservations under those rules by the pharmaceutical companies sponsoring the research. Under this rule, no company is required to release additional information to a community if it does not want to have a waiver of consent for its emergency research.

72. One of these comments stated that information is a property right and to require that it be surrendered without compensation may violate the Fifth Amendment of the Constitution.

The agency disagrees with this comment. The Fifth Amendment requires that no private property be taken for a public purpose without just compensation. (U.S. Constitution, Amendment V.) One factor used to determine whether there has been a taking is whether the action interferes with the reasonable investment backed expectations of the owner of the alleged

property right. (*Kaiser Aetna* v. *United States*, 444 U.S. 164, 175 (1979).) Where a voluntary submitter of information is aware of the conditions under which the information must be disclosed, the submitter gains an economic advantage related to the submission (such as registration), and the disclosure is rationally related to a legitimate government interest, there is no taking. (*Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1007–8 (1984).) Under this rule, the disclosure is directly related to protecting the individual members of a community that may be involved in the clinical investigation without informed consent by providing the community with advance notice of the nature of the investigation and the possibility that they may be involved in the clinical investigation without their informed consent. Furthermore, the regulation provides a mechanism under which the sponsor may perform the clinical investigations and sets the conditions under which the disclosure will occur. Therefore, the regulation serves as advance notice that prevents a sponsor from having any reasonable investment-backed expectation concerning the information and, thus, there is no unconstitutional taking.

73. A number of comments raised questions about § 50.24(a)(7)(ii) including: what criteria would be used to determine that disclosure was adequate; when is the disclosed information to be provided to FDA; what is meant by ''sufficient'' and ''relevant''; whether it is sufficient prior to the study to simply post a notice on the bulletin board; who determines the adequacy of the disclosure; whether this places an obligation to ''disclose'' or to ''disseminate'' information to the community; what this disclosure is supposed to accomplish. Clarification was requested as to the method and scope of disclosure.

It is the responsibility of the IRB to determine the ''sufficiency'' of the information to be disclosed. The agency advises that this information could include, but may not necessarily be limited to, the information that is found in the informed consent document, the investigator's brochure, and the research protocol. The obligation to disclose information includes an obligation to disseminate information to the community. The purposes of disclosure are to provide community confidence in the role of the IRB and in its decisionmaking capability, to permit the community to express its concerns and possible objections to the research, and to inform the community so that it is aware that the research is to be conducted involving individuals from the community.

74. Another comment suggested that FDA and DHHS should provide IRB's with copies of disclosure forms.

The agency disagrees. It is the IRB's responsibility to determine the method for disclosure and information to be disclosed. A ''form'' would stifle IRB creativity and flexibility.

75. Comments on § 50.24(a)(7)(iii) suggested that the regulation specifically include the requirement that the underlying data be disclosed following the end of the study; another suggested that product approval decisions should be based on compliance with this requirement as well as the timeliness of disclosure.

The agency does not think that these comments require a change in the regulation. The agency thinks that it is necessary to provide comprehensive summary data from the completed trial to the research community in order to permit other researchers to assess the results of the clinical investigation. The agency thinks that there must be a scientific need to conduct clinical investigations involving subjects who are unable to consent; if previous investigations have already provided the scientific answer, this should be shared broadly with the research community. Sufficient information may be contained in a scientific publication of the results of the completed investigation; in other instances, it may need to be supplemented by additional information. The agency has modified § 50.24(a)(7)(iii) to clarify that the information to be disclosed is to include the demographic characteristics (age, gender, and race) of the research population.

In response to the suggestion that product approval decisions should be based on compliance with this requirement, the agency notes that it has a variety of compliance procedures that it may use to enforce this disclosure requirement.

76. Comments opposed to this disclosure requirement suggested that it would jeopardize the ability to publish the results of the research in peer review journals; it would foster unscientific conclusions without peer review; an investigator cannot control the peer review process to ensure publication; it could negatively influence future trial recruitment and force a sponsor to disclose proprietary information. Several comments suggested that in multicenter studies, one institution may get a negative result, while another may get a positive result; thus, disclosure could be misleading. Comments suggested that updating the disclosure could be burdensome and that the disclosure itself could be considered dissemination of off-label use information and advertising. Another comment questioned the need for such disclosure because the community would have no opportunity to modify the research; another commented that the disclosure would be so delayed and the community to which the disclosure would occur has such insufficient knowledge to understand the disclosure, that the disclosure would be meaningless.

Some comments requested that the agency define what and how disclosure is to be accomplished; what is ''sufficient'' and what would constitute the ''scientific community.'' One comment questioned whether the information that would be disclosed to the community and researchers would differ.

The comments opposed to this disclosure requirement illustrate a need for the agency to clarify what is intended by this section. For a multicenter investigation, the agency anticipates that the sponsor and/or lead investigators will be responsible for analyzing the results of the overall investigation, including the demographic characteristics of the research population, and that these results will be published (or reported in the lay press) within a reasonable period of time following completion of the investigation. Publication in a scientific journal or reports of the results by lay press, that would be supplemented upon request by comprehensive summary data, will enable the research community, e.g., researchers not connected to the clinical investigation, to learn of the research's results. Following publication, the IRB will be responsible for determining appropriate mechanisms for providing this information, possibly supplemented by a lay description, to the community from which research subjects were drawn. The usual rules of marketing and promotion apply to the disclosure of this information. The agency notes that it is common for the results of research to be reported in the lay press and published in peer reviewed journals.

77. One comment noted that the comment in the preamble that there would be a need for fewer subjects if disclosure took place did not recognize the possible need for replication of the research—a sound scientific principle.

In the preamble to the proposed rule, the agency stated that: ''[b]y broadly sharing the results of the research with the scientific community, there may be less need to replicate the research; therefore, fewer subjects may be needed

to obtain the same level of scientific knowledge and to advance emergency medicine.'' The agency recognizes that there is frequently a need to replicate research in order to verify its findings. The agency thinks, however, that broadly sharing both positive and negative results of research with the scientific community may reduce or eliminate unnecessary duplication of research that has been conducted and verified by others.

7. Section 50.24(a)(5)(iv)—Data Monitoring Committees

A number of comments on proposed § 50.24(a)(5)(iv), which has been renumbered § 50.24(a)(7)(iv) in this final rule, supported the requirement for the establishment of an independent data monitoring committee. These comments also requested clarification of the requirement and offered various suggestions. A discussion of these comments and the agency's response follows.

78. Editorial changes were suggested to this section to clarify the function of the data monitoring committee.

The regulation has been changed to clarify that the purpose of the data monitoring committee is to exercise oversight of the clinical investigation. In addition, on the agency's own initiative, the agency has changed ''data and safety monitoring board'' to ''independent data monitoring committee'' to conform to wording used in the international community.

79. Clarification was requested on the function, nature, authority, and responsibility of the committee. One comment requested citations to reference materials on data monitoring committees; another suggested that the regulation reference FDA's ''Guideline for the Monitoring of Clinical Investigations'' (53 FR 4723). One comment questioned whether the committee was simply advisory or whether it would have authority to halt a study. Other comments requested advice on the appropriate composition of the committee and another requested that FDA define its minimum size and expertise.

A number of comments requested clarification as to who is responsible for establishing and operating the data monitoring committee. One comment suggested that if it is the responsibility of the sponsor to establish the committee, then the term ''independent'' needs to be defined. Several comments noted that if the responsibility for establishing the committee changes, depending upon whether the study is multicenter with a commercial sponsor or a single center, noncommercially sponsored study, the circumstances for this shift in responsibility must be clearly described. Another comment asked for clarification as to who is responsible for establishing ''the preestablished stopping rules'' and how these rules are defined. Several comments suggested that it should be the responsibility of the principal investigator and/or the sponsor of the research to convene the committee. Another comment suggested that if it is the responsibility of the sponsor to convene the committee for multicenter studies, it should be explicitly stated in the regulations.

A number of suggestions were given for how the committee should be composed and its functions. The agency also received suggestions for alternatives to the establishment of such a committee. Several comments suggested that the IRB be responsible for approving the composition of the committee based on the complexity, size, and risks associated with the study. Others suggested that the committee should be composed of specific types of individuals, including scientists, community members, IRB representatives without a conflict of interest, data management representatives, biostatisticians, and noninvestigator clinicians. Others suggested that a link be created between the committee and the IRB and that specific reporting requirements between the two entities be established so that the IRB can have the necessary information to terminate or modify the study.

The agency recognizes that there is no clear consensus within the scientific community regarding the optimal model for data monitoring committees. It is not the intention of the agency to settle the debates that are ongoing in the scientific community at this time. Rather, the agency recognizes that there is diversity in this area; the role, functions, and responsibilities of data monitoring committees are evolving, and it may be the case that there is no single model that is optimal in all circumstances. The data monitoring committee is established by the sponsor of the research, as an advisory body to the sponsor. An independent committee is constituted of individuals not otherwise connected with the particular clinical investigation. A variety of expertise is required for an effective data monitoring committee. Typically included are clinicians specializing in the relevant medical field(s), biostatisticians, and bioethicists. The data monitoring committee receives study data on an ongoing basis on a schedule generally defined in the investigational protocol; based on its review of the data it may recommend to the sponsor that the clinical investigation be modified or stopped. In effect, it is responsible for making sure that continuing the investigation in its current format remains appropriate, on both safety and scientific grounds. A number of reasonable models for establishment and function of these committees are described and discussed in S. Ellenberg, N. Geller, R. Simon, S. Yusuf (editors), Practical issues in data monitoring of clinical trials (Proceeding of an International Workshop) *Statistics in Medicine*, vol. 12; 1993. If a sponsor accepts a data monitoring committee's recommendation to stop the investigation or to institute a major modification of the trial, the sponsor is required to notify FDA and all participating investigators and IRB's in a written IND or IDE safety report within 10 working days after the sponsor's initial receipt of the information. (See §§ 312.32, 312.56(d), and 812.150(b)(1)).

Protocols frequently contain statistical guidelines for permitting trials to stop prior to completing the protocol-specified accrual and followup, on the basis of definitive efficacy or safety differences between the treatments being compared.

80. Comments opposed to this requirement mainly cited concern that for single project/single institutional studies without a commercial sponsor, the cost and resources required for establishing such a body would be prohibitive and, therefore, important research would not be done. Another comment suggested that for noncommercially funded studies, the agency permit the investigator/sponsor to request a waiver of the requirement to FDA. If such a waiver were granted, timely data summaries could be submitted to FDA for review.

The agency disagrees with these comments. Trials of life-threatening conditions may discover favorable or adverse effects on survival during the trial. Requiring a data monitoring committee will help ensure that if it becomes clear that the benefits of the investigational intervention are established, or that risks are greater than anticipated, or that the benefits do not justify the risks of the research, the investigation can be modified to minimize those risks or the clinical investigation can be halted. The data monitoring committee is established by the sponsor of the research, as an advisory body to the sponsor. It is the appropriate role of the sponsor, not FDA, to receive and evaluate a data monitoring committee's

recommendation. The agency thinks that a data monitoring committee is a very necessary protection for the human subjects participating in this research. The agency thinks that the cost of operating such committees does not need to be prohibitive and that the cost is justified by the protections provided by having such a committee.

81. Others commented that the requirement for a data monitoring committee is unnecessary given that these studies already will have oversight by FDA and the IRB, both of which are independent of the research, as well as by the sponsor and the clinical investigator.

The agency disagrees. The FDA, IRB, and research sponsor, unlike the data monitoring committee, do not receive outcome data from the clinical investigation on an ongoing basis. Thus, oversight by these entities does not substitute for the requirement for a data monitoring committee.

82. Another comment pointed out that there was no need for such a committee for nondrug and nondevice studies if these involved no more than minimal risk.

This regulation is applicable only to clinical investigations involving products regulated by FDA.

83. One other comment suggested that this requirement would be unduly burdensome unless the sponsor paid for the cost of establishing and operating the committee (including paying for the salaries of members on the committee).

As discussed previously, FDA does not prescribe what entity pays for particular aspects of clinical research and review. However, if, as previously described, the data monitoring committee is established by the sponsor of the research as an advisory body to the sponsor, the agency believes that it is likely that the sponsor will pay the cost of establishing and operating the committee.

84. Another comment suggested that the make-up of the data monitoring committee should not be left to the sponsor or clinical investigator to decide and that ''independent'' should be defined as ''separate'' from the research team and sponsor. Another comment noted that financial interest is only one aspect of what constitutes a conflict of interest and that the preamble to the final rule should clarify both terms when describing what constitutes an ''independent'' committee.

The agency believes that the 1993 *Statistics in Medicine* publication of the proceedings of an international workshop (previously referenced) will assist sponsors in establishing appropriate data monitoring committees. As previously discussed, a variety of expertise is required for an effective data monitoring committee; the agency believes that it would be inappropriate for it to dictate the specific make-up of each such committee. In the preamble to the proposed rule, the agency defined ''independent'' to mean that the committee would be composed solely of individuals who have no financial interest in the outcome of the clinical investigation, and who have not been involved in the design or conduct of the investigation. The agency does not think that further clarification of ''independent'' is needed, but other factors can certainly be taken into consideration in individual cases.

85. One comment stated that the data monitoring committee should be charged with monitoring the makeup of the study population to ensure that it does not disproportionately consist of disadvantaged groups.

There is nothing to prevent a data monitoring committee from performing this type of monitoring. It is the responsibility of the sponsor to determine the scope of the data monitoring committee's responsibilities.

86. Some comments suggested alternatives to requiring the creation of a data monitoring committee, including requiring more frequent continuing review by the IRB or permitting a sponsor's monitor to perform the function. For noncommercially funded studies, it was suggested that the agency permit the IRB, with scientific and statistical consultants if needed, to perform the function.

An IRB, as well as a sponsor's monitor, may not have access to study data on an ongoing basis and may not have the variety of expertise required for an effective data monitoring committee. If an IRB, a subcommittee of the IRB, or some other preexisting institutional committee were to serve as a data monitoring committee, it would need to be constituted as a data monitoring committee when it functions in that capacity. The agency thinks that the duties and scope of activities of an IRB and a data monitoring committee are quite different and that it is important for separate entities to be established. The agency would not object, however, to an already established committee, such as an IRB, serving as a data monitoring committee as long as that committee was constituted to perform the duties of a data monitoring committee and operated as such separately and distinctly from its IRB activities.

87. As described previously, the agency has added a new section, § 50.24(a)(7)(v), to provide an additional protection to research subjects. This new section clarifies that if obtaining informed consent is not feasible and if a legally authorized representative is not available, the investigator will attempt to contact a family member of the subject to determine whether the family member objects to the subject's participation in the clinical investigation.

8. Section 50.24(a)(6)

88. Several comments were received on § 50.24(a)(6). One comment questioned whether the statement ''obtaining such consent may be feasible for some subjects'' referred to a circumstance in which obtaining consent may become feasible.

This comment did not take into account § 50.24(b). Section 50.24(b) concerns providing information to the subject, representative, or family member at the earliest feasible opportunity. Section 50.24(a)(6) is included to cover those instances where it may be feasible to obtain informed consent from the individual subject or subject's representative or contact a family member prior to entry into the clinical investigation.

89. Two comments suggested specific wording changes to acknowledge the IRB's responsibility to review informed consent procedures. One suggested that this section be reworded to state:

> The IRB has reviewed and approved informed consent procedures and an informed consent document for subjects or their legal representatives in situations where use of such procedures and documents is feasible.

The agency has incorporated wording similar to that suggested into the regulation. It is appropriate to recognize the informed consent process, and not just the document, as requiring IRB review and approval. In addition, in order to help ensure that the family member has sufficient information to make a decision about a subject's participation in a trial, the agency has added a sentence to the end of § 50.24(a)(6) that states ''[t]he IRB has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the clinical investigation consistent with paragraph (a)(7)(v) of this section.'' The agency anticipates that these procedures and information will likely parallel those approved by the IRB for use in obtaining informed consent from subjects or their legally authorized representatives.

90. A second comment suggested that this section be replaced with the following:

> The IRB has reviewed and approved: (i) the informed consent document and procedures to ask for informed consent by subjects or legally authorized representatives when obtaining such consent may be feasible for some subjects, (ii) the information provided and process to ask for a decision by subject or legally authorized representative to continue or discontinue participation after the research has begun, (iii) the information provided and procedures for consultation with representatives of the community, (iv) the information provided and procedures for public disclosure before the research, and (v) the information provided and procedures for public disclosure of the results of the research. All documents and procedures should also be submitted to the FDA for review.

This modification would require both the IRB and FDA to review and approve all documents or procedures that give information to the public, subjects, or representatives. The comment suggesting this modification notes that this is currently required for all nonemergency IND and IDE research.

The language suggested in this comment appears to duplicate requirements already contained in the regulation, that is: the requirement for review of informed consent documents is already contained in § 50.24(a)(6); the requirement for review of information concerning the subject's ability to discontinue participation in the research is contained in § 50.24(b); and the requirements for review of information used during consultation with or disclosure to the community are contained in § 50.24(a)(7)(i) to (a)(7)(iii). FDA has confidence in the IRB review process and does not think that it is necessary for all of these documents and procedures to be submitted to FDA for its review. The agency notes that conforming amendments to this regulation require that a copy of the information publicly disclosed under § 50.24(a)(7)(ii) and (a)(7)(iii) be submitted to the IND or IDE file and to Dockets Management Branch. The agency further notes that the statement that FDA currently requires all of these documents and procedures to be submitted for its review for all nonemergency IND and IDE research is incorrect. Rather, it is the IRB that traditionally reviews information that is to be provided to the research subject; the requirements for consultation with and disclosure to the community have not been previously required.

9. Section 50.24(b)

91. A number of comments were received on § 50.24(b) that suggested clarifying or tightening the requirement for informing subjects or their legal representatives. One comment recommended that the agency change the wording from ''at the earliest possible opportunity'' to the ''earliest feasible opportunity.'' Another comment suggested that the timeframe for notification was too open-ended and that there should be a specific time limit.

The agency agrees with the wording change and has incorporated it into the regulations. The term ''feasible'' incorporates the idea of ''practicability'' and recognizes that in some instances it may not be feasible to provide information to the subject (e.g., if the individual does not survive or is mentally incompetent), and to the subject's legal representative or family member (if the identity of the subject is never determined). The agency also thinks that the phrase ''at the earliest feasible opportunity'' establishes a reasonable time limit.

92. Another comment suggested deleting the initial phrase ''when possible and,'' noting that if the subject does not survive and no representative is found, then there will be no ''opportunity'' for a debriefing—thus, the initial phrase is not needed.

The agency agrees with this comment and for the reasons addressed in the previous response, has deleted this initial phrase from the regulation.

93. One comment suggested that the regulation require that if a representative is told and the subject's condition improves, the subject must also be informed as soon as possible. Two comments stated that if the subject dies, the subject's legal representative or family member must be provided with this information.

The agency agrees with these comments and has modified § 50.24(b) to state:

> If a legally authorized representative or family member is told about the clinical investigation and the subject's condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into a clinical investigation with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the clinical investigation is to be provided to the subject's legally authorized representative or family member, if feasible.

94. A few comments suggested that § 50.24(b) be revised to require documentation that the subject, authorized representative, or family member, were informed of the research. Another comment suggested that the agency require a signed consent document for continued participation in the research.

The agency thinks that it may not always be possible to develop a meaningful informed consent document for continued participation in the research, because the relevant information may vary significantly depending upon when it becomes feasible to provide the information to the subject or legally authorized representative. The agency is, therefore, not requiring that such a form be developed. The agency notes, however, that § 50.24(a)(6) places the responsibility on the IRB to review and approve ''informed consent procedures and an informed consent document'' for use with subjects or their legal representatives, and procedures and information to be used in consultations with family members, in situations where use of such procedure is feasible. Thus, a consent form will have been reviewed and approved for use in the clinical investigation. The agency has modified the wording in § 50.24(b) to specify that the ''information contained in the informed consent document'' is to be provided to the subject, legal representative, or family member. This will help to ensure that adequate information is provided to the subject, legal representative, or family member upon which a judgment can be made as to whether to continue or discontinue the subject's participation in the investigation.

It is up to the IRB to determine whether it is possible or desirable, given the nature of the clinical investigation, to have an actual document that could be signed for continued participation in the investigation. The agency notes that such a document, that would be signed after entry into an investigation, would not constitute consent for what had already occurred; it could, however, serve to document that the subject consented to continued participation in the investigation. The agency notes that §§ 312.60 and 812.140 require the clinical investigator to document data pertinent to each individual in the investigation. This documentation should include information that the subject, legally authorized representative, or family member was informed of the subject's inclusion in the clinical investigation, the details of the investigation, and other information contained in the informed consent document.

95. One comment on the subject's ability to discontinue participation in the research suggested that § 50.24(b) be reworded to state:

The subject or legally authorized representative should be presented with three options: continue fully, continue the intervention (if it is still taking place) but do not include the subject's data in the research database or results, or discontinue both the intervention and the use of the subject's data. The researcher will track the percentage of subjects or representatives choosing each option.

FDA regulations (see, for example, § 312.62 and § 812.140(a)(3)) require investigators to prepare and maintain adequate case histories recording all observations and other data pertinent to the investigation on each individual treated with the drug or exposed to the device. The agency needs all such data in order to be able to determine the safety and effectiveness of the drug or device. The fact of having been in an investigation cannot be taken back. Also, if a subject were able to control the use (inclusion and exclusion) of his or her data, and particularly if the clinical investigation were not blinded, the bias potential would be immense. Thus, the agency rejects this comment because it could prevent FDA from learning of an important effect of the product and significantly bias the results of the investigation.

96. One comment noted that in cases where withdrawal from a study would be life-threatening, FDA might consider additional guidance on counseling of subjects who have regained competence regarding their remaining in the study. Another comment noted that in some cases, a subject cannot be withdrawn from the study, particularly in the case of an implanted device, without some degree of medical harm—that is, the possibility of additional risk for the subject due to its removal. In this case there is a ''penalty'' for withdrawal from the research.

In all clinical investigations, when appropriate, it is the responsibility of an investigator to advise the subject of the consequences of a subject's decision to withdraw from the investigation and explain procedures for orderly termination of participation by the subject. (See § 50.25(b)(4)). If withdrawal from an investigation would or could be life-threatening, this consequence would need to be conveyed to the subject. The agency acknowledges that for certain interventions, such as implantation of an investigational device, there may be a serious consequence following a subject's decision to discontinue participation in the research. Similarly, for an investigational drug that cannot be halted immediately without medical consequences, the subject will need to be advised of the consequences of a decision to withdraw and procedures for withdrawal that would minimize risks to the subject.

10. Section 50.24(d)

A number of comments expressed concern about § 50.24(d) requiring a separate IND or IDE for studies conducted under § 50.24 if an IND or IDE already exists. Others expressed concern about requiring an IND or an IDE for products that have received FDA approval for other uses.

97. One comment suggested a modification to the wording of § 50.24(d) to state that: ''[s]uch IND or IDE should only include enough detail to satisfy the administrative oversight responsibilities of appropriate FDA officials.''

The agency disagrees with this suggestion. The information that is required to be in an IND or IDE is the information that is needed by the agency to conduct an adequate review of the application. As described in more detail below, if an IND or IDE exists, the separate application does not need to duplicate, and the sponsor does not need to resubmit, information that is contained in the existing IND or IDE; the separate application will need to reference the existing IND or IDE, contain a protocol for the clinical investigation that includes a description of how the investigation proposes to meet the conditions of this regulation, and contain only the study-specific information required by §§ 312.23, 812.20, and 812.25, as appropriate.

98. A number of comments suggested alternative approaches to the requirement contained in § 50.24(d) for products that have received marketing approval or for which there already exists an IND or IDE, noting that for these studies this requirement would be unduly burdensome, would create the need for unnecessary paperwork, and could effectively prohibit much needed research. One comment suggested that the agency limit the scope of this requirement or consider an alternative for single-center studies under which an IRB can waive consent if the investigator has informed the appropriate branch of FDA of the proposed study at least 30 days before submission to the IRB to allow FDA time to submit its views on the study for consideration by the IRB. This comment argued that such a requirement would provide sufficient opportunity for FDA involvement, while at the same time permit a focused FDA review, consuming fewer resources than would the review of an IND or IDE for each study. Other comments suggested that the agency has ample authority under existing IND and IDE regulations to require strict adherence to the 30-day review period and that the agency should simply require that emergency research protocols be clearly identified as such, submitted to the agency under an existing IND or IDE, and be unable to commence until 30 days after submission. These comments argued that this would meet the objective of the regulation without adding additional administrative burdens to the sponsor or investigator.

These comments may not appreciate why the agency is requiring the submission of an IND or IDE for each clinical investigation and the information that must be contained in such an IND or IDE. The submission of a separate IND or IDE will ensure that FDA reviews the application before the study may proceed. FDA review of the application will enable the agency to assess whether the available treatments for the condition are unproven or unsatisfactory, whether the intervention is reasonable, whether the study design will provide the information sought, and whether other conditions of the regulations are met. The amount of information needed in the application will differ depending upon the particular intervention. If an IND or IDE exists, the separate application does not need to duplicate, and the sponsor does not need to resubmit, information that is contained in the existing IND or IDE; the separate application will need to reference the existing IND or IDE, contain a protocol for the clinical investigation that includes a description of how the investigation proposes to meet the conditions of this regulation, and contain only the study-specific information required by §§ 312.23, 812.20, and 812.25, as appropriate.

If the investigation involves a product that has received marketing approval and the use is within the product's approved labeling, and without dosage or schedule change if for a drug product, the protocol may simply need to be accompanied by the product's approved labeling and a description of how the investigation proposes to meet the conditions of this regulation; no toxicology or manufacturing controls or chemistry information may need to be submitted. By submitting this information to the agency for review, the dual review by both FDA and an IRB will provide additional protections to the subjects of this research. The agency does not think that this requirement is unduly burdensome, creates unnecessary paperwork, or would prohibit needed research.

If the clinical investigation involves a product that has received marketing

approval, but involves a route of administration or dosage level or use in a subject population or other factor that significantly increases the risks (or decreases the acceptability of the risks) associated with the use of the product, or if the investigation involves an investigational product for which an IND or IDE does not exist, then the IND or IDE would need to include information to support the altered conditions of use, including toxicology, chemistry, and clinical information, as appropriate.

99. Another comment suggested that the agency should: (1) Include a mandatory internal ''ethics consult'' of the protocol and informed consent (this would necessitate requiring the submission of proposed informed consent documents with the IND/IDE application); (2) ensure that data on these submissions are captured in a readily retrievable form for future analysis and reporting so that information on the types and numbers of such submissions will be available; (3) be able to provide names and contact information for IRB's reviewing these protocols to ensure communication among these IRB's; and (4) respond actively in writing to any submission under these regulations either placing the study on ''clinical hold'' or indicating that the agency's review has been completed. This would ensure that the agency has completed its review before the study is permitted to proceed.

The agency's response to each of these suggestions follows: (1) The agency believes that it would be inappropriate to mandate an internal agency ''ethics'' consultation on each protocol proposing to invoke this exception from informed consent. It is within the province of the IRB to determine the ethical acceptability of a proposed clinical investigation. The agency does intend, however, to periodically review actions on these protocols to help ensure that the rule is implemented consistently and appropriately throughout the agency. The agency notes that under the IDE regulations the agency requires the submission of the proposed informed consent documents with the IDE application. (2) FDA thinks that it can best monitor the implementation of this rule by requiring the submission of a separate IND or IDE for these clinical investigations. By requiring the submission of a separate IND or IDE for these investigations, FDA expects to be able to provide information on their type and number. (3) The agency believes that it would be more appropriate for the sponsor of the research to facilitate communication among reviewing IRB's, instead of FDA performing this function. (4) FDA agrees that it should provide a written response to the sponsor following the agency's review of these protocols. FDA currently sends written responses following review of IDE's and treatment IND's and believes that sending letters here will serve as an additional protection for subjects. The response will serve to document that FDA has reviewed the clinical investigation and agreed that it may proceed, and the letters will result in the ability of sponsors to begin these investigations as expeditiously as possible. The agency has added language to §§ 312.20(c) and 812.20(a)(4)(i) to clarify that a clinical investigation involving an exception from informed consent under § 50.24 is not permitted to proceed without the prior written authorization from FDA. FDA will provide such notification 30 days after FDA receives the application, or earlier.

100. Section 50.24(d) raised a number of questions and caused confusion concerning its applicability to: Studies designed to compare the efficacy of two already marketed agents; the study of systems, processes, and procedures that are not designed to assess the efficacy of a test agent, but rather to determine the best process or technique for its use; a study comparing the effect of a standard of care with the use of no agent at all; and FDA exercising jurisdiction over studies that do not involve evaluating the safety or efficacy of a product subject to FDA regulation. One comment recommended that the regulations be expanded to apply to not only new devices or drugs, but also to new uses for existing devices and drugs, as well as to new therapeutic techniques and that researchers be permitted to seek FDA approval for research on drugs or devices already in use through alternate forms and/or procedures developed by FDA for this purpose.

This comment incorrectly interpreted the wording in § 50.24(d) to apply only to unapproved new devices or unapproved new drugs. As discussed earlier, § 50.24(d) also applies to clinical investigations involving already marketed products that are regulated by FDA. This regulation does not apply to research that is outside of FDA's regulatory jurisdiction—that is, studies involving no product subject to FDA regulation.

101. A number of examples were provided of studies that purportedly would have been prevented if an IND or IDE had been required: (1) High versus low dose epinephrine; (2) interposed abdominal counterpulsation CPR; (3) saline infusion during trauma; (4) effect of high pressure ventilation during CPR; (5) studies on sodium bicarbonate during CPR; (6) studies on MAST trousers during CPR; and (7) comparison of various intravenous crystalloid solutions in shock-trauma. The application of this requirement to these types of studies was described, by at least one comment, as the ''fatal flaw'' in the regulation. Other comments suggested that the broad scope of this requirement would be wasteful of sponsor resources in terms of filing the IND and IND annual reports, wasteful of FDA resources in terms of reviewing such studies, cause unnecessary paperwork, and would suppress necessary studies.

As discussed previously, the agency believes that it is necessary to require an IND or IDE for these types of clinical investigations and it does not believe that this requirement is unduly burdensome or that it will prevent needed research. The information required in a sponsor's annual report would not increase because of the requirement for a separate IND or IDE. The sponsor would simply need to prepare a separate cover letter and excerpt the information from the other IND's or IDE's annual report, and file it in the separate IND or IDE.

102. Several comments suggested that the IND/IDE regulations could be revised to allow for a 30-day review period for those studies that qualify for this exemption; that sponsors would voluntarily agree to wait 30 days for agency review of such studies; or that the agency could place ''on hold'' for 30 days such studies in order to allow for agency review.

FDA thinks that the most efficient way for the agency to ensure that these clinical investigations are reviewed by the agency before they commence is to require the submission of a separate IND or IDE for that investigation. FDA is concerned that to allow these investigations to be submitted as amendments to existing IND's or IDE's could be confusing to sponsors and might lead to these investigations beginning before FDA review. This is because the agency's current regulations do not require a 30-day wait for amendments; they can begin immediately following submission to the agency and receipt of IRB approval. The agency thinks that this is a simple and nonburdensome mechanism that achieves an important protection for subjects in this research in which subjects may be enrolled without informed consent.

11. Section 50.24(e)

103. Most of the comments on § 50.24(e) objected to FDA modifying

the traditional reporting/information flow from IRB to clinical investigator to sponsor and the reverse. These comments requested that the agency retain this flow of communication in the rule.

The agency disagrees with these comments. Although FDA recognizes that the sponsor's interaction with the IRB should primarily occur through the investigator who conducts the clinical investigation, FDA has never prohibited direct communication between the sponsor and the IRB when doing so would result in a more efficient flow of information. For clinical investigations involving medical devices, FDA requires direct communication between the sponsors and the IRB's in a number of instances. (See, for example, multiple paragraphs in § 812.150(b).) The agency thinks that it is appropriate for the IRB to communicate directly with the sponsor and for the sponsor to communicate directly with the IRB when this improves efficiency and/or safety, as it does in this regulation. The agency has amended this section and its related conforming amendments to specify that the IRB shall document its findings and provide them promptly in writing to the investigator and the sponsor of the clinical investigation when an IRB determines that it cannot approve the investigation because the investigation does not meet the criteria in the exception or because of other relevant ethical concerns. The agency thinks that this is the most efficient mechanism to ensure that both the investigator and sponsor are advised of the IRB's findings in a timely manner.

104. In a related comment, clarification was requested for studies in which there is no commercial sponsor and whether it is then the responsibility of the institution or the individual investigator to carry out the requirements specified in this section (as well as in the conforming amendments of §§ 56.109(g), 312.30, and 312.54).

Whether or not there is a commercial sponsor, each clinical investigation has a sponsor and it remains the sponsor's responsibility to carry out the requirements assigned to the sponsor in this section. (I.e., if the investigation is investigator-sponsored, the investigator is the sponsor of the research and, therefore, the investigator assumes all the responsibilities of the ''sponsor.'')

105. Another comment suggested that when an investigator is proposing a previously IRB-rejected protocol, the investigator is ethically obligated to disclose the rationale of the earlier rejecting IRB.

The agency agrees with this comment, but it believes that no change is needed in the regulations. The requirements in § 50.24(e) will compel a sponsor to disclose to IRB's that have reviewed or are asked to review a clinical investigation the findings of an IRB that could not approve the investigation because the investigation does not meet the criteria in this exception provided under paragraph (a) of § 50.24 or because of other relevant ethical concerns.

106. Another comment suggested that in order to avoid delay or failure to convey information about previously disapproved protocols, the IRB should submit information directly to FDA.

The agency disagrees with this comment. The conforming amendments (§ 312.54(b) and § 812.47(b)) require a sponsor to monitor these studies to identify when an IRB determines that it cannot approve the research because it does not meet the criteria in § 50.24(a) or because of other relevant ethical concerns, and to promptly provide this information in writing to FDA. The sponsor is, therefore, obligated to submit this information promptly to the agency.

107. Another comment suggested that sharing IRB research rejection information compromises the autonomy of the IRB and that it will make impartial decision making more difficult.

The agency disagrees and believes that human subject protections will be enhanced by sharing of this information.

108. A number of comments and questions addressed the phrase ''substantially equivalent clinical trials.'' Several comments noted that a given sponsor may not be aware of a substantially equivalent clinical trial proposed by another sponsor; thus, FDA and/or OPRR should be responsible for ensuring that communication about such trials takes place. One suggestion was for FDA to establish an on-line registry at FDA of studies that have applied for waiver of consent; this registry could be searched by IRB's and investigators to determine which other IRB's have reviewed the same or substantially equivalent trials.

The agency intended this requirement to refer to clinical trials with the same sponsor. The regulation has been modified to clarify this issue.

109. One comment suggested that the extent of this reporting (of ''disapproval'' information) should be defined in the preamble, with the minimum content of such a report contained in the regulation.

Existing § 56.109(d), redesignated as § 56.109(e) requires an IRB to ''notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity.'' It states that ''[i]f the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision.* * *'' The new sentences to § 56.109(e) requires the IRB to notify the investigator and sponsor in writing when an IRB determines that it cannot approve the research because it does not meet the requirements of § 50.24(a) or because of other ethical concerns. FDA has revised the wording of § 56.109(e) to make it explicit that this written notification must include a statement of the reasons for the IRB's determination. The correspondence from the IRB should contain sufficient information for a receiving IRB to understand the concerns of the initial IRB.

110. One comment noted that if it is the agency's concern that a sponsor may minimally modify the rejected proposal (i.e., a substantially equivalent trial) and submit it to another IRB, that should be clarified and prohibited. Another questioned whether ''equivalent'' referred to medical conditions, treatments compared, subject populations, or something else. Another comment questioned whether ''substantially equivalent'' only applies to other trials with the same drug/device; if the sponsor subsequently requests an exemption for a similar trial with another drug in the same class must the sponsor disclose the IRB findings about the first drug.

By ''substantially equivalent'' the agency means other clinical investigations that propose to invoke this exception from informed consent and that involve basically the same medical conditions and investigational treatments. As noted previously, the agency intends this requirement to refer to clinical investigations conducted by the same sponsor.

111. Another comment questioned who is expected to make the determination that a study is ''substantially equivalent.'' This comment described a potential situation whereby an IRB rejected a protocol as written and the sponsor then modified the protocol according to the IRB's recommendations. This comment, as well as others, questioned whether, in a multicenter study, the other centers that approved and initiated the initial protocol would have to review this trial again.

It is the sponsor's responsibility to determine that a study is ''substantially

equivalent.'' If, in the scenario described, a protocol invoking this exception is modified by the sponsor in order to respond to IRB concerns that it does not meet the criteria in § 50.24(a) of the exception or because of other relevant ethical concerns, and it is a multicenter study, then the IRB's written findings are to be disclosed to other centers that either are, or may be, participating in the study. If there is a change in a protocol in a multicenter trial, there is re-review of the protocol by all the IRB's of the institutions participating in the multicenter trial. If the change is minor, it may be eligible for expedited review under § 56.110, which permits the IRB to use an expedited review procedure to review minor changes in previously approved research during the period for which approval is authorized. If the change is significant, it would need to be reviewed by the full committee. It is the sponsor's responsibility to determine if it has a substantially similar protocol necessitating information dissemination.

112. One comment noted that the current wording of § 50.24(e) appeared to require disclosure of IRB disapprovals only to future IRB's and investigators. This comment suggested that the regulation should specify that investigators already participating and IRB's that have already approved the study be notified of an IRB disapproval.

The agency agrees with this comment and has modified § 50.24(e) accordingly. The agency thinks that this information is relevant to IRB's that have reviewed and approved the study and that will be responsible for conducting continuing review of the research as well as to IRB's that will be asked to review the study. Although this information may not change an IRB's final determination on the approvability of a particular protocol, it will allow access to, and the ability to consider, information that negatively influenced another IRB.

113. Several comments questioned the timing of IRB review and submission of the IND. One comment suggested that IRB review precede the submission of the IND to prevent agency review of studies that would eventually be found to be unacceptable to the reviewing IRB's. This comment suggested that the regulations be modified to indicate that if an IRB refuses to approve the study, the sponsor could request a pre-IND meeting with FDA to discuss the reasons for the disapproval. Another comment suggested the opposite, noting that many IRB's will not consider a protocol under an IND or IDE until after FDA approval because FDA review includes aspects that are not within the scope of IRB review. Thus, FDA should agree to review and approve IND's and IDE's that contain a firm and binding sponsor commitment to local IRB review. This comment noted that implementation of the § 50.24(a) provisions will be policed by OPRR and, thus, both FDA and the public can be ensured that the sponsor's advance commitment will be met. This comment suggested the following language:

§ 312.40(b)(3) For a separate IND submitted under § 312.20(c), if a sponsor provides a commitment to local IRB establishment and approval of procedures for compliance with § 50.24(a).

§ 812.30(a)(3) For a separate IDE submitted under § 812.20(a)(4), if a sponsor provides a commitment to local IRB establishment and approval of procedures for compliance with § 50.24(a).

§ 50.24(c) [Add the following sentences] The IRB must document the additional protections provided under subsection (a)(5) in writing to the sponsor of the research. The sponsor of the research must share this information with FDA.

The agency does not agree that it should mandate the timing of IRB and FDA review. As evidenced by the comments, sponsors currently differ in whether they request FDA or IRB review first. FDA does not believe it should reduce the sponsor's flexibility to determine the sequence of IRB and FDA review. The agency notes that FDA may find a clinical investigation unacceptable or require modifications in an investigation which, if it had been reviewed by an IRB, would require re-review by the IRB.

The comment concerning an IRB refusal to approve a study and the need for a pre-IND meeting does not explain the reason such a meeting should occur. As described in 312.47(a): ''[m]eetings between a sponsor and the agency are frequently useful in resolving questions and issues raised during the course of a clinical investigation. FDA encourages such meetings to the extent that they aid in the evaluation of the drug and in the solution of scientific problems concerning the drug, to the extent that FDA's resources permit.'' Thus, while there is nothing to prevent a sponsor from requesting a meeting with FDA, it is not clear that a sponsor would want to meet with the agency to discuss why an IRB did not approve its investigation.

In response to the comment that FDA should agree to review and approve IND's and IDE's that contain a firm and binding sponsor commitment to obtain local IRB review, FDA agrees. FDA will accept a sponsor's commitment in an IND or IDE application to obtain IRB review in this situation as it does in others. The agency understands that IRB review may follow submission and review of the investigation by FDA. Thus, where an IRB has not yet reviewed and approved the protocol that the agency has reviewed and allowed to proceed, an IRB's review and approval, as well as community consultation and disclosure, are then required prior to subjects entering the investigation.

The agency notes that OPRR does not enforce the provisions in § 50.24(a) for clinical investigations that are regulated by FDA. Instead, FDA oversees the quality and integrity of the research that is conducted under the agency's jurisdiction through its Bioresearch Monitoring Program. FDA's Bioresearch Monitoring Program includes inspections of clinical investigators, sponsors, and IRB's to evaluate whether each entity's obligations are met.

Finally, the agency does not believe there is a need to adopt the additional language suggested regarding IRB review because the language is redundant with existing regulations, i.e., the regulations already require sponsors to obtain the investigator's commitment to obtain IRB review (see, for example, 312.53(c)(1)(vii)); IRB's are required to ''find and document'' each item under (a), including (a)(6)) (see § 50.24(a)); and IRB's are required to provide information that has been publicly disclosed under § 50.24(a)(7)(ii) and (a)(7)(iii) to the sponsor and the sponsor is required to provide this information to FDA (see, for example, § 56.109(g), § 312.54(a), § 601.51(d), and § 812.38(b)(2)). In addition, as previously described, FDA expects the protocol for the investigation to include a description of how the investigation proposes to meet the conditions of this regulation.

114. A number of comments questioned the value of § 50.24(e) and suggested that it be deleted. The reasons given in these comments included: its impracticality, its irrelevance to local decision making, the inappropriate line of communication (previously discussed), and the precedent that it establishes for requiring public disclosure of IRB decision-making (potentially leading to extra liability from disclosure for the IRB). Comments also questioned whether the requirement would apply to unsponsored research (discussed above), noted that if FDA needs this information it can request it from the IRB, and asserted that it is inappropriate for the IRB to apparently review a study and give feedback to FDA when IRB's depend on FDA to conduct an adequate preliminary review of such studies. Comments also noted the paperwork

burden on IRB's (which may need to write a very different type of document than the one that it would typically write in rejecting a study), and that this requirement could undermine the authority of the IRB if it were obliged to report each rejection to FDA. One other comment questioned the value of this requirement noting that one IRB's decision to reject a study would have no impact on the substantive, factual medical and other information available to all IRB's. This comment noted that the relevance of this evaluation for an IRB that has already approved a study would be even more untenable and burdensome and could potentially be disruptive to the sponsor and ongoing studies. Another comment noted that this requirement is ambiguous and questioned whether the sponsor would need to provide the report exactly as provided by the IRB or whether the sponsor could summarize the IRB's findings. This comment also questioned how FDA would use this information.

The agency disagrees with these comments. The agency does not think that this will create an additional recordkeeping burden on IRB's because these findings are already required to be documented by the IRB under § 56.109(e) and § 56.115(a)(2). As noted earlier, the agency has modified this section to require the IRB to provide these findings to the clinical investigator and to the sponsor of the research. The agency has a great deal of respect for the IRB system and for decision-making that occurs by IRB's. Given the nature of this research, the agency thinks that it is important for entities with responsibility for allowing these investigations to proceed to consider IRB concerns related to these investigations. The agency will expect the sponsor to forward the report exactly as it was provided by the IRB; however, the sponsor may choose to provide additional relevant information to the agency along with the IRB's findings. Similarly, if an IRB chooses to prepare more extensive documentation of its findings than that which is required by § 56.109(e), § 56.115(a)(2), and § 56.115(a)(4), there is nothing in this regulation that would prevent the IRB from so doing.

115. One comment noted that an IRB may reject a study based on the ethical criticism of a single member. This comment argued that if an IRB raised a relevant ethical issue, the sponsor, which is the entity with the greatest legal liability, should evaluate the issue and if the concern is found to be valid, it should be up to the sponsor to decide to communicate the issue to other IRB's. This comment suggested that abridging the sponsor's responsibility will lead to less independent thinking by IRB's, slower progress in expanding clinical trials, and a ''mass'' of less than well-considered ethical comments being presented to FDA for its consideration.

The agency intends to monitor and evaluate the implementation of this regulation on an ongoing basis. While the agency doubts that such effects will be caused by this requirement, the agency will evaluate the impact of this requirement on IRB's and the conduct of clinical investigations. The agency notes that if an IRB ''rejected'' an investigation on the basis of an argument put forth by a single IRB member, it would appear likely that member's arguments were persuasive to the whole IRB.

116. The agency received a number of comments that suggested editorial or technical changes to clarify the language contained in the regulations.

The agency has incorporated editorial and technical changes where the agency thinks that they add clarification to the language in the regulation. In certain cases, the agency disagreed that the editorial or technical changes would clarify the language in the regulation.

C. Conforming Amendments

A variety of comments were received on the conforming amendments. Some of these have been previously discussed. Others, that relate solely to the conforming amendments, are discussed below.

117. One comment objected to § 56.109(c)(1) which allows an IRB to waive the requirement that the subject sign a written consent form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context. This comment noted that one cannot ensure that informed consent is obtained, if a written consent form is not signed.

The language contained in § 56.109(c)(1) has been in effect since 1981 and applies to research that involves no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context. This section does not apply to research conducted under the provisions of this rule.

118. One comment suggested that § 56.109(c)(2) be modified to include the suggestion that the IRB should seek additional input, as necessary, from sponsors or other experts to aid them in their decision making.

The IRB currently is free to consult with anyone that it wants; no change in the regulation is needed.

119. One comment on § 56.109(d) suggested that the discretion suggested by the use of the term ''may'' was inappropriate and that this term should be changed to ''must'' in order to require the investigator to provide subjects with a written statement. Another comment questioned whether the proposed § 56.109(d) replaced the current (d) or extended it.

Proposed § 56.109(d) was taken from the existing IRB regulation; it was the last sentence in § 56.109(c). Section 56.109(d) became proposed § 56.109(e) with an additional sentence added at the end. In writing this conforming amendment, the agency intended new § 56.109(d) to apply only to § 56.109(c)(1)—that is, to studies that involve no more than minimal risk and involve no procedures for which written consent is normally required outside the research context. The agency has modified § 56.109(d) to make this clear; on its own initiative, the agency has also corrected a typographical error in this paragraph. The agency notes that § 50.24(b) describes the requirements for emergency research.

120. One comment suggested that § 56.109(e) does not match the intent of § 50.24(e), in that not only the notice of disapproval, but also the reason and/or concern needs to be provided. This comment suggested that § 56.109(e) be modified to include the following sentence: ''The written notification shall include a statement of the reasons for the disapproval.''

The agency agrees with this comment and had intended that the reasoning behind the IRB's determination be provided. The agency notes that it is not only IRB disapprovals, but also an IRB's determination that it cannot approve an investigation, that triggers this requirement.

121. Another comment suggested that elsewhere in the regulations, there is allowance given for discussion between an investigator whose study has been disapproved and the reviewing IRB. This comment suggested that similar wording, or clarification, should allow for sponsor and IRB negotiation.

The agency disagrees with this comment. The purpose of this requirement is to enhance, not limit, communication of information between IRB's, investigators, sponsors, and FDA. § 56.109(d), renumbered as § 56.109(e), continues to state that ''[i]f the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.'' There is nothing in this regulation that prevents this

opportunity for discussion from occurring. It is up to the IRB, however, to determine when a final determination has been made on a study.

122. One comment questioned whether § 56.109(e) should be paragraph (f) (a new paragraph), referring only to documentation of refusals to approve.

Old 56.109(d) which concerns decisions to approve, disapprove, or modify research, was renumbered in the proposal as new section 56.109(e). Thus, this paragraph does address documentation of disapprovals.

123. One comment recommended that the responsibility for determining when disclosure has occurred be assigned to the IRB's and that IRB's should be required to notify the sponsor so that the sponsor could notify FDA. This comment would affect §§ 56.109(g), 314.430(d), 812.38(b)(2) and 812.47(a).

The responsibility for determining when information has been publicly disclosed is a dual responsibility of the IRB and sponsor. Section 56.109(g) requires the IRB to provide a copy of information that has been publicly disclosed to the sponsor of the research; the sponsor is responsible for notifying FDA. Sections 312.54(a) and 812.47(a) require the sponsor to monitor the progress of all research invoking § 50.24 to determine when the public disclosures occur and to promptly submit copies of the information that has been publicly disclosed to the IND or IDE file and also to the Dockets Management Branch.

124. One comment recommended that proposed section 56.111(c) be deleted, noting that this section is a documentation statement, rather than an approval criterion. This comment notes that proposed § 50.24(a) contains similar language requiring such documentation and, therefore, no benefit is evident in the proposed modification to § 56.111.

The agency agrees that there is no need for proposed section 56.111(c). Under § 50.24(a), the IRB is responsible for finding and documenting that each of the safeguards are met; this is also covered broadly by § 56.111(a)(4).

125. Several comments suggested that § 312.54(a) be modified to state that the ''sponsor shall document'' rather than ''determine'' when public disclosure has occurred. These comments suggested that ''determine'' could be misconstrued to mean that the sponsor shall ''decide'' what constitutes adequate public disclosure, and that it is the responsibility of the IRB to make that determination.

The agency agrees that it is the responsibility of the IRB to determine what constitutes adequate disclosure to the community; however, it is the responsibility of the sponsor to provide copies of the information disclosed to the agency. The language in § 312.54(a) has been modified to clarify that when the sponsor receives from the IRB information concerning the public disclosures required by § 50.24(a)(7)(ii) and (a)(7)(iii), the sponsor is required to submit the information that was disclosed to FDA.

126. One comment recommended that the reference to § 50.23 be removed from § 312.60 but provided no explanation.

FDA rejects this comment and believes that the reference to § 50.23 in § 312.60 is needed to identify the various provisions in the regulations permitting an exception to informed consent. Because § 50.23 provides different criteria for permitting an exception to the informed consent requirement, the agency is retaining reference to this section in § 312.60.

127. One comment questioned the meaning of the modification to § 314.430 and whether it means that Freedom of Information (FOI) requests for this information will not be processed, or that requests for information publicly disclosed under § 50.24(a)(7)(ii) and (iii) must be submitted to the Dockets Management Branch.

Requests for copies of this public disclosure information are to be submitted as Freedom of Information Act requests. FDA has amended § 312.130(d), 314.430(d)(2), 601.51(d)(2), 812.38(b)(4), and 814.9 to clarify that persons wishing to request the publicly disclosed information in the IND or IDE that was required to be filed with the Dockets Management Branch shall submit a request under the Freedom of Information Act. Alternatively, persons wishing to view this information may visit FDA's Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. A special docket, Docket Number 95S–0158, has been established for this purpose. To facilitate retrieval of information that may pertain to a single clinical investigation, FDA is specifying that information submitted to the docket must be identified by the IND or IDE number.

128. This comment also suggested that § 312.130 be modified by the addition of

312.130(d) For investigational new drug applications involving an exception from informed consent under § 50.24 of this chapter, sponsors are required to submit copies of information that has been publicly disclosed under § 50.24(a)(5)(ii) and (a)(5)(iii) [renumbered § 50.24(a)(7)(ii) and (a)(7)(iii)] to the IND file and to Dockets Management Branch. Copies of this information will be available to the public from the Dockets Management Branch.

The agency agrees with this comment that it would be clearer if § 312.130(d) were modified. Consistent with the discussion above, the agency has amended § 312.130 to add a new paragraph (d) which contains similar language to that suggested in the comment.

129. On the agency's own initiative, FDA is amending the clinical hold regulation at § 312.42 to explicitly include a failure to comply with the requirements in § 50.24 as a reason for clinical hold. The agency believes this revision will remove any confusion that may exist regarding the authority to stop, where warranted, an investigation invoking this rule. The agency does not believe a change is needed to the device regulation at § 812.30 on disapproving or withdrawing approval of an IDE because that regulation currently expressly authorizes FDA to take such action for failure to comply with ''any other applicable regulation or statute, or any condition of approval imposed by an IRB or FDA.''

D. Preemptive Effect

In developing these rules, FDA considered whether there were existing State or local legal requirements governing informed consent that might limit or preclude participation in research in circumstances that otherwise could be authorized by IRB's acting in accord with these proposed rules. FDA recognizes that nationally uniform informed consent requirements governing this type of research could serve to lessen the current confusion created in the research community by differing Federal regulations. FDA also recognizes that the existing Federal Policy for the Protection of Human Subjects, which governs much of this type of research, currently provides that it does not affect any State or local laws or regulations that may otherwise be applicable and that provide additional protections for human subjects. Accordingly, FDA specifically invited comment on whether there are existing State or local legal requirements that might limit or preclude participation in research in circumstances that otherwise could be authorized by IRB's acting in accord with these proposed rules and whether any such requirements should be preempted by Federal requirements. As discussed previously, FDA received limited information on existing State or local legal requirements that might limit or preclude participation in research covered by this rule. The agency also

received a number of comments in favor of the status quo. The information submitted on existing State or local legal requirements was insufficient for the agency to justify changing the existing Federal policy for the protection of human subjects, which governs much of this type of research, and which currently provides that it does not affect any State or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects. Thus, the agency does not intend to preempt existing State or local requirements that provide additional protections for human subjects.

IV. Effective Date

These regulations are effective November 1, 1996. IND's and IDE's that intend to invoke this rule may be submitted to the agency on or after the publication date of this rule and must include a description of how the clinical investigation proposes to meet the conditions of this regulation. These investigations cannot begin until the rule is effective, the agency has reviewed the investigation against the requirements contained in this final rule, a letter has issued to the sponsor advising the sponsor that the investigation may proceed, the investigation has been reviewed and approved by an IRB, and the community consultation and disclosure required by this rule have occurred.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

VI. Executive Orders

A. Executive Order 12606: The Family

Executive Order 12606 directs Federal agencies to determine whether policies and regulations may have a significant impact on family formation, maintenance, and general well-being. FDA has analyzed this rule in accordance with Executive Order 12606, and has determined that it has no potential negative impact on family formation, maintenance, and general well-being.

FDA has determined that this rule will not affect the stability of the family, and particularly, the marital commitment. It will not have any significant impact on family earnings. The rule would not erode the parental authority and rights in the education, nurture, and supervision of children.

B. Executive Order 12612: Federalism

Executive Order 12612 requires Federal agencies to carefully examine regulatory actions to determine if they would have a significant effect on Federalism. Using the criteria and principles set forth in the order, FDA has considered the rule's impact on the States, on their relationship with the Federal Government, and on the distribution of power and responsibilities among the various levels of government. FDA concludes that this rule is consistent with the principles set forth in Executive Order 12612.

Executive Order 12612 states that agencies formulating and implementing policies are to be guided by certain Federalism principles. Section 2 of Executive Order 12612 enumerates fundamental federalism principles. Section 3 states that, in addition to these fundamental principles, executive departments and agencies shall adhere, to the extent permitted by law, to certain listed criteria when formulating and implementing policies that have federalism implications. Section 4 lists special requirements for preemption.

Section 4 of Executive Order 12612 states that an executive department or agency foreseeing the possibility of a conflict between State law and federally protected interests within its area of regulatory responsibility is to consult with States in an effort to avoid such conflict. Section 4 of the Executive Order also states that an executive department or agency proposing to act through rulemaking to preempt State law is to provide all affected States notice and opportunity for appropriate participation in the proceedings. As required by the Executive Order, States have had, through this rule's notice of proposed rulemaking, an opportunity to raise the possibility of conflicts and to participate in the proceedings (section 4(d) and (e)). Consistent with Executive Order 12612, FDA requested information and comments from interested parties, including but not limited to State and local authorities, on these issues of federalism. FDA is not preempting State law through this rulemaking.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under 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 regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The agency has determined that this rule is a ''significant regulatory action'' as defined in section 3(f)(4) of the Executive Order because it raises novel policy issues.

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 any significant impact of a rule on small entities. This rule is a deregulatory action insofar as it will permit research to proceed that could not proceed under existing regulations, and because relatively few research projects will need to meet the requirements of this rule. Therefore, under the Regulatory Flexibility Act 5 U.C.C. 605(b), the Commissioner certifies that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Paperwork Reduction Act of 1995

This 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 (Pub. L. 104–13, May 22, 1995), and that are already approved under Protection of Human Subjects—Recordkeeping Requirements for Institutional Review Boards, part 56 (21 CFR part 56) under OMB Control No. 0910–0130; Investigational New Drug Application under OMB Control No. 0910–0014; and Investigational Devices Exemption Reports and Records, part 812 (21 CFR 812) under OMB Control No. 0910–0078. Modifications to these approved information collection requirements are underway or will be made at the time that each information collection is renewed. The agency believes that this is appropriate because this rule has only a minor impact on these existing information collection packages.

One comment was received on the agency's estimate of paperwork burden. That comment noted that the estimate of 20 sponsored investigational drug and 10 sponsored device studies that will require waiver of consent may be correct for multicenter studies sponsored by manufacturers. However, based on results from an informal survey of

Emergency Medicine Research Directors conducted in May 1994 and again in December 1994, there may be a substantial number of single investigator/single institution studies that will also involve waiver of consent. The comment, thus, concluded that the agency had underestimated the total number of studies that will be advanced for consideration of a waiver of consent.

This comment is correct; the agency did not consider single-investigator/single-institution studies. In response to this comment, the agency has estimated that there will be approximately 25 single-institution studies requiring an IDE and 50 single-institution studies requiring an IND annually. This paperwork section has been revised accordingly.

For Protection of Human Subjects—Recordkeeping Requirements for IRB's under OMB Control No. 0910–0130, FDA has calculated the existing recordkeeping burden on IRB's required by § 56.115 based on the estimated number of IRB's and the estimated annual number of hours each IRB spends in recordkeeping activities. FDA does not believe that this rule will increase the number of IRB's. However, the agency estimates that the number of hours for recordkeeping related to studies that propose to invoke this exception from informed consent will increase for an estimated 275 IRB's by 5 annual hours per record-keeper. This will change the estimated recordkeeper burden from 65 to 70 hours annually for these estimated 275 IRB's.

The newly redesignated and revised § 56.109(e) proposes to require that an IRB notify in writing the sponsor of the research when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception provided under § 50.24(a) of this chapter or because of other relevant ethical concerns. In accord with the Paperwork Reduction Act of 1995, the agency discloses that this rule requires this third party notification.

For Investigational New Drug Application under OMB Control No. 0910–0014, the agency estimates that sponsors will submit an average of 20 studies a year, with an average of 20 clinical investigators each, that propose to invoke this exception from informed consent and that sponsor-investigators will submit an average of 50 studies a year. Currently, the agency estimates the reporting requirements contained in part 312 (21 CFR 312) to average 123.34 hours per respondent annually. Reporting requirements are contained in the following sections of part 312: 312.7, 312.10, 312.23, 312.30, 312.31, 312.32, 312.33, 312.35, 312.36, 312.38, 312.41, 312.44(c)(d), 312.45, 312.47, 312.53, 312.55, 312.56, 312.58, 312.64, 312.66, 312.70, 312.83, 312.85, 312.110, 312.120(b), 312.120(c)(3), 312.140, and 312.145. FDA estimates that respondents will increase by 450 annually, resulting in an increase of 55,503 hours over that currently estimated. The reporting burden for respondents will, as a result, increase from an estimated 3,926,308 hours annually to 3,971,811 hours annually.

New § 312.54(b) proposes to require the sponsor to provide information when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) or because of other relevant ethical concerns. This information is to be provided promptly in writing to FDA, investigators who are asked to participate in the clinical investigation or a substantially equivalent investigation, and other IRB's that are asked to review the investigation or a substantially equivalent investigation. In accord with the Paperwork Reduction Act of 1995, the agency discloses that this rule requires this third party notification.

For recordkeeping, under § 312.52, 312.57, 312.59, 312.62(a), 312.62(b), 312.62(c), 312.160(a) and (c), the agency estimated that an average of 165.13 hours were spent per respondent. For the estimated additional 450 recordkeeping respondents invoking this rule, this would result in approximately 74,309 hours annually. The recordkeeping burden for respondents will, as a result, increase from an estimated 2,244,090 hours annually to 2,318,399 hours annually.

For Investigational Devices Exemption Reports and Records under OMB Control No. 0910–0078, the agency estimates that 35 studies proposing to invoke this exception will be submitted to the agency annually. The number of studies upon which the current paperwork reporting burden is estimated (§ 812.20, 812.25, 812.27, 812.35, and 812.150) may, therefore, increase from 244 original submissions to 279 original submissions, increasing the number of hours by 2,800 for respondents (estimated at 80 hours per submission), from a total of 19,520 to 22,320 hours annually.

New § 812.47(b) proposes to require the sponsor to provide information when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. This information is to be provided promptly in writing to FDA, investigators who are asked to participate in the clinical investigation or a substantially equivalent investigation, and other IRB's that are asked to review the investigation or a substantially equivalent investigation. In accord with the Paperwork Reduction Act of 1995, the agency discloses that this rule requires this third party notification.

The number of recordkeepers, under §§ 812.43 and 812.140, is currently estimated at 700; this number is not expected to change. The estimated number of annual hours for recordkeeping requirements is expected to increase by 350 hours. The agency had estimated that original submissions require 10 hours annually of recordkeeping per submission; recordkeeping related to studies invoking this rule are expected to increase the submissions from 244 to a total of 279.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this rule to OMB for its review of these previously approved information collection requirements. The agency solicited comments on the information collection requirements in order to: (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the 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.

List of Subjects

21 CFR Part 50

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, 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 parts 50, 56, 312, 314, 601, 812, and 814 are amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

2. Section 50.3 is amended by adding a new paragraph (n) to read as follows:

§ 50.3 Definitions.

* * * * *

(n) *Family member* means any one of the following legally competent persons: Spouse; parents; children (including adopted children); brothers, sisters, and spouses of brothers and sisters; and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

3. Section 50.24 is added to subpart B to read as follows:

§ 50.24 Exception from informed consent requirements for emergency research.

(a) The IRB responsible for the review, approval, and continuing review of the clinical investigation described in this section may approve that investigation without requiring that informed consent of all research subjects be obtained if the IRB (with the concurrence of a licensed physician who is a member of or consultant to the IRB and who is not otherwise participating in the clinical investigation) finds and documents each of the following:

(1) The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo-controlled investigations, is necessary to determine the safety and effectiveness of particular interventions.

(2) Obtaining informed consent is not feasible because:

(i) The subjects will not be able to give their informed consent as a result of their medical condition;

(ii) The intervention under investigation must be administered before consent from the subjects' legally authorized representatives is feasible; and

(iii) There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation.

(3) Participation in the research holds out the prospect of direct benefit to the subjects because:

(i) Subjects are facing a life-threatening situation that necessitates intervention;

(ii) Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects; and

(iii) Risks associated with the investigation are reasonable in relation to what is known about the medical condition of the potential class of subjects, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.

(4) The clinical investigation could not practicably be carried out without the waiver.

(5) The proposed investigational plan defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative contacted for consent within that window rather than proceeding without consent. The investigator will summarize efforts made to contact legally authorized representatives and make this information available to the IRB at the time of continuing review.

(6) The IRB has reviewed and approved informed consent procedures and an informed consent document consistent with § 50.25. These procedures and the informed consent document are to be used with subjects or their legally authorized representatives in situations where use of such procedures and documents is feasible. The IRB has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the clinical investigation consistent with paragraph (a)(7)(v) of this section.

(7) Additional protections of the rights and welfare of the subjects will be provided, including, at least:

(i) Consultation (including, where appropriate, consultation carried out by the IRB) with representatives of the communities in which the clinical investigation will be conducted and from which the subjects will be drawn;

(ii) Public disclosure to the communities in which the clinical investigation will be conducted and from which the subjects will be drawn, prior to initiation of the clinical investigation, of plans for the investigation and its risks and expected benefits;

(iii) Public disclosure of sufficient information following completion of the clinical investigation to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results;

(iv) Establishment of an independent data monitoring committee to exercise oversight of the clinical investigation; and

(v) If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the investigator has committed, if feasible, to attempting to contact within the therapeutic window the subject's family member who is not a legally authorized representative, and asking whether he or she objects to the subject's participation in the clinical investigation. The investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.

(b) The IRB is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, of the subject's inclusion in the clinical investigation, the details of the

investigation and other information contained in the informed consent document. The IRB shall also ensure that there is a procedure to inform the subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, that he or she may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. If a legally authorized representative or family member is told about the clinical investigation and the subject's condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into a clinical investigation with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the clinical investigation is to be provided to the subject's legally authorized representative or family member, if feasible.

(c) The IRB determinations required by paragraph (a) of this section and the documentation required by paragraph (e) of this section are to be retained by the IRB for at least 3 years after completion of the clinical investigation, and the records shall be accessible for inspection and copying by FDA in accordance with § 56.115(b) of this chapter.

(d) Protocols involving an exception to the informed consent requirement under this section must be performed under a separate investigational new drug application (IND) or investigational device exemption (IDE) that clearly identifies such protocols as protocols that may include subjects who are unable to consent. The submission of those protocols in a separate IND/IDE is required even if an IND for the same drug product or an IDE for the same device already exists. Applications for investigations under this section may not be submitted as amendments under §§ 312.30 or 812.35 of this chapter.

(e) If an IRB determines that it cannot approve a clinical investigation because the investigation does not meet the criteria in the exception provided under paragraph (a) of this section or because of other relevant ethical concerns, the IRB must document its findings and provide these findings promptly in writing to the clinical investigator and to the sponsor of the clinical investigation. The sponsor of the clinical investigation must promptly disclose this information to FDA and to the sponsor's clinical investigators who are participating or are asked to participate in this or a substantially equivalent clinical investigation of the sponsor, and to other IRB's that have been, or are, asked to review this or a substantially equivalent investigation by that sponsor.

PART 56—INSTITUTIONAL REVIEW BOARDS

4. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C 216, 241, 262, 263b–263n).

5. Section 56.109 is amended by revising paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), by adding two new sentences to the end of newly redesignated paragraph (e), and by adding new paragraphs (d) and (g) to read as follows:

§ 56.109 IRB review of research.

* * * * *

(c) An IRB shall require documentation of informed consent in accordance with § 50.27 of this chapter, except as follows:

(1) The IRB may, for some or all subjects, waive the requirement that the subject, or the subject's legally authorized representative, sign a written consent form if it finds that the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside the research context; or

(2) The IRB may, for some or all subjects, find that the requirements in § 50.24 of this chapter for an exception from informed consent for emergency research are met.

(d) In cases where the documentation requirement is waived under paragraph (c)(1) of this section, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(e)* * * For investigations involving an exception to informed consent under § 50.24 of this chapter, an IRB shall promptly notify in writing the investigator and the sponsor of the research when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception provided under § 50.24(a) of this chapter or because of other relevant ethical concerns. The written notification shall include a statement of the reasons for the IRB's determination.

* * * * *

(g) An IRB shall provide in writing to the sponsor of research involving an exception to informed consent under § 50.24 of this chapter a copy of information that has been publicly disclosed under § 50.24(a)(7)(ii) and (a)(7)(iii) of this chapter. The IRB shall provide this information to the sponsor promptly so that the sponsor is aware that such disclosure has occurred. Upon receipt, the sponsor shall provide copies of the information disclosed to FDA.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

6. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 321, 331, 351, 352, 353, 355, 356, 357, 371); sec 351 of the Public Health Service Act (42 U.S.C. 262).

7. Section 312.2 is amended by adding paragraph (b)(6) to read as follows:

§ 312.2 Applicability.

* * * * *

(b) * * *

(6) A clinical investigation involving an exception from informed consent under § 50.24 of this chapter is not exempt from the requirements of this part.

* * * * *

8. Section 312.20 is amended by adding new paragraph (c) to read as follows:

§ 312.20 Requirement for an IND.

* * * * *

(c) A sponsor shall submit a separate IND for any clinical investigation involving an exception from informed consent under § 50.24 of this chapter. Such a clinical investigation is not permitted to proceed without the prior written authorization from FDA. FDA shall provide such written authorization 30 days after FDA receives the IND or earlier.

9. Section 312.23 is amended by adding new paragraph (f) to read as follows:

§ 312.23 IND content and format.

* * * * *

(f) *Identification of exception from informed consent.* If the investigation involves an exception from informed consent under § 50.24 of this chapter, the sponsor shall prominently identify on the cover sheet that the investigation is subject to the requirements in § 50.24 of this chapter.

10. Section 312.30 is amended by adding a new sentence to the end of the introductory text to read as follows:

§ 312.30 Protocol amendments.

* * * Whenever a sponsor intends to conduct a clinical investigation with an exception from informed consent for emergency research as set forth in § 50.24 of this chapter, the sponsor shall submit a separate IND for such investigation.

* * * * *

11. Section 312.42 is amended by adding new paragraph (b)(5) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(b) * * *

(5) *Clinical hold of any investigation involving an exception from informed consent under § 50.24 of this chapter.* FDA may place a proposed or ongoing investigation involving an exception from informed consent under § 50.24 of this chapter on clinical hold if it is determined that:

(i) Any of the conditions in paragraphs (b)(1) or (b)(2) of this section apply; or

(ii) The pertinent criteria in § 50.24 of this chapter for such an investigation to begin or continue are not submitted or not satisfied.

* * * * *

12. New section 312.54 is added to subpart D to read as follows:

§ 312.54 Emergency research under § 50.24 of this chapter.

(a) The sponsor shall monitor the progress of all investigations involving an exception from informed consent under § 50.24 of this chapter. When the sponsor receives from the IRB information concerning the public disclosures required by § 50.24(a)(7)(ii) and (a)(7)(iii) of this chapter, the sponsor promptly shall submit to the IND file and to Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, copies of the information that was disclosed, identified by the IND number.

(b) The sponsor also shall monitor such investigations to identify when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. The sponsor promptly shall provide this information in writing to FDA, investigators who are asked to participate in this or a substantially equivalent clinical investigation, and other IRB's that are asked to review this or a substantially equivalent investigation.

13. Section 312.60 is amended by revising the second and third sentences in the text as follows:

§ 312.60 General responsibilities of investigators.

* * * An investigator shall, in accordance with the provisions of part 50 of this chapter, obtain the informed consent of each human subject to whom the drug is administered, except as provided in §§ 50.23 or 50.24 of this chapter. Additional specific responsibilities of clinical investigators are set forth in this part and in parts 50 and 56 of this chapter.

14. Section 312.130 is amended by adding a new paragraph (d) to read as follows:

§ 312.130 Availability for public disclosure of data and information in an IND.

* * * * *

(d) The availability of information required to be publicly disclosed for investigations involving an exception from informed consent under § 50.24 of this chapter will be handled as follows: Persons wishing to request the publicly disclosable information in the IND that was required to be filed in Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, shall submit a request under the Freedom of Information Act.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

15. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

16. Section 314.430 is amended by redesignating paragraph (d) as paragraph (d)(1) and by adding new paragraph (d)(2) to read as follows:

§ 314.430 Availability for public disclosure of data and information in an application or abbreviated application.

* * * * *

(d)(1) * * *

(2) Notwithstanding paragraph (d)(1) of this section, FDA will make available to the public upon request the information in the investigational new drug application that was required to be filed in Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, for investigations involving an exception from informed consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

* * * * *

PART 601—LICENSING

17. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

18. Section 601.51 is amended by redesignating paragraph (d) as paragraph (d)(1) and by adding new paragraph (d)(2) to read as follows:

§ 601.51 Confidentiality of data and information in applications for establishment and product licenses.

* * * * *

(d)(1) * * *

(2) Notwithstanding paragraph (d)(1) of this section, FDA will make available to the public upon request the information in the IND that was required to be filed in Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, for investigations involving an exception from informed consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

19. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C 216, 241, 262, 263b–263n).

20. Section 812.20 is amended by revising paragraph (a)(1) and adding new paragraph (a)(4) to read as follows:

§ 812.20 Application.

(a) *Submission.* (1) A sponsor shall submit an application to FDA if the sponsor intends to use a significant risk device in an investigation, intends to conduct an investigation that involves an exception from informed consent under § 50.24 of this chapter, or if FDA

notifies the sponsor that an application is required for an investigation.

* * * * *

(4)(i) A sponsor shall submit a separate IDE for any clinical investigation involving an exception from informed consent under § 50.24 of this chapter. Such a clinical investigation is not permitted to proceed without the prior written authorization of FDA. FDA shall provide such written authorization 30 days after FDA receives the IDE or earlier.

(ii) If the investigation involves an exception from informed consent under § 50.24 of this chapter, the sponsor shall prominently identify on the cover sheet that the investigation is subject to the requirements in § 50.24 of this chapter.

* * * * *

20. Section 812.35 is amended by adding a new sentence to the end of paragraph (a) to read as follows:

§ 812.35 Supplemental applications.

(a) * * * Whenever a sponsor intends to conduct a clinical investigation with an exception from informed consent for emergency research as set forth in § 50.24 of this chapter, the sponsor shall submit a separate IDE for such investigation.

* * * * *

21. Section 812.38 is amended by adding a new paragraph (b)(4) to read as follows:

§ 812.38 Confidentiality of data and information.

* * * * *

(b) * * *

(4) Notwithstanding paragraph (b)(2) of this section, FDA will make available to the public, upon request, the information in the IDE that was required to be filed in Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, for investigations involving an exception from informed consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

* * * * *

22. New section 812.47 is added to subpart C to read as follows:

§ 812.47 Emergency research under § 50.24 of this chapter.

(a) The sponsor shall monitor the progress of all investigations involving an exception from informed consent under § 50.24 of this chapter. When the sponsor receives from the IRB information concerning the public disclosures under § 50.24(a)(7)(ii) and (a)(7)(iii) of this chapter, the sponsor shall promptly submit to the IDE file and to Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, copies of the information that was disclosed, identified by the IDE number.

(b) The sponsor also shall monitor such investigations to determine when an IRB determines that it cannot approve the research because it does not meet the criteria in the exception in § 50.24(a) of this chapter or because of other relevant ethical concerns. The sponsor promptly shall provide this information in writing to FDA investigators who are asked to participate in this or a substantially equivalent clinical investigation and other IRB's that are asked to review this or a substantially equivalent investigation.

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

23. The authority citation for 21 CFR part 814 is revised to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 708, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381).

24. Section 814.9 is amended by redesignating paragraph (d) as paragraph (d)(1) and by adding new paragraph (d)(2) to read as follows

§ 814.9 Confidentiality of data and information in a premarket application (PMA) file.

* * * * *

(d)(1) * * *

(2) Notwithstanding paragraph (d)(1) of this section, FDA will make available to the public upon request the information in the IDE that was required to be filed in Docket Number 95S–0158 in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, for investigations involving an exception from informed consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

* * * * *

Dated: July 17, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–24967 Filed 9–26–96; 8:59 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

Waiver of Informed Consent Requirements in Certain Emergency Research

AGENCY: National Institutes of Health, HHS.

ACTION: Waiver.

SUMMARY: The Department of Health and Human Services (HHS) is announcing the waiver of the applicability of the title 45 CFR part 46 (protection of human subjects) requirement for obtaining and documenting informed consent, for a strictly limited class of research involving activities which may be carried out in human subjects who are in need of emergency therapy and for whom, because of the subjects' medical condition and the unavailability of legally authorized representatives of the subjects, no legally effective informed consent can be obtained. However, because of special regulatory limitations relating to research involving prisoners (subpart C of 45 CFR part 46) and research involving fetuses, pregnant women, and human in vitro fertilization (subpart B of 45 CFR part 46), this waiver is inapplicable to these categories of research.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: F. William Dommel, Jr., J.D. Senior Policy Advisor, Office for Protection from Research Risks, 6100 Executive Boulevard, Suite 3B01J, National Institutes of Health, MSC 7507, Rockville, MD 20892–7507. Telephone (301) 496–7005, ext. 203 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Waiver

Pursuant to Section 46.101(i) of title 45 of the Code of Federal Regulations, the Secretary of Health and Human Services (HHS) has waived the general requirements for informed consent at 45 CFR 46.116 (a) and (b), and at 46.408, to be referred to as the ''Emergency Research Consent Waiver,'' for a class of research consisting of activities [1], each of which have met the following strictly limited conditions detailed under either (a) or (b) below:

[1] Because of special regulatory limitations relating to research involving prisoners (subpart C of 45 CFR part 46), and research involving fetuses, pregnant women, and human in vitro fertilization (subpart B of 45 CFR part 46), this waiver is inapplicable to these categories of research.

(a) The Institutional Review Board (IRB) responsible for the review, approval, and continuing review of the research activity has approved both the activity and a waiver of informed consent and found and documented:

(1) that the research activity is subject to regulations codified by the Food and Drug Administration (FDA) at Title 21 CFR part 50 and will be carried out under an FDA investigational new drug application (IND) or an FDA investigational device exemption (IDE), the application for which has clearly identified the protocols that would include subjects who are unable to consent, and

(2) that the requirements for exception from informed consent for emergency research detailed in title 21 CFR section 50.24 have been met relative to those protocols, or

(b) The IRB responsible for the review, approval, and continuing review of the research has approved both the research and a waiver of informed consent and has found and documented that the research is not subject to regulations codified by the FDA at title 21 CFR part 50 and found and documented and reported to the Office for Protection from Research Risks, Department of Health and Human Services, that the following conditions have been met relative to the research:

(1) The human subjects are in a life-threatening situation, available treatments are unproven or unsatisfactory, and the collection of valid scientific evidence, which may include evidence obtained through randomized placebo-controlled investigations, is necessary to determine the safety and effectiveness of particular interventions.

(2) Obtaining informed consent is not feasible because:

(i) The subjects will not be able to give their informed consent as a result of their medical condition;

(ii) The intervention involved in the research must be administered before consent from the subjects' legally authorized representatives is feasible; and

(iii) There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the research.

(3) Participation in the research holds out the prospect of direct benefit to the subjects because:

(i) Subjects are facing a life-threatening situation that necessitates intervention;

(ii) Appropriate animal and other preclinical studies have been conducted, and the information derived from those studies and related evidence support the potential for the intervention to provide a direct benefit to the individual subjects; and

(iii) The risks associated with the research are reasonable in relation to what is known about the medical condition of the potential class of subjects, the risks and benefits of standard therapy, if any, and what is known about the risks and benefits of the proposed intervention or activity.

(4) The research could not practicably be carried out without the waiver.

(5) The proposed research protocol defines the length of the potential therapeutic window based on scientific evidence, and the investigator has committed to attempting to contact a legally authorized representative for each subject within that window of time and, if feasible, to asking the legally authorized representative contacted for consent within that window rather than proceeding without consent. The investigator will summarize efforts made to contact representatives and make this information available to the IRB at the time of continuing review.

(6) The IRB has reviewed and approved informed consent procedures and an informed consent document in accord with Sections 46.116 and 46.117 of title 45 of the Code of Federal Regulations. These procedures and the informed consent document are to be used with subjects or their legally authorized representatives in situations where use of such procedures and documents is feasible. The IRB has reviewed and approved procedures and information to be used when providing an opportunity for a family member to object to a subject's participation in the research consistent with paragraph (b)(7)(v) of this waiver.

(7) Additional protections of the rights and welfare of the subjects will be provided, including, at least:

(i) Consultation (including, where appropriate, consultation carried out by the IRB) with representatives of the communities in which the research will be conducted and from which the subjects will be drawn;

(ii) Public disclosure to the communities in which the research will be conducted and from which the subjects will be drawn, prior to initiation of the research, of plans for the research and its risks and expected benefits;

(iii) Public disclosure of sufficient information following completion of the research to apprise the community and researchers of the study, including the demographic characteristics of the research population, and its results;

(iv) Establishment of an independent data monitoring committee to exercise oversight of the research; and

(v) If obtaining informed consent is not feasible and a legally authorized representative is not reasonably available, the investigator has committed, if feasible, to attempting to contact within the therapeutic window the subject's family member who is not a legally authorized representative, and asking whether he or she objects to the subject's participation in the research. The investigator will summarize efforts made to contact family members and make this information available to the IRB at the time of continuing review.

In addition, the IRB is responsible for ensuring that procedures are in place to inform, at the earliest feasible opportunity, each subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, of the subject's inclusion in the research, the details of the research and other information contained in the informed consent document. The IRB shall also ensure that there is a procedure to inform the subject, or if the subject remains incapacitated, a legally authorized representative of the subject, or if such a representative is not reasonably available, a family member, that he or she may discontinue the subject's participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. If a legally authorized representative or family member is told about the research and the subject's condition improves, the subject is also to be informed as soon as feasible. If a subject is entered into research with waived consent and the subject dies before a legally authorized representative or family member can be contacted, information about the research is to be provided to the subject's legally authorized representative or family member, if feasible.

For the purposes of this waiver ''family member'' means any one of the following legally competent persons: spouses; parents; children (including adopted children); brothers, sisters, and spouses of brothers and sisters; and any individual related by blood or affinity whose close association with the subject is the equivalent of a family relationship.

Background

It had come to the attention of HHS that there are proposals to conduct certain research, including National Institutes of Health (NIH) funded research, which could not go forward in

the context of the current HHS regulations for the protection of human subjects (45 CFR part 46), unless certain informed consent requirements of those regulations were waived in accord with the waiver provisions provided at 45 CFR 46.101(i). HHS carefully reviewed the need for the exercise of the Section 46.101(i) waiver authority in these circumstances, and the requirements for informed consent were waived by the Secretary in the instance of only one specific multi-site study of head injuries which is currently underway (60 FR 38353).

The Secretary is now waiving the informed consent requirements for the class of research activities and no longer restricting the waiver to a single research project. This waiver provides clear instruction as to when research in emergency circumstances may proceed without obtaining an individual subject's informed consent. Elsewhere in this edition of the Federal Register, the FDA is publishing a final rule which amends FDA regulations to authorize a nearly identical waiver of informed consent in research which is regulated by FDA. The joint publication of these actions permit harmonization of the HHS and FDA regulations regarding research in emergency circumstances. The HHS waiver, just as the FDA regulatory change, provides a narrow exception to the requirement for obtaining and documenting informed consent from each human subject or his or her legally authorized representative prior to initiation of research if the waiver of informed consent is approved by an IRB. The waiver authorization applies to a limited class of research activities involving human subjects who are in need of emergency medical intervention but who cannot give informed consent because of their life-threatening medical condition, and who do not have available a legally authorized person to represent them. The Secretary, HHS is authorizing this waiver in response to growing concerns that current regulations, absent this waiver, are making high quality research in emergency circumstances difficult or impossible to carry out at a time when the need for such research is increasingly recognized.

HHS notes testimonies to this effect delivered to (i) the Subcommittee on Regulation, Business Opportunities, and Technology, Committee on Small Business, U.S. House of Representatives (Washington DC, May 23, 1994); (ii) the Coalition Conference of Acute Resuscitation Researchers (Washington DC, October 25, 1994); (iii) the meeting of Applied Research Ethics National Association (Boston MA, October 30, 1994); (iv) the meeting of Public Responsibility in Medicine & Research (Boston MA, November 1, 1994); and (v) the Food and Drug Administration/ National Institutes of Health Public Forum on Informed Consent in Clinical Research Conducted in Emergency Circumstances (Rockville MD, January 9–10, 1995).

Periodic Review

A periodic review of the implementation by IRBs of this Section 101(i) waiver will be conducted by the Office for Protection from Research Risks, National Institutes of Health, to determine the adequacy of the waiver in meeting its intended need or if adjustments to the waiver might be necessary and appropriate.

Dated: July 17, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–24968 Filed 9–26–96; 8:59 am]

BILLING CODE 4150–04–M

Federal Register

Wednesday
October 2, 1996

Part III

Department of the Interior

National Park Service

36 CFR Part 61

Procedures for State, Tribal and Local Government Historic Preservation Programs; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 61

RIN 1024–AC44

Procedures for State, Tribal and Local Government Historic Preservation Programs

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise the requirements for State and local historic preservation programs as well as the way NPS administers these programs. The proposed changes are intended to provide more flexibility in State historic preservation office staffing, State Historic Preservation Review Board membership and operations, and carrying out State Historic Preservation Officer responsibilities. This proposed revision also officially recognizes the growing role of tribal historic preservation programs. Some of the proposed changes are necessary because of the 1992 amendments to the National Historic Preservation Act (the Act). Other changes are proposed to reduce the regulatory burden on, and provide more flexibility for, State and local historic preservation programs as well as NPS. Much of this has been done pursuant to the President's Regulatory Reinvention Initiative and Executive Order 12866. Also, the evolution and growing maturity of State and local offices in the national historic preservation program have eliminated the need for some of the more detailed and restrictive requirements. Repetition, advice, and quotations from the Act are no longer needed and are removed from this regulation.

DATES: Written comments will be accepted through December 2, 1996.

ADDRESSES: All comments concerning this proposed regulation should be addressed to: Chief, Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127; Attention: John W. Renaud. Comments may be hand-delivered or overnight mailed to 800 North Capitol Street, NW., Suite 200, Washington, D.C. 20002. Comments may be sent FAX'ed to 202–343–6004 or by E-mail to John__Renaud@nps.gov.

FOR FURTHER INFORMATION CONTACT: John W. Renaud, 202–343–1059, FAX 202–343–6004, John__Renaud@nps.gov (E-mail).

SUPPLEMENTARY INFORMATION:

Background

36 CFR Part 61 is promulgated pursuant to the Act (16 U.S.C. 470 *et seq.*) that created the national historic preservation program as a partnership among Federal, State, tribal and local governments, nonprofit organizations, commercial organizations, and private individuals. The Act also created a mechanism for funding this partnership, the Historic Preservation Fund. This partnership is dedicated to the preservation of irreplaceable historic and archeological resources that provide the foundation of the Nation's heritage. Through this partnership the vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits of our historical patrimony will be maintained and enriched for future generations of Americans. 36 CFR Part 61 provides the regulatory framework for voluntary participation by State, local, and tribal governments in the national historic preservation program. These programs are administered by the Secretary of the Interior operating through the Director of the NPS. As of the date of publication of this proposed revision to this rule, all 59 States and territories participate in the program, as do more than 1000 local governments. The tribal portion (currently reserved) of this proposed regulatory revision could lead to the participation in the national historic preservation program of the more than 500 federally recognized Indian tribes, Native Alaskan corporations, and Native Hawaiian organizations. When guidance on tribal programs is promulgated and tribal historic preservation programs are approved pursuant to the Act, a tribal government will have a role in the national historic preservation program that is similar to the role of a State. NPS is responsible for providing national standards, guidance, and technical assistance to the State and local historic preservation programs. NPS also provides quality control and an appeals mechanism for the activities funded by the Historic Preservation Fund grants-in-aid and matching monies. The responsibility for most decision making in the programs and the selection of specific projects and activities lies with each State, tribal, and local government based on its needs and the needs of its customers. Public participation is a crucial part in guiding the course of State and local historic preservation programs.

This proposed revision to 36 CFR Part 61 is necessary because the current regulation (promulgated in 1984) has become outmoded and incomplete due to changes in statute and the evolution of the national historic preservation program. The National Historic Preservation Act Amendments of 1992 (Title XL of Pub L. 102–575) made a number of substantive and technical changes to the subject matter covered by these rules. Whole new program mandates (such as tribal preservation programs) were added to the Act and many refinements were made to existing programs such as State Historic Preservation Officer responsibilities and the periodic evaluation of State programs. Much of the language in the 1984 regulation dealt with the establishment of the certified local government (CLG) program and the establishment of a system for periodic evaluation of State Historic Preservation Offices. These programs now have been in operation for over a decade. The regulation needs to reflect the current maturity of these programs. For some topics (such as the periodic evaluations of State programs), the 1984 regulation set up a system that was more restrictive than is now deemed necessary. This regulatory revision proposes to build more flexibility into the regulation, rely more on State and local government programs, and reduce the standard, minimum oversight while retaining the ability to increase oversight in individual cases when needed.

Aside from the 1992 Amendments to the Act, NPS became aware of the need for changes to these rules through day-to-day administration of the program, as well as through communication with partners in the national historic preservation program.

Revision of 36 CFR Part 61 is the appropriate means to solve many of the problems identified above. The 1984 regulation is so narrowly defined that it limits the range of approaches available both to the Secretary in the administration of the program and to State and local governments in running the day-to-day operations of the programs. The national historic preservation program has grown in competency, responsibility, and accountability over the years. There also has been a maturation in the professional practice of historic preservation. There is every reason to believe that these trends will continue. 36 CFR Part 61 needs to acknowledge that change will be constant. By placing more reliance on State and local governments, by eliminating unnecessary detail and procedures, and by expressing a more flexible oversight philosophy, 36 CFR Part 61 can reduce the need for a future rulemaking.

The penalties for noncompliance as specified in this proposed rulemaking

involve the ability to retain approved program status. These are mandated by statute. The regulation also refers to government-wide requirements for Federal grants that include noncompliance penalties ranging from increased oversight and reporting, to recovery of Federal funds, to suspension from the program until requirements are met. Monitoring these regulatory requirements is accomplished through a periodic review of State Programs; with quality control of documents such as National Register nominations and Preservation Tax Incentive applications that are forwarded by the State to NPS; and by evaluation of standard reports on the accomplishments made using Federal grant money.

36 CFR Part 61 provides the general procedural framework for State, local, and tribal (reserved) historic preservation programs. Procedures can be found elsewhere for specific activities carried out by those programs and referred to in this document, e.g., 36 CFR Part 60 for the National Register of Historic Places, 36 CFR Part 67 for Federal Historic Preservation Tax Incentives, etc. National standards and guidance on general topics of applicability such as survey, planning, treatment of historic properties, and professional qualifications can be found in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation that can be obtained from the NPS.

Section-by-Section Analysis

This proposed revision includes a number of general and organizational changes to the regulation promulgated in 1984. The title of the regulation has been changed by removing the word ''approved'' and by adding tribal programs. The word ''approved'' also has been deleted from section titles. The word ''approved'' implied too much emphasis on the oversight role of the NPS. While oversight is part of the purpose of the regulation, it is not the entire focus of it. 36 CFR Part 61 defines the roles for all of the national historic preservation program partners. These responsibilities, not the oversight, are the key items of this regulation. Tribal programs were added to the title pursuant to section 101(d) of the Act, and in recognition of their growing role in the national historic preservation program partnership.

The sections of 36 CFR Part 61 have been reordered to put the State-related sections together, the local government sections together, and the tribal sections together. Previously, all ''approval'' sections were together and all grants sections were together. This proposal reduces the need for the user to jump around the regulation to find needed information. Sections 61.8 and 61.9 have been reserved for tribal historic preservation programs. These sections will be published in the Federal Register at a later date.

All repetition has been eliminated within 36 CFR Part 61. Quotations from the Act have been eliminated. In the 1984 promulgation of this regulation, whole sections of the Act were repeated with little expansion or interpretation. In cases where little elaboration of statutory language was needed (such as with most of the responsibilities of the State Historic Preservation Officer), this proposed revision provides a citation to the specific section of the Act rather than quoting it.

Language has been removed when it is unnecessary for comprehension of a topic. Procedural details and titles that are subject to change have also been removed. Examples include (1) the listing of subparts in the definition of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, (2) the listing of how the NPS will organize its periodic evaluation of State Historic Preservation Offices, and (3) the statement of how often the NPS will issue revisions to the National Register Programs Guideline.

Advice and examples, such as possible methods to obtain temporary professional assistance, also have been removed from the regulation. Numerous editorial changes have also been made that will not be discussed in detail in this document.

Section 61.1 Authorization

This section has been revised to eliminate redundancy and to add tribal references.

Section 61.2 Definitions

Those terms defined in the Act that do not need any regulatory interpretation have been dropped from this proposal. Instead, specific cross references to the sections of the Act containing definitions have been provided.

Section 61.3 Implementation of This Part 61

A new subsection has been added that describes the NPS approach to administering the programs described in 36 CFR Part 61. It is a flexible approach drawn largely from OMB Circular A–102, as implemented in the Department of Interior through 43 CFR Part 12.

A new subsection has been added that authorizes State, tribal, or local government fiscal audit and management systems to be substituted for comparable Federal procedures upon approval by the Secretary. Examples include accounting methods, cash management and internal audit controls and procedures. In the spirit of reinventing government, this revision recognizes the competence, objectivity and accountability of governments at all levels. Prior approval by the Secretary protects the interests of the Federal Government and the intent of the Act.

The grandfather clause (formerly located in subsection 61.4(d) that concerns State staff) has been moved to this section and broadened to include State Review Board members and CLG Commission members. Whenever the mandatory historic preservation professional qualification standards change, an individual officially qualified under the former Standards and still serving on State staff, a State Review Board, or a CLG commission may be considered to be professionally qualified as long as he/she continues to hold that position.

Section 61.4 State Programs

61.4(b)

The quotation of State Historic Preservation Officer responsibilities enumerated in the Act has been replaced by a citation to Section 101(b)(3) of the Act.

61.4(b)(1)

An updated description of comprehensive statewide historic preservation planning has been added that more clearly describes the purpose of the statewide plan.

61.4(b)(2)

This new paragraph has been added to clarify that, though each State is required to conduct surveys for ''historic properties'' (i.e., properties eligible for listing in the National Register of Historic Places) and maintain an inventory of such properties, it is permissible, and important for each State to maintain an inventory of what is known about the presence or absence of historic properties within its boundaries. For example, when choosing a location for a new economic development project so as not to harm historic properties, it would be helpful and cost effective for project planners to know that an area has been intensively surveyed two years previously for both archeological and architectural/historical resources and nothing was found.

61.4(b)(3)

The subsection regarding public participation was formerly subsection 61.4(f) and has been revised to reflect

the flexibility that is possible (e.g., within the National Register nomination process) while meeting the requirements of the Act.

61.4(b)(4)

This subsection on contracts and cooperative agreements was formerly subsection 61.4(g).

61.4(c)

This new subsection acknowledges that there may be temporary situations during which it would not make sense to require a State Historic Preservation Officer to carry out all of the statutory responsibilities. Examples might include emergencies or other conditions that compel a State Historic Preservation Officer to concentrate staffing and financial resources on certain activities and thus delay or curtail other responsibilities.

61.4(d)

State Program Review. This section, formerly subsection 61.4(c), has been revised to reflect the changes made by the 1992 Amendments to the Act and to remove the procedural details from the regulation.

61.4(d)(1)

Pursuant to the Act, State programs now will be evaluated for ''consistency'' rather than ''compliance'' with the Act. The evaluation will take place at least once every four years rather than once every two to three years. This proposed revision reflects the flexibility provided for in the Act without preventing a more frequent program evaluation if necessary. The former detailed description of how each evaluation will be conducted has been removed because experience since 1984 has revealed that it restricted the flexibility necessary to administer the program.

61.4(d)(2)

Proposed new language in this paragraph provides more flexibility in the process used to evaluate State programs.

61.4(d)(3)

New language has been proposed that reflects the 1992 Amendments to the Act. State program approval will be continued if the program is ''consistent with the Act,'' and disapproval will take place only if a State is found to have ''major program aspects'' inconsistent with the Act. Minor inconsistencies, even though they may require correction, cannot be grounds for disapproving the entire program as part of the State program review process. A technical correction has been made to make it clear that the Secretary has the authority to take immediate action to disapprove a State program if the situation warrants.

61.4(e)

State Staff. The proposed changes to this subsection, formerly subsection 61.4(d), are largely editorial and technical. Inasmuch as Appendix A has been eliminated (see below), the historic preservation professional qualifications now refer to the ''Secretary's Standards.'' The annual certification that the State has a fully qualified staff has been removed from the regulation. By applying for its annual grant, the State Historic Preservation Officer is confirming that all program prerequisites (including a qualified staff) are, and will continue to be, met. Each State generally can be relied upon to inform NPS when there is a vacancy in required staff. Consequently, detailed notification requirements are no longer needed in this regulation.

61.4(f)

State Review Board. Formerly subsection 61.4(e), the professional disciplines required in this subsection for each State's Review Board have been changed to match the requirements for State staff; i.e., each Review Board must include the disciplines of history, architectural history and either prehistoric or historic archeology. Architecture has been dropped as a national requirement but most likely will be represented on Review Boards because of the usefulness of that expertise. Following the logic of the expanded statutory definition of ''State Historic Preservation Review Board'' in the Act (see Section 301(12)), the required ''professional majority'' in Review Board membership may be drawn from any of the disciplines defined in the Secretary's historic preservation professional qualification standards. Each State can be relied upon to select a professional composition for its Review Board that best fits the State's historic resources and the historic preservation needs within the State. These ''professional qualification'' requirements apply to whatever State board or boards, commissions, etc., that carry out the Review Board responsibilities specified in this regulation that normally require access to specialized historic preservation expertise.

The minimum required number of Review Board meetings has been changed from three to one per year. Each State is expected to convene its Review Board as often as is necessary to complete its work in a timely fashion. The minimum number of meetings required will vary from State to State and from year to year. The regulatory change is being proposed to avoid requiring meetings that might not be needed.

The language regarding Appendix A, the annual certification of the State Review Board, and vacancy on a State Review Board has been removed for reasons that parallel those described above for the revisions to section 61.4(e).

Section 61.5 Grants to State Programs

The proposed changes to this section, formerly § 61.6, include a new name, and the changes are all editorial, technical, or discussed in the general changes section.

Section 61.6 Certified Local Government Programs

This section, formerly § 61.5, has been renamed, reoriented, reorganized and greatly reduced in length. A large number of editorial changes have been made in this section, but relatively few substantive changes are proposed. In the 1984 version, much of the language in this section mandated how each State must establish its procedures for certifying local governments. Since 1985, every eligible State has had NPS-approved procedures. In this proposed revision, the lengthy and detailed language on how to establish State procedures has been replaced by much shorter language concerning the maintenance and amendment of State procedures.

61.6(e)(i)

Pursuant to the 1992 Amendments to the Act, this subsection has been changed to require that State and local designation and protection legislation meet the definition of ''designation'' and ''protection'' in the Act.

Section 61.7 Subgrants to Certified Local Governments

This section has been renamed, reoriented, reorganized and greatly reduced in length. The changes parallel those described above for the revisions to Section 61.6. In addition, the following revisions are proposed:

Inasmuch as CLG subgrants are treated like any other subgrant, all language specifying standard subgrant requirements has been eliminated from this section and replaced with a single statement that standard requirements must be met as specified in the National Register Programs Guideline.

The old section exempting the District of Columbia from this CLG subgrant section has been eliminated as

unnecessary inasmuch as it is exempted in Section 61.6 from the entire CLG program.

Section 61.8 Tribal Programs [Reserved]

This new section has been added and reserved for later use.

Section 61.9 Grants to Tribal Programs [Reserved]

This new section has been added and reserved for later use.

Section 61.10 Waiver

This section, formerly § 61.8, is redesignated § 61.10 and is mostly unchanged.

Section 61.11 Information Collection Requirements [Reserved]

This section, formerly § 61.9, is redesignated and reserved. After OMB approval of the information collection requirements, this section will be updated at the final rule to reflect program changes and the Paperwork Reduction Act of 1995.

Appendix A to Part 61—Professional Qqualifications Standards

This Appendix has been dropped as redundant to the historic preservation professional qualification standards found in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

Appendix B to Part 61—Information sources

This revision to 36 CFR Part 61 proposes the elimination of Appendix B as growing too large, too quickly becoming out of date and not as necessary as it was in 1984. The 1984 version contained names, addresses and phone numbers of NPS Regional Offices and State Historic Preservation Offices; there were no CLGs at that time. Some of that information became out of date within a year of publication. An Appendix B updated to 1996 would become almost twenty times longer with the addition of CLGs. At some point, tribal historic preservation offices, and Federal agency historic preservation offices would need to be added. A list with more than a thousand entries (not including tribes, Federal agencies and new CLGs) would become out of date faster than the 1984 list of 62 entries. The growth of technological tools, such as E-mail, FAX machines and the Internet, makes the need to have such a list of information sources in 36 CFR Part 61 unnecessary.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The primary author of this rule is John W. Renaud, Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Paperwork Reduction Act

The collection of information contained in this section has previously been approved by the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, and assigned clearance number 1024–0038. This approval expired in January 1996 and renewal of this approval has been submitted to OMB. The information is being collected as part of the process of reviewing the procedures and programs of State and local governments participating in the national historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.

The public reporting burden for the collection of this information is estimated to average 14.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024–0038), Washington, D.C. 20503.

Compliance With Other Laws

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

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

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

(a) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
(b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;
(c) conflict with adjacent ownership or land uses; or
(d) cause a nuisance to adjacent owners or occupants.

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

List of Subjects in 36 CFR Part 61

Grant programs-natural resources, Historic preservation, Reporting and recordkeeping requirements.

In consideration of the forgoing, 36 CFR Chapter I is proposed to be amended as follows:

1. 36 CFR Part 61 is revised to read as follows:

PART 61—PROCEDURES FOR STATE, TRIBAL AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Sec.
61.1 Authorization.
61.2 Definitions.
61.3 Implementation of this part 61.
61.4 State programs.
61.5 Grants to State programs.
61.6 Certified local government programs.
61.7 Subgrants to certified local governments.
61.8 Tribal programs. [Reserved]
61.9 Grants to Tribal programs. [Reserved]
61.10 Waiver.
61.11 Information collection. [Reserved]

Authority: 16 U.S.C. 470 *et seq.*

§ 61.1 Authorization.

The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*):

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

(1) Approving State historic preservation programs;

(2) Certifying local governments to carry out the purposes of the Act;

(3) The allocation by the State of a share of the grants received by the State under the Act to certified local governments (CLGs); and

(4) Assisting Indian tribes in preserving their particular historic properties.

(b) Directs the Secretary to administer a program of grants-in-aid to the States and Indian tribes for historic preservation projects and programs approved by the Secretary; and

(c) Requires the Secretary to make available information concerning professional standards, methods, and techniques for the preservation of historic properties and the administration of historic preservation programs.

§ 61.2 Definitions.

As used in this part:

(a) All terms defined in the National Historic Preservation Act of 1966, as amended, have the same meaning as provided by that statute. See especially Sections 101(a), 101(b)(1), 101(c)(4), 108 and 301 of the Act.

(b) *Act* means the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*)

(c) *Chief elected local official* means the elected head of a local government.

(d) *The National Register Programs Guideline* means the official NPS document that establishes administrative procedures and guidelines for historic preservation programs of the National Trust for Historic Preservation, and the State, tribal and local governments supported by the Historic Preservation Fund (HPF) or matching funds.

(e) *The Secretary's Standards and Guidelines* means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, that provide broad national policy guidance on archeological and historic preservation practices, methods and qualifications.

(f) *State historic preservation program* or *State program* means those activities listed in Section 101(b)(3) of the Act as responsibilities of the ''State Historic Preservation Officer''.

§ 61.3 Implementation of this part 61.

(a) *NPS policy of management by exception.* The regulations in this part will be implemented in such a way, where it is feasible to be consistent with its terms, as to:

(1) Rely to the maximum extent feasible on State, tribal and local government systems of financial and program administration that meet Federal standards;

(2) Presume that historic preservation programs are managed in an accountable way unless situations indicate the contrary; and

(3) Limit the use of direct Federal management review procedures to high risk situations, to new programs or to activities more appropriately overseen at the Federal level.

(b) At the discretion of the Secretary, each State, tribal and local government may substitute its own fiscal audit and management systems for comparable fiscal audit and management requirements issued by the Secretary, so long as the system establishes and maintains substantially similar accounting standards and provides for independent peer review.

(c) *The National Register Programs Guideline.* NPS will maintain this Guideline to ensure that each State, certified local government, tribal government, and the National Trust for Historic Preservation meets the requirements of the Act and of applicable regulations in performing historic preservation activities, pursuant to the Act.

(d) *The Secretary of the Interior's Standards and Guidelines.* The National Register Programs Guideline will include The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines will be used by NPS as the technical performance standards for matters covered by this part.

(e) Each State staff, State Review Board member and certified local government Commission member approved by the Secretary as meeting the Secretary's Professional Qualification Standards will retain that status, regardless of any subsequent changes in the Standards, until such time as that individual no longer is employed by the State office, serves on the State Review Board, or serves on the certified local government Commission with which that individual was affiliated as of the date of that individual's approval.

(f) Publications mentioned in this part can be obtained by contacting: Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

§ 61.4 State programs.

(a) A State Historic Preservation Officer (SHPO) will be appointed or designated by the Governor to administer the State historic preservation program.

(b) It will be the responsibility of the SHPO to carry out the duties and activities described in section 101 (b)(3) of the Act. In performing those duties and activities:

(1) The SHPO will carry out an historic preservation planning process that includes the development and implementation of a comprehensive statewide historic preservation plan that provides guidance for effective decision making about historic and cultural resource preservation throughout the State.

(2) In addition to State activities to survey and maintain inventories of historic properties, eligible activities also include efforts to record a broad range of properties in order to obtain:

(i) Comparative data valuable in determining the National Register eligibility of properties;

(ii) Information on properties that may become eligible for the National Register of Historic Places with the passage of time; and/or

(iii) Information on the absence of historic properties to be used in planning for public and private development projects.

(3) The State will provide for adequate public participation in the State historic preservation program as a whole. As part of the process of recommending a property to the National Register, the State will comply with the consultation and notification procedures contained in 36 CFR part 60. The State may authorize other persons or entities to fulfill the notice requirements in 36 CFR part 60. The State also may authorize the Local Preservation Commission of a certified local government to act for the State Review Board for the purpose of considering National Register nominations within its jurisdiction, provided the Commission meets the professional qualifications required for the State Review Board when considering such nominations. With the consent of all property owners in a nomination and the chief elected local official, the State Review Board or the Local Commission acting on its behalf may consider the nomination without a face-to-face meeting.

(4) The State may carry out all or any part of its responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution, or otherwise pursuant to State law. However, the

State may not delegate its responsibility for compliance with grant assistance terms and conditions.

(c) The Secretary will consider individual State proposals that include fewer than all of the SHPO duties in the Act in cases where the historic resources and needs would be better served for a specified period by implementing an alternative approach.

(d) *Procedures for review and approval of State historic preservation programs.* (1) The Secretary will evaluate each State program for consistency with the Act periodically, but not less often than every four years, and will provide the State with written findings and analyses that highlight program strengths and weaknesses. A State program will be approved by the Secretary if the Secretary determines that it meets the program requirements of paragraphs (a), (b), (e) and (f) of this section.

(2) The Secretary may use on-site and/or off-site inquiries to perform the evaluation.

(3) *Approval method.* (i) Each State with a program determined to be consistent with the Act will receive timely written notice from the Secretary that its approved status is continued.

(ii) Each State found to have major program aspects not consistent with the Act will receive timely written notice of deficiencies from the Secretary, along with required actions for correcting them. Unless circumstances warrant immediate action, the Secretary will defer making a decision on program approval for a specified period to allow the State to correct deficiencies or present a justifiable plan and timetable for correcting deficiencies. During this period, the State has the opportunity to appeal to the Secretary any findings and requirements.

(iii) A State successfully resolving deficiencies will receive timely written notice from the Secretary that its approved status is continued. Once approved status is renewed, a State generally will not be reviewed until the next regular evaluation period, although evaluations may be conducted more often if the Secretary deems this necessary.

(iv) A State with deficiencies that warrant immediate action or that remain after the expiration of the period specified pursuant to paragraph (d)(3)(ii) of this section will receive written notice from the Secretary that its approved status is removed. The Secretary will then initiate financial suspension and other actions in accordance with administrative guidelines specified in the National Register Programs Guideline and applicable regulatory requirements.

(4) Instructions on carrying out the evaluation process are provided in the National Register Programs Guideline.

(e) A professionally qualified staff will be appointed or employed by the State historic preservation program.

(1) Except as approved pursuant to paragraph (e)(2) of this section, the staff will include at a minimum, one individual meeting The Secretary's Standards and Guidelines professional qualifications for history, one individual meeting the qualifications for historic or prehistoric archeology and one individual meeting the qualifications for architectural history. The State will determine the qualifications for staff positions in addition to this required minimum.

(2) The Secretary will consider individual proposals made by States whose historic resources, needs or circumstances would be better served or met by an alternative staff composition.

(3) When a staff position required by paragraph (e)(1) of this section becomes vacant, the State will ensure that the vacancy is filled in a timely manner. In the interim, the State will ensure that technical matters are addressed by appropriately qualified individuals. A vacancy in a required position that persists for more than six months will be cause for review and appropriate action by the Secretary.

(f) An adequate and qualified State historic preservation Review Board will be appointed by the SHPO unless an alternative method of appointment is provided by State law.

(1) All Review Board members will have demonstrated competence, interest or knowledge in historic preservation. A majority of Review Board members will meet the Secretary of the Interior's Professional Qualification Standards. Among the members meeting the Professional Qualification Standards will be individuals who meet the Standards for history, prehistoric archeology or historical archeology, and architectural history. One person may meet the Standards for more than one required discipline. The State will determine qualifications for any additional Review Board members.

(2) The Secretary will consider individual proposals made by States whose historic resources, needs or circumstances would be better served or met by an alternative Review Board composition.

(3) When a required Review Board position becomes vacant, the State will ensure that the vacancy is filled in a timely manner. In the interim, the State will ensure that the Review Board has access to advice from appropriately qualified individuals. A lapse of more than one year in filling the vacancy will be cause for review and appropriate action by the Secretary.

(4) The State Review Board will meet at least once a year and will adopt written procedures governing its operations consistent with the provisions of this section and with the National Register Programs Guideline.

(5) State Review Board responsibilities include, but need not be limited to, the following:

(i) Reviewing and making recommendations on National Register nomination proposals;

(ii) Participating in the review of appeals to National Register nominations; and

(iii) Providing advice to the State on the full range of Historic Preservation Fund-supported activities, as described in Section 101 (b)(3) of the Act.

§ 61.5 Grants to State programs.

(a) Each State with an approved State program will be eligible for grants-in-aid from the Historic Preservation Fund (HPF).

(b) Administration of HPF matching grants-in-aid will be in accordance with the Act, the National Register Programs Guideline, OMB Circular A–128 and 43 CFR part 12. Failure by a State to meet these requirements will be cause for appropriate action by the Secretary.

§ 61.6 Certified local government programs.

(a) All approved State programs will provide a mechanism for certifying local governments (CLGs) to participate in the National program.

(b) All approved State historic preservation programs will maintain procedures approved by the Secretary for the certification of local governments. Procedures also will be maintained for removal of certified local government status for cause. The State will submit any proposed amendments to its procedures to the Secretary for approval. The Secretary will act on such proposals within 45 days of receipt.

(c) When a local government certification request has been approved by the State in accordance with the State's approved certification process, the State will prepare a written certification agreement that lists the specific responsibilities of the local government. The State will submit to the Secretary such information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not take exception to the proposed certification within 15 working days of

receipt, the local government will be regarded as certified by the Secretary.

(d) Beyond the minimum responsibilities set out in the Act for all CLGs, the State may make delegations of responsibility to individual CLGs. However, these delegations may not include the State's overall responsibility derived from the National Historic Preservation Act, as amended, or where specified by law or regulation.

(e) The State must ensure that each local government satisfies the following minimum requirements as conditions for certification. Each certified local government will:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State will define what constitutes appropriate legislation, as long as:

(i) Designation provisions include the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of the local government;

(ii) Protection provisions include a local review process under State or local law for proposed demolitions of, changes to, or other action that may affect historic properties as described in paragraph (e)(1)(i) of this section; and

(iii) The legislation otherwise is consistent with the Act.

(2) Establish by State or local law and maintain an adequate and qualified historic preservation review commission (Commission). All Commission members will have a demonstrated interest, competence or knowledge in historic preservation.

(i) The State will encourage certified local governments to include individuals meeting the Secretary's Professional Qualification Standards among the membership of the Commission, to the extent that such individuals are available in the community.

(ii) The State may specify the minimum number of Commission members that must meet the Secretary's Professional Qualification Standards. The State may also specify which, if any, of the disciplines listed in the Standards must be represented on the Commission. Membership requirements set by the State for Commissions will not be more stringent or comprehensive than its requirements for the State Review Board.

(iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, a local government may be certified without the minimum number or types of disciplines established in State procedures, if it can demonstrate that it has made a reasonable effort to fill those positions, or that an alternative composition of the Commission best meets the needs of the Commission and of the local government.

(iv) The State will make available to each Commission orientation materials and training designed to provide a working knowledge of the roles and operations of Federal, State and local historic preservation programs, and historic preservation in general.

(3) Maintain a system for the survey and inventory of historic properties. The State will ensure that such systems and the data that they produce can be readily integrated into statewide inventories and appropriate State and local planning processes.

(4) Provide for adequate public participation in the historic preservation program as a whole. The State will provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. The State will monitor and evaluate the performance of each CLG according to written standards and procedures established by the State. If a State evaluation of a CLG's performance indicates that such performance is inadequate, the State will suggest ways to improve performance. If, after a period of time stipulated by the State, the State determines that there has not been sufficient improvement, it may recommend to the Secretary that the local government be decertified. If the Secretary does not object within 30 working days of receipt, the decertification will be considered approved by the Secretary.

(f) Effects of certification include:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The State may delegate to a CLG any of the responsibilities of the SHPO and the State Review Board in processing National Register nominations as specified in 36 CFR part 60, except for the authority to nominate properties directly to the National Register. A CLG may make nominations directly to NPS only when the State does not have an approved program pursuant to § 61.4.

(2) Eligibility to apply for a portion of the State's annual Historic Preservation Fund (HPF) grant award. At least 10 percent of the State's annual HPF grant award will be set aside for transfer to CLGs.

(g) The District of Columbia will be exempted from the requirements of this section because there are no subordinated local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States, and hence cannot satisfy the requirements for local government certification, it may apply to the Secretary for exemption from the requirements of this section.

(h) *Procedures for direct certification by the Secretary where there is no approved State program pursuant to § 61.4.* To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved State program.

(1) Where there is no approved State program, local governments wishing to be certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (e) of this section.

(3) The Secretary will review certification applications under this paragraph (h) and take action within 90 days of receipt.

§ 61.7 Subgrants to certified local governments.

(a) At least 10 percent of each State's annual Historic Preservation Fund (HPF) grant award will be designated for transfer by the State to CLGs as subgrants. In any year that the annual HPF State grant appropriation exceeds $65,000,000, one half of the amount over $65,000,000 will also be transferred to CLGs according to procedures to be provided by the Secretary.

(b) Each CLG will be eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. The State is not required to award funds to all governments eligible to receive funds.

(c) Each State will maintain a procedure approved by the Secretary for allocating the CLG share of its annual HPF grant award. The procedure will provide a clear basis for funding decisions and ensure that no CLG receives a disproportionate share of the allocation. The State will submit any proposed amendments to its procedure to the Secretary for approval. The Secretary will act on such proposals within 45 days of receipt.

(d) Each State will notify annually each eligible local government of its opportunity to apply for funding as well as what is entailed in the application and project selection process.

(e) Each CLG receiving an HPF grant award from the CLG share will be considered a subgrantee of the State. The State will ensure that each CLG adheres to all applicable requirements of the National Register Programs Guideline. The State may require specific uses of funds subgranted to CLGs. Subgranted monies will not be applied as matching share for any other Federal grant.

(f) Where there is no approved State program pursuant to § 61.4, the method for allocating funds to CLGs in that State will be determined by the Secretary in accordance with the procedures set forth for the State in this § 61.7. To the extent feasible, the Secretary will ensure consistency and continuity in the funding allocation policy of the CLG program for a State that does not have an approved historic preservation program.

§ 61.8 Tribal programs. [Reserved]

§ 61.9 Grants to Tribal programs. [Reserved]

§ 61.10 Waiver.

The Secretary may waive any of the requirements of the rules in this part that are not mandated by statute or by other applicable regulations, if, in the Secretary's written opinion, the historic preservation program would benefit from such waiver and the purposes, conditions, and requirements of the National Historic Preservation Act of 1966, as amended, would not be compromised.

§ 61.11 Information collection. [Reserved]

Dated: September 18, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–24406 Filed 10–1–96; 8:45 am]

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Federal Register

Wednesday
October 2, 1996

Part IV

Department of Housing and Urban Development

24 CFR Part 576

Streamlining the Emergency Shelter Grants Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 576

[Docket No. FR–4088–F–01]

RIN 2506–AB84

Office of the Assistant Secretary for Community Planning and Development; Streamlining the Emergency Shelter Grants Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Emergency Shelter Grants (ESG) Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the ESG regulations clearer and more concise. In addition, this rule will reflect provisions implementing legislation that has amended the program since the last general rule amending the ESG regulations. The legislation has, among other changes to the program: Extended program entitlements to Indian tribes; established new limits on expenditures for specified purposes, including administrative costs, services, and prevention activities; reduced the amount required to be matched by grantees and recipients, especially those non-State recipients that are least capable of meeting matching funds requirements; and mandated habitability standards and required the implementation of procedures to ensure confidentiality of records relating to family violence services.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Director, Program Coordination and Analysis Division, Office of Community Planning and Development, Room 7262, telephone (202) 708–1226. For questions on program requirements for Indian tribes, contact: Bruce Knott, Director, Housing and Community Development Division, Office of Native American Programs, Room B–133, telephone (202) 755–0068. (These telephone numbers are not toll-free.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

The address for both of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the ESG Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), because those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference.

Several other provisions in the regulations apply to more than one program, and therefore HUD repeated these provisions in different parts. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this final rule consolidates duplicative and related provisions, maintaining appropriate cross-references for the reader's convenience. For example, requirements for environmental review have been moved into the section on ''Other federal requirements'' (§ 576.57) and have been streamlined by reference to a new rule on these requirements that was published on April 30, 1996 (61 FR 19120). This April 30 rule also permits streamlining of references to flood hazards and coastal barriers in § 576.57.

Similarly, provisions that are not regulatory requirements—for example, provisions containing nonbinding guidance or explanations—have been removed. Although this information can be helpful to program participants, HUD will more appropriately provide this information through handbook guidance or other materials, rather than maintain it in the CFR.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish portions of this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Some portions of this rule have been subject to notice-and-comment rulemaking in the past. A proposed rule that was published in 58 FR 17766 (April 5, 1993) included statutory provisions applicable to Indian tribe allocations, and was based on the first Notice of Funding Availability (NOFA) that the Department used to distribute Emergency shelter grant (ESG) amounts to Indian tribes. Normally, the Department would not allow a final rule to be based on a proposed rule for which so much time has lapsed. Because this very limited portion of the program has been operating in accordance with the statutory requirements and expressly based upon the methodology included in the proposed rule, and because this is the first general rule that the Department has published on this program subsequent to the proposed rule (upon which the Department received no comments), an exception is being made to the standard rulemaking policy. The Department emphasizes, however, that any provisions in the proposed rule that are made final in this rule are based strictly upon the statutory provisions and are allowed primarily because inclusion in this rule provides better notice to affected parties.

Similarly, this rule also makes final a very limited interim rule on the reallocation of unused ESG amounts that was published on November 19, 1992 (57 FR 54505) and has remained in effect since that time. The Department received three comments on the interim rule, one of which praised the rule and two which suggested changes. Based on its experience in operating under the provision contained in the interim rule, the Department does not believe that the administrative mechanism chosen to distribute the unused funds is unfair, as suggested by one of the commenters. The regulations already ensure a preference for using grant amounts in the jurisdiction to which they were allocated. A change suggested by

another commenter, regarding advance notification by the Department before an action to recover unspent grant amounts, does not require a regulation for implementation. Therefore, in issuing this final streamlining rule, the Department is not changing the provision on reallocation of unused grant amounts.

The ESG Program

The more general regulations applicable to the ESG Program (24 CFR part 576) were amended most recently by a final rule published on November 7, 1989 (54 FR 46799). Today's streamlining rule incorporates provisions in two subsequent statutes that contain numerous amendments to subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371–11377) (the McKinney Act), the authorizing legislation for the ESG program: (1) section 832 (104 Stat. 4359) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA); and (2) section 1402 (106 Stat. 4012) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act).

Changes in NAHA

Section 832(b) of NAHA permits recipients to use up to 5% of an annual ESG Program grant for administrative purposes. Section 832(c) increased from 20% to 30% the percentage of a grant that may be used to provide essential services. Section 832(d) withdraws homelessness prevention activities from categorization as ''essential services'', and imposes a separate limit of 30% of the aggregate amount of assistance to a State (including each territory), local government, or Indian tribe that may be used for efforts to prevent homelessness.

Section 832(e) reduced by $100,000 the amount that States are required to provide as a match to assistance received under the ESG program. The $100,000 reduction is required to be implemented by each State in a manner that will benefit those participating local governments, Indian tribes, agencies, and nonprofit organizations that are least able to contribute to the State's matching funds. The Department is revising § 576.51 (as redesignated) to reflect the determination under which the Department has been operating that a territory is not required to provide matching funds. This revision, which is authorized as a matter of the Department's discretion by 48 U.S.C. 1469a(d), ensures that the funds allocated to the territories can be provided whether or not they are able to meet the matching requirements otherwise applicable under this program.

Section 832(e) of NAHA requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG Program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter.

Section 832(f) expressly extends eligibility for assistance under the ESG Program to Indian tribes. This extension is reflected in numerous sections of this rule. Additional requirements that will be applicable to Indian tribes interested in competing for ESG set-aside funds will be included in periodic NOFAs published in the Federal Register, as provided in § 576.31 of this final rule.

Section 832(g) mandates the Secretary to prescribe standards for emergency shelters that ensure appropriate privacy, safety, and health-related living conditions. Section 576.55 of this rule continues to require that buildings used for emergency shelters comply with local government safety and sanitation standards.

Changes in Housing and Community Development Act of 1992

Section 1402(b) of the 1992 Act requires a certification regarding the involvement of homeless individuals and families in providing work or services pertaining to facilities or activities assisted under the ESG program. Section 1402(c) requires each unit of local government, Indian tribe, and nonprofit recipient that receives ESG funds to provide for the participation of homeless individuals on its board of directors or other policymaking entity. Section 1402(d) provides that grantees and recipients may terminate assistance provided to an individual or family who violates program requirements only in accordance with a formal process. Section 1402(e) expressly authorizes as an eligible activity the use of not more than 10 percent of any ESG grant for costs of staff.

Policy Emphasis

The Department seeks to emphasize that emergency shelters are intended to be part of a process for ending homelessness. Thus, emergency shelter grant funds are also appropriately targeted on efforts to avoid homelessness for families and individuals at imminent risk of becoming homeless. This policy is reflected in language added to § 576.1, ''Applicability and purpose''.

While the Department is not expanding its definition of ''homeless'', it is restating in this preamble its understanding of the scope of that definition. The Department does not believe that the limited resources of the ESG program were intended by Congress to be used to serve persons who are poorly housed; the primary purpose of the program is to help persons who lack shelter. Therefore, in this program the Department is concerned with persons who are, or may soon become, homeless, rather than persons who are living in overcrowded or substandard housing. Other programs administered by the Department, such as the Section 8 housing assistance payments programs, public and Indian housing, and the HOME Program, target persons living in overcrowded or substandard housing.

The Department would correct several omissions from the current regulations by adding paragraphs (h) and (i) to § 576.57 (as redesignated). Paragraph (h) refers to statutory lobbying and disclosure requirements. Paragraph (i) clarifies that the Davis-Bacon Act (40 U.S.C. 276a–276a–5), which establishes minimum wage requirements, does not apply to this Program. Although the Davis-Bacon Act was never incorporated into the McKinney Act and therefore is not applicable to the ESG program, a specific statement to this effect was not included in the program regulations. Similar references may be found in other McKinney Act programs administered by HUD.

Findings and Certifications

Paperwork Reduction Act Statement.

The information collection requirements contained in §§ 576.21, 576.31, 576.57, 576.43, 576.59, and 576.61 in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control numbers 2506–0117 and 2506–0089. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial

number of small entities. The rule is largely in the nature of technical amendments to existing regulations for the purpose of recognizing specific statutory requirements under which the program already is operating. The remainder of the rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Review

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by streamlining and updating provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the ESG program regulations. That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this rule will not have federalism implications, because the regulatory changes either: (1) Would not have substantial direct effects on States, including units of local government and other political subdivisions established by the States; on the relationship between the Federal Government and the States; or on the distribution of power and responsibilities among the various levels of government; or (2) would merely implement statutory changes to the Emergency Shelter Grants Program. A more comprehensive review under Executive Order 12612 of any of these changes is not required because the implementation of the statutes leaves little discretion with the Department to lessen these impacts.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this rule.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule is limited to simplifying and streamlining the Emergency Shelter Program regulations.

The Catalog of Federal Domestic Assistance program number is 14.231.

List of Subjects in 24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 576 of title 24 of the Code of Federal Regulations is amended as follows:

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

1. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

Subpart A—General

2. Section 576.1 is revised to read as follows:

§ 576.1 Applicability and purpose.

This part implements the Emergency Shelter Grants program contained in subtitle B of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11371–11378). The program authorizes the Secretary to make grants to States, units of general local government, territories, and Indian tribes (and to private nonprofit organizations providing assistance to homeless individuals in the case of grants made with reallocated amounts) for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless, and for homeless prevention activities. The program is designed to be the first step in a continuum of assistance to enable homeless individuals and families to move toward independent living as well as to prevent homelessness.

3. Section 576.3 is amended as follows:

a. By revising the first sentence in the definition of ''Consolidated plan.'';

b. By revising the definitions of ''Conversion'', ''Homeless'', ''Major rehabilitation'', ''Metropolitan city'', ''Private nonprofit organization'', ''Rehabilitation'', ''Renovation'', and ''Urban county'';

c. By removing the definition for ''Emergency shelter grant amounts or grant amounts'';

d. By redesignating paragraphs (a) through (h) of the definition of ''Essential services'' as paragraphs (1) through (8), respectively; and

e. By redesignating paragraphs (a) through (f) of the definition of ''Homeless prevention'' as paragraphs (1) through (6), respectively; and

f. By adding definitions in alphabetical order of ''Administrative costs'', ''Indian tribe'', and ''Responsible entity''; to read as follows:

§ 576.3 Definitions.

* * * * *

Administrative costs means as the term is defined in 583.135(b) of this part, except that the exclusion relates to the costs of carrying out eligible activities under § 576.21(a).

Consolidated plan means the plan prepared in accordance with part 91 of this title. * * *

Conversion means a change in the use of a building to an emergency shelter for the homeless under this part, where the cost of conversion and any rehabilitation costs exceed 75 percent of the value of the building after conversion.

* * * * *

Formula city or county means a metropolitan city or urban county that is eligible to receive an allocation of grant amounts under § 576.5.

* * * * *

Homeless means as the term is defined in 42 U.S.C. 11302.

* * * * *

Indian tribe means as the term is defined in 42 U.S.C. 5302(a).

Major rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

Metropolitan city means a city that was classified as a metropolitan city under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

* * * * *

Private nonprofit organization means as the term is defined in 42 U.S.C. 11371.

Rehabilitation means the labor, materials, tools, and other costs of improving buildings, other than minor or routine repairs. The term includes where the use of a building is changed to an emergency shelter and the cost of this change and any rehabilitation costs does not exceed 75 percent of the value of the building before the change in use.

Renovation means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

Responsible entity means as the term is defined in § 58.2 of this title, as applied though § 58.1(b)(3) of this title and § 576.57(e).

* * * * *

Urban county means a county that was classified as an urban county under 42 U.S.C. 5302(a) for the fiscal year immediately preceding the fiscal year for which emergency shelter grant amounts are made available.

* * * * *

4. A new § 576.5 is added in subpart A, to read as follows:

§ 576.5 Allocation of grant amounts.

(a) *Territories.* HUD will set aside for allocation to the territories an amount equal to 0.2 percent of the total amount of each appropriation under this part in any fiscal year. HUD will allocate this set-aside amount to each territory based upon its proportionate share of the total population of all territories.

(b) *States, metropolitan cities, urban counties, and Indian tribes.* HUD will allocate the amounts that remain after the set-aside to territories under paragraph (a) of this section, to States, metropolitan cities, urban counties, and Indian tribes, as provided in 42 U.S.C. 11373. HUD will subsequently distribute the amount set aside for Indian tribes under this paragraph as provided in § 576.31.

(c) *Notification of allocation amount.* HUD will notify in writing each State, metropolitan city, urban county, and territory that is eligible to receive an allocation under this section of the amount of its allocation.

Subpart B—Eligible Activities

5. Section 576.21 is revised to read as follows:

§ 576.21 Eligible activities.

(a) *Eligible activities.* Emergency shelter grant amounts may be used for one or more of the following activities relating to emergency shelter for the homeless:

(1) Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless;

(2) Provision of essential services to the homeless, subject to the limitations in paragraph (b) of this section;

(3) Payment for shelter maintenance, operation, rent, repairs, security, fuel, equipment, insurance, utilities, food, and furnishings. Not more than 10 percent of the grant amount may be used for costs of staff;

(4) Developing and implementing homeless prevention activities, subject to the limitations in 42 U.S.C. 11374(a)(4) and paragraph (c) of this section. Grant funds may be used under this paragraph to assist families that have received eviction notices or notices of termination of utility services only if the conditions stated in 42 U.S.C. 11374(a)(4) are met; and

(5) Administrative costs, in accordance with 42 U.S.C. 11378.

(b) *Limitations on provision of essential services.* (1) Grant amounts provided by HUD to units of general local government, territories, or Indian tribes, and grant amounts provided by a State to State recipients, may be used to provide an essential service under paragraph (a)(2) of this section only if the service is a new service, or is a quantifiable increase in the level of a service above that which the unit of general local government (or, in the case of a nonprofit organization, the unit of general local government in which the proposed activities are to be located), territory, or Indian tribe, as applicable, provided with local funds during the 12 calendar months immediately before the grantee or State recipient received initial grant amounts.

(2) Limits on the use of assistance for essential services established in 42 U.S.C. 11374(a)(2) are applicable even when the unit of local government, territory, or Indian tribe provides some or all of its grant funds to a nonprofit recipient. This limitation may be waived in accordance with 42 U.S.C. 11374.

(c) *Limitation on homeless prevention activities.* Limits on the use of assistance for homeless prevention activities established in 42 U.S.C. 11374(a)(4) are applicable even when the unit of local government, territory, or Indian tribe provides some or all of its grant funds to a nonprofit recipient.

§§ 576.22 and 576.23 [Redesignated as §§ 576.23 and 576.25]

6. Sections 576.22 and 576.23 are redesignated as §§ 576.23 and 576.25, respectively, and are revised to read as follows:

§ 576.23 Limitations—Primarily religious organizations.

(a) *Provision of assistance.* (1) Assistance may be provided under this part to a grantee or recipient that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(ii) It will not discriminate against any person applying for shelter or any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion; and

(iii) It will provide no religious instruction or counseling, conduct no religious services or worship (not including voluntary nondenominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of shelter and other eligible activities under this part.

(2) HUD may provide reallocated amounts to a recipient that is a primarily religious organization if the assistance will not be used by the organization to acquire a structure (in the case of homeless prevention activities under § 576.21(a)(4)), or to rehabilitate a structure owned by the organization, except as described in paragraph (b) of this section.

(b) *Rehabilitation or conversion of emergency shelters.* Grants may be used to rehabilitate or convert to an emergency shelter a structure that is owned by a primarily religious organization, only if:

(1) The structure (or portion thereof) that is to be renovated, rehabilitated, or converted with HUD assistance has been leased to an existing or newly established wholly secular organization;

(2) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements;

(3) The leased structure will be used exclusively for secular purposes available to all persons;

(4) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the renovation, rehabilitation, or conversion;

(5) The portion of the cost of any improvements that benefit any unleased

portion of the structure will be allocated to, and paid for by, the religious organization; and

(6) The primarily religious organization agrees that if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay to the original grantee (from which the amounts used to renovate, rehabilitate, or convert the building were derived) an amount equal to the residual value of the improvements. A private nonprofit organization must remit to HUD this amount if the organization is the lessee as well as the grantee. The original grantee is expected to use this amount to alleviate homelessness in its jurisdiction, but there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(c) *Assistance to a wholly secular private nonprofit organization.* (1) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The secular organization may be eligible to receive all forms of assistance available under this part, subject to the following:

(i) The secular organization must agree to provide shelter and services eligible under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (a)(1) of this section.

(ii) The secular organization may enter into a contract with the religious organization to provide essential services or undertake homeless prevention activities. The religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (a)(1) of this section.

(iii) The rehabilitation, conversion, or renovation of emergency shelters are subject to the requirements of paragraph (b) of this section.

(2) HUD will not require the religious organization to establish the secular organization before the selection of its application. In such a case, the religious organization may apply on behalf of the secular organization. The application will be reviewed on the basis of the religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the secular organization after formation. After formation, a secular organization that is not in existence at the time of the application will be required to demonstrate that it meets the definition of private nonprofit organization contained in § 576.3. The obligation of funds will be conditioned upon compliance with these requirements.

§ 576.25 Who may carry out eligible activities.

(a) *Generally.* As provided in 42 U.S.C. 11373 eligible activities may be carried out by all State recipients and grantees, except States.

(b) *States.* All of a State's formula allocation, except for administrative costs, must be made available to the following entities:

(1) Units of general local government in the State, which may include formula cities and counties even if such cities and counties receive grant amounts directly from HUD; or

(2) Private nonprofit organizations, in accordance with 42 U.S.C. 11373(c).

(c) *Nonprofit recipients.* Units of general local government, territories, and Indian tribes may distribute all or part of their grant amounts to nonprofit recipients to be used for emergency shelter grant activities.

Subparts C and D—[Removed]

7. Subparts C and D are removed.

Subparts E through H [Redesignated as Subparts C through F]

8. Subparts E through H are redesignated as subparts C through F

Subpart C—Award and Use of Grant Amounts

§ 576.51 [Redesignated as § 576.31]

9. Section 576.51 is redesignated as § 576.31 and is revised to read as follows:

§ 576.31 Application requirements.

(a) *Indian tribes.* After funds are set aside for allocation to Indian tribes under § 576.5, HUD will publish a Notice of Funding Availability (NOFA) in the Federal Register. The NOFA will specify the requirements and procedures applicable to the allocation and competitive awarding of these set-aside funds to eligible Indian tribe applicants.

(b) *States, territories, and formula cities and counties.* To receive emergency shelter grant amounts, a State, territory, or formula city or county must:

(1) Submit documentation required under this part, part 5 of this title, or any other applicable provisions of Federal law; and

(2) Submit and obtain HUD approval of a consolidated plan that includes activities to be funded under this part. This consolidated plan serves as the jurisdiction's application for funding under this part.

§ 576.52 [Removed]

10. Section 576.52, ''Environmental review'', is removed.

§ 576.53 [Redesignated as § 576.33 and amended]

11. Section 576.53, ''Review and approval of applications'', is redesignated as § 576.33 and is amended by removing the reference ''576.89'' and adding in its place the reference ''576.69''.

§ 576.55 [Redesignated as § 576.35 and amended]

12. Section 576.55 is redesignated as § 576.35 and is amended by revising (a)(1), (b), and (c), to read as follows:

§ 576.35 Deadlines for using grant amounts.

(a)(1) *States.* Each State must make available to its State recipients all emergency shelter grant amounts that it was allocated under § 576.5 within 65 days of the date of the grant award by HUD. Funds set aside by a State for homeless prevention activities under § 576.21(a)(4) must be made available to State recipients within 180 days of the grant award by HUD.

* * * * *

(b) *Formula cities and counties, territories and Indian tribes—Expenditure of grant funds.* Each formula city or county, territory, and Indian tribe must spend all of the grant amounts it was allocated or awarded under §§ 576.5 or 576.31 within 24 months of the date of the grant award by HUD.

(c) *Failure to meet deadlines.* (1) Any emergency shelter grant amounts that are not made available or obligated within the applicable time periods specified in paragraphs (a)(1) or (b) of this section will be reallocated under § 576.45.

(2) The State must recapture any grant amounts that a State recipient does not obligate and spend within the time periods specified in paragraph (a)(2) of this section. The State, at its option, must make these amounts and other amounts returned to the State (except amounts referred to in § 576.22(b)(6) available as soon as practicable to other units of general local government for use within the time period specified in paragraph (a)(2) of this section or to HUD for reallocation under § 576.45.

Subpart D—Reallocations

§ 576.61 [Redesignated as § 576.41 and amended]

13. Section 576.61 is redesignated as § 576.41 and is amended by:

a. Revising the section heading;

b. Revising paragraphs (b), (d)(1), (d)(2), (e), (f), and (g); and

c. Revising the heading of paragraph (c) to read as follows:

§ 576.41 Reallocation; lack of approved consolidated plan—formula cities and counties.

* * * * *

(b) *Grantee.* HUD will make available to the State in which the city or county is located the amounts that a city or county referred to in paragraph (a) of this section would have received.

(c) *Notification of availability.* * * *

(d) * * *

(1) Execute a grant agreement with HUD for the fiscal year for which the amounts to be reallocated were initially made available.

(2) If necessary, submit an amendment to its application for that fiscal year for the reallocation amounts it wishes to receive. The amendment must be submitted to the responsible HUD field office no later than 30 days after notification is given to the State under paragraph (c) of this section.

(e) *Amendment review and approval.* (1) Section 576.33 governs the review and approval of application amendments under this section. HUD will endeavor to make grant awards within 30 days of the application amendment deadline, or as soon thereafter as practicable.

(2) Program activities represented by proposed amendments are subject to environmental review under § 576.57 in the same manner as original proposals.

(f) *Deadlines for using reallocated grant amounts.* Section 576.35 governs the use of amounts reallocated under this section.

(g) *Amounts that cannot be reallocated.* Any grant amounts that cannot be reallocated to a State under this section will be reallocated as provided by § 576.43. Amounts that are reallocated under this section, but that are returned or unused, will be reallocated under § 576.45.

§ 576.63 [Redesignated as § 576.43 and amended]

14. Section 576.63 is redesignated as § 576.43 and is amended:

a. By revising the section heading;

b. By revising paragraphs (a) and (b);

c. By revising the first sentence of paragraph (c);

d. By revising the introductory text of paragraph (d);

e. By revising paragraph (d)(2);

f. By removing the parenthetical ''(except paragraph (e))'' in the introductory text of paragraph (e); and

g. By revising paragraphs (f), (g), and (h), to read as follows:

§ 576.43 Reallocation of grant amounts; lack of approved Consolidated Plan—States, territories, and Indian tribes.

(a) *Applicability.* This section applies when:

(1) A State, territory, or Indian tribe fails to obtain approval of its consolidated plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year; or

(2) Grant amounts cannot be reallocated to a State under § 576.41.

(b) *Grantees.* (1) HUD will reallocate the amounts that a State or Indian tribe referred to in paragraph (a)(1) of this section would have received:

(i) In accordance with 42 U.S.C. 11373(d)(3); and

(ii) If grant amounts remain, then to territories that demonstrate extraordinary need or large numbers of homeless individuals.

(2) HUD will make available the amounts that a territory under paragraph (a)(1) of this section would have received to other territories that demonstrate extraordinary need or large numbers of homeless individuals.

(c) *Notification of funding availability.* HUD will make reallocations to States and Indian tribes under this section by direct notification or Federal Register notice that will set forth the terms and conditions under which amounts under this section are to be reallocated and grant awards made. In the case of reallocations to territories, the responsible HUD field office will promptly notify each territory of any reallocation amounts under this section and will indicate the terms and conditions under which reallocation amounts are to be made available and grant awards made.

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the formula city or county, State, territory, or Indian tribe must:

(1) * * *

(2) Execute a grant agreement with HUD for the fiscal year for which the amounts to be reallocated were initially made available.

* * * * *

(f) *Grant amounts.* HUD may make a grant award for less than the amount applied for or for fewer than all of the activities identified in the application amendment.

(g) *Deadlines for using reallocated amounts.* Section 576.35 governs the use of amounts reallocated under this section.

(h) *Amounts not reallocated.* Any grant amounts that are not reallocated under this section, or that are reallocated, but are unused, will be reallocated under § 576.45(d). Any amounts that are reallocated, but are returned, will be reallocated under § 576.45(c).

§ 576.67 [Redesignated as § 576.45 and amended]

15. Section 576.67 is redesignated as § 576.45, and is amended as follows:

a. In paragraph (c)(1), by italicizing the first sentence and by removing the reference ''§ 576.43'' and adding in its place the reference ''§ 576.5'';

b. By redesignating paragraphs (c) (2) and (3) as paragraphs (c) (3) and (4), respectively;

c. By adding a new paragraph (c)(2);

d. By revising paragraphs (c)(3) and (c)(4), as redesignated;

e. In paragraph (c)(9), by removing the reference to ''§ 576.52'' and adding in its place a reference to ''576.57'';

f. In paragraph (d), by removing the reference to ''subpart D'' and adding in its place a reference to ''§ 576.5'';

g. By revising the heading of paragraph (f); and

h. By revising paragraph (f)(2) to read as follows:

§ 576.45 Reallocation of grant amounts; returned or unused amounts.

* * * * *

(c) * * *

(1) *States and formula cities and counties.* * * *

(2) *Indian tribes.* Returned grant amounts that were allocated to an Indian tribe will be made available to other Indian tribes.

(3) *Territories.* Returned grant amounts that were allocated to a territory will be made available, first, to other territories and, if grant amounts remain, then to States.

(4) *Further reallocation: States, formula cities and counties, territories, and Indian tribes.* HUD will reallocate under paragraph (e) of this section any grant amounts that remain after applying the preceding provisions of paragraph (c) of this section or that are returned to HUD after reallocation under those provisions.

* * * * *

(f) *Definitions—returned or unused grant amounts.* * * *

(2) For purposes of this section, emergency shelter grant amounts are considered ''unused'' (i.e., Federal deobligation):

(i) When they become available for reallocation by HUD after a grantee has

executed a grant agreement with HUD for those amounts; or

(ii) The amounts remain after reallocation under § 576.43 or paragraph (c) of this section.

Subpart E—Program Requirements

§ 576.71 [Redesignated as § 576.51 and revised]

16. Section 576.71 is redesignated as § 576.51 and is revised to read as follows:

§ 576.51 Matching funds.

(a) *General.* Each grantee, other than a territory, must match the funding provided by HUD under this part as set forth in 42 U.S.C. 11375. The first $100,000 of any assistance provided to a recipient that is a State is not required to be matched, but the benefit of the unmatched amount must be shared as provided in 42 U.S.C. 11375(c)(4). Matching funds must be provided after the date of the grant award to the grantee. Funds used to match a previous ESG grant may not be used to match a subsequent grant award under this part. A grantee may comply with this requirement by providing the matching funds itself, or through matching funds or voluntary efforts provided by any State recipient or nonprofit recipient (as appropriate).

(b) *Calculating the matching amount.* In calculating the amount of matching funds, in accordance with 42 U.S.C. 11375(a)(3), the time contributed by volunteers shall be determined at the rate of $5 per hour. For purposes of this paragraph, the grantee will determine the value of any donated material or building, or of any lease, using a method reasonably calculated to establish a fair market value.

§ 576.73 [Redesignated as § 576.53 and amended]

17. Section 576.73 is redesignated as § 576.53, and is amended by revising paragraph (a) and the introductory text of paragraph (b), to read as follows:

§ 576.53 Use as an emergency shelter.

(a)(1) *Restrictions and definition.* Period of use restrictions applicable to assistance provided under this part are governed by 42 U.S.C. 11375(a). Use of grant amounts for developing and implementing homeless prevention activities does not trigger period of use requirements.

(2) For purposes of the requirements under this section, the term *same general population* means either the same types of homeless persons originally served with ESG assistance (i.e., battered spouses, runaway children, families, or mentally ill individuals), or persons in the same geographic area.

(b) *Calculating the applicable period.* The 3- and 10-year periods applicable under paragraph (a) of this section begin to run:

* * * * *

§ 576.75 [Redesignated as § 576.55]

18. Section 576.75 is redesignated as § 576.55 and is revised to read as follows:

§ 576.55 Building standards.

(a) Any building for which emergency shelter grant amounts are used for conversion, major rehabilitation, rehabilitation, or renovation must meet local government safety and sanitation standards.

(b) For projects of 15 or more units, when rehabilitation costs are:

(1) 75 percent or more of the replacement cost of the building, that project must meet the requirements of § 8.23(a) of this title; or

(2) Less that 75 percent of the replacement cost of the building, that project must meet the requirements of § 8.23(b) of this title.

§ 576.77 [Redesignated as § 576.56]

19. Section 576.77 is redesignated as § 576.56, and is revised to read as follows:

§ 576.56 Homeless assistance and participation.

(a) *Assistance.* (1) Grantees and recipients must assure that homeless individuals and families are given assistance in obtaining:

(i) Appropriate supportive services, including permanent housing, medical health treatment, mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(ii) Other Federal, State, local, and private assistance available for such individuals.

(2) Requirements to ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this part are set forth in 42 U.S.C. 11375(c)(5).

(3) Grantees and recipients may, in accordance with 42 U.S.C. 11375(e), terminate assistance provided under this part to an individual or family who violates program requirements.

(b) *Participation.* (1) Each unit of local government, Indian tribe, and nonprofit recipient that receives funds under this part must provide for the participation of homeless individuals on its policymaking entity in accordance with 42 U.S.C. 11375(d).

(2) Each State, territory, Indian tribe, unit of local government, and nonprofit recipient that receives funds under this part must involve homeless individuals and families in providing work or services pertaining to facilities or activities assisted under this part, in accordance with 42 U.S.C. 11375(c)(7).

§ 576.79 [Redesignated as § 576.57 and amended]

20. Section 576.79 is redesignated as § 576.57, and is amended as follows:

a. By revising paragraphs (e) and (f);

b. By redesignating paragraph (h) as paragraph (j); and

c. By adding new paragraphs (h) and (i) to read as follows:

§ 576.57 Other Federal requirements.

* * * * *

(e) *Environmental review responsibilities.*—(1) *Generally.* Responsible entities must assess the environmental effects of each application under part 58 of this title. An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and related authorities listed in part 58 of this title. The grant award is subject to completion of the environmental responsibilities set out in part 58 of this title within a reasonable time period after notification of the award. This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.

(2) *Awards to States.* In the case of emergency shelter grants to States that are distributed to:

(i) Units of general local government, the unit of general local government shall be the responsible entity, and the State will assume HUD's functions with regard to the release of funds; or

(ii) Nonprofit organizations, the State shall be the responsible entity, and HUD will perform functions regarding release of funds under part 58 of this title.

(3) *Release of funds.* HUD will not release funds for an eligible activity if the grantee, recipient, or any other party commits emergency shelter grant funds before the grantee submits, and HUD approves, any required Request for Release of Funds.

(f) *Audit.* The financial management systems used by a State, formula city or county, governmental entity, or an Indian tribe that is a grantee under this program must provide for audits in

accordance with part 44 of this title. A private nonprofit organization is subject to the audit requirements of OMB Circular A–133, as set forth in part 45 of this title. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, NW., Suite G–2200, Washington, DC 20503, Telephone, 202–395–7332.)

* * * * *

(h) *Lobbying and disclosure requirements.* The disclosure requirements and prohibitions of 42 U.S.C. 3537a and 3545 and 31 U.S.C. 1352 (the Byrd Amendment), and the implementing regulations at parts 4 and 87 of this title.

(i) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to this program.

§ 576.80 [Redesignated as § 576.59]

21. Section 576.80, ''Relocation and acquisition'', is redesignated as § 576.59.

Subpart F—Grant Administration

§ 576.81 [Redesignated as § 576.61 and amended]

22. Section 576.81 is redesignated as § 576.61, and is amended by revising the second sentence and adding paragraphs (a) and (b), to read as follows:

§ 576.61 Responsibility for grant administration.

* * * The State, territory, Indian tribe, or unit of local government is responsible for ensuring that its recipients carry out the recipients' emergency shelter grant programs in compliance with all applicable requirements in the case of:

(a) A State making grant amounts available to State recipients; or

(b) A territory, Indian tribe, or unit of general local government distributing grant amounts to nonprofit recipients.

§ 576.83 [Redesignated as § 576.63 and amended]

23. Section 576.83, ''Method of payment'', is redesignated as § 576.63, and is amended by removing the last sentence.

§ 576.87 [Redesignated as § 576.65]

24. Section 576.87 is redesignated as § 576.65 and is revised to read as follows:

§ 576.65 Recordkeeping.

(a) Each grantee must ensure that records are maintained for a 4-year period to document compliance with the provisions of this part.

(b) Requirements to ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this part are set forth in 42 U.S.C. 11375(c)(5).

§ 576.89 [Redesignated as § 576.67 and amended]

25. Section 576.89, ''Sanctions'', is redesignated as § 576.67, and is amended as follows:

a. By removing a reference in paragraph (b) to ''§ 576.55(a)(2)'' and adding in its place a reference to ''§ 576.35(a)(2)''; and

b. By removing references in paragraphs (b) and (c) to ''§ 576.67(d)'' and adding in their places references to ''§ 576.45(d)''.

Dated: September 20, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–25054 Filed 10–1–96; 8:45 am]

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Federal Register

Wednesday
October 2, 1996

Part V

Department of Housing and Urban Development

24 CFR Part 570

Office of Assistant Secretary for Policy and Research; Hispanic-Serving Institutions Work Study Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4070–P–01]

RIN 2528–AA06

Office of the Assistant Secretary for Policy Development and Research; Hispanic-Serving Institutions Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 appropriated funds for HUD's Community Development Work Study Program (CDWSP). The Conference Report, H. Rep. 104–384, which serves as guidance for that statute, earmarked funds for a new Hispanic-Serving Institutions Work Study Program (HSI–WSP) as part of CDWSP. Elsewhere in today's issue of the Federal Register, HUD is publishing a Notice of Funding Availability (NOFA) for the HSI–WSP announcing the availability of $3 million from amounts earmarked for the program. The NOFA states the requirements that will govern the use of these funds in FY 1996. HUD's intents to use the requirements contained in the NOFA, which is Appendix A to this document, as the basis for a final rule and invites public comment on the announced requirements.

DATES: Comments must be received by December 2, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed requirements to the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708–1537. Hearing or speech-impaired individuals may call HUD's TTY number (202) 708–1455, or 1–800–877–8339 (Federal Information relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.) Ms. Karadbil can also be contacted via the Internet at Jane__R.__Karadbil@hud.gov.

SUPPLEMENTARY INFORMATION:

Background

The Conference Report (H. Rep. 104–384, dated December 6, 1995) serving as guidance accompanying ''The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996'' (Public Law 104–134) earmarked funds for a new community development work study program for Hispanic-Serving Institutions (HSIs). HUD has determined that this Report provides sufficient legal basis for establishing the HSI–WSP. The Report included this new program as a companion to the existing Community Development Work Study (CDWSP) program and the HSI–WSP will, therefore, be governed by the statutory requirements applicable to the CDWSP. CDWSP was created by Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, enacted on February 5, 1988), which added a new section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.). Under this authority, HUD is authorized to award grants to institutions of higher education, either directly or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate and undergraduate programs in community development, community planning, or community management. For the HSI–WSP, eligibility will be limited to two-year public or private non-profit institutions of higher education, designated as Hispanic-Serving Institutions by the U.S. Department of Education. A list of these institutions appears as Appendix A of the Notice of Funding Availability.

Elsewhere in today's issue of the Federal Register, HUD is publishing a Notice of Funding Availability (NOFA) for HSI–WSP announcing the availability of $3 million from amounts earmarked for the program in the above-referenced Conference Report and stating the requirements that will govern the use of these funds.

HUD intends to use today's NOFA as the basis for a final rule amending 24 CFR part 570 and establishing requirements for the HSI–WSP. For this reason, HUD is inviting public comment on the requirements contained in the NOFA, so that the final rule on the HSI–WSP will have the benefit of public participation.

Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

In accordance with 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this NOFA relate only to training grants and technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

The Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that it will not have a significant economic impact on a substantial number of small entities. The rule only affects applicants and participants in the Hispanic-Serving Institutions Community Work Study Program, and will not have any meaningful economic impact on any entity.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a

result, the rule is not subject to review under the Order. Specifically, the rule solicits participation by institutions of higher education in creating community development work study programs for some of their economically disadvantaged and minority students. The rule does not impinge upon the relationships between the Federal Government and State or local governments.

The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has the potential for beneficial impact on family formation, maintenance, and general well-being. The program will enable economically disadvantaged and minority students to get a college education, helping them to become self-sufficient. Accordingly, since the impact on the family is beneficial, no further review is necessary.

List of Subject in 24 CFR Part 570

Community development block grants-technical assistance and services, Education-higher education-general.

The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.513.

Dated: August 22, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

Appendix A—Hispanic—Serving Institutions Work Study Program Notice of Funding Availability—FY 1996

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1996.

SUMMARY: This notice invites applications from certain institutions of higher education (i.e., public and private non-profit Hispanic-Serving community colleges) for grants under the Hispanic-Serving Institutions Work Study Program (HSI–WSP), to assist economically disadvantaged and minority students participating in work study programs. The HSI–WSP program was created through an earmarking of funds under the Community development Work Study Program. This notice announces the availability of up to $3 million in grants from FY 1996 appropriations to fund the HSI–WSP.

EFFECTIVE DATE: October 2, 1996.

DATES: *Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control, in Room 8230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, by 4:30 p.m. Eastern Time on December 11, 1996.* Facsimiles will not be accepted. This deadline is *firm* as to *date, hour, and place.* In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submissions of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

ADDRESSES: Because of the limited number of institutions eligible to apply for the HSI–WSP, the Department will be sending an application kit directly to the President of each eligible institution, without requiring institutions to request them. Application kits may also be obtained by written request from the following address: HUD USER, ATTN: Hispanic-Serving Institutions Work Study Program, P.O. Box 6091, Rockville, MD 20850. Requests for application kits may be faxed to: 301–251–5767 (this is not a toll-free number). Such requests must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to ''Document FR–4105.'' In addition, the application kit is available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://oup.aspensys.com:89; or from a Gopher Server at: gopher://oup.aspensys.com:77.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1537, extension 218. The TTY number for the hearing impaired is (202) 708–1455. (These are not toll-free numbers.) The Federal Information Relay Service toll free number is 800–877–8339. Ms. Karadbil can also be reached via the Internet at Jane__R.__Karadbil@HUD.GOV.

SUPPLEMENTARY INFORMATION:

A. Background

''The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996'' (Public Law 104–134) appropriated funds for HUD's Community Development Work Study Program (CDWSP). The Conference Report, H. Rep. 104–384, dated December 6, 1995, which serves as guidance for that statute, earmarked funds for a new community development work study program for Hispanic-Serving Institutions (HSIs) as part of the existing CDWSP. HUD has determined that this Report provides sufficient legal basis for establishing the Hispanic-Serving Institutions Work Study Program (HSI–WSP).

CDWSP was created through section 501(b)(2) of the Housing and Community Development Act of 1987 (Public Law 100–242, enacted on February 5, 1987), which added a new Section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.). Under CDWSP regulations, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students, including students with disabilities, who participate in community development work study programs and are enrolled in full-time graduate programs in community or economic development, community planning, or community management. While the statute creating CDWSP authorized funding for students enrolled in eligible undergraduate or graduate programs, a recently issued regulation has limited that program to graduate programs. HSI–WSP is subject to the same statutory requirements applicable to the CDWSP. For the HSI–WSP, however, eligibility will be limited to two-year public or private non-profit institutions of higher education, designated as Hispanic-Serving Institutions by the U.S. Department of Education (see Appendix A). It should be noted that while the term ''undergraduate'' was never construed under CDWSP to include two-year institutions of higher education, the U.S. Department of Education includes these institutions in its definition of ''undergraduate.''

B. Purpose of Notice

This notice announces the requirements that will govern the use of funds earmarked for HSI–WSP for fiscal year 1996. HUD believes good cause exists for making these requirements effective for fiscal year 1996 without prior public comment, because the failure to make these requirements effective immediately would prevent the use of HSI–WSP funds during the 1996–1997 school year. The time period remaining before the end of the 1996–1997 school year will not allow HUD to publish proposed requirements, respond to public comments, publish a notice containing revised requirements, select recipients, and permit the recipients to bring their programs into operation. Today's notice will make funds available to recipients at the earliest possible date (i.e., the second semester of the 1996–1997 school year). Elsewhere in today's issue of the Federal Register, HUD is publishing a notice of proposed rulemaking for the HSI–WSP, based on the requirements of this NOFA. The notice of proposed rulemaking incorporates this NOFA by reference, states HUD's intention to use the requirements contained in this NOFA as the basis for a final rule amending 24 CFR part 570, and invites public comment on the announced requirements that will be used in subsequent funding rounds.

This notice also solicits applications for the $3 million in funding available for HSI–WSP grants. The applications requirements and deadlines are set forth in sections XIV. through XVII. of the program description below.

C. HSI–WAP Program Description

I. Applicability and Objectives

Under the HSI–WSP, HUD will make grants to certain public and private non-profit HSIs of higher education for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time community college programs in community building, and to provide entry to pre-professional careers in these fields.

II. Eligible Institutions

Title III of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(1)) defines an HSI generally as an eligible institution of education that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent of the Hispanic students are either low-income individuals or first generation college students. The Department will use this definition to determine eligibility for the HSI–WSP. Further, the U.S. Department of Education has issued a list of all institutions meeting this definition. A list of the community colleges on this list appears as Appendix A to this Notice of Funding Availability. Only institutions on this list, or subsequently added to the U.S. Department of Education's list of qualified HSI's, prior to the application deadline, are eligible to apply for HSI–WSP funds under this Notice.

The Department has decided to limit eligibility under the HSI–WSP to community colleges for several reasons. There are currently 200 institutions of higher education certified by the U.S. Department of Education as ''Hispanic-Serving.'' Of this number 60 are universities, 24 are four-year colleges, 27 are two-year proprietary, i.e., for-profit, colleges, and 89 are public or private non-profit community colleges. Hispanic-Serving universities are already eligible for the CDWSP and there is no compelling reason to make them eligible for both programs. Because community colleges are not eligible for the CDWSP, their students are not able to partake of the benefits the program has to offer. Hispanic-Serving four-year colleges are not eligible under this NOFA, nor under the new final rule for the CDWSP. Creating a program which makes community colleges and four-year colleges and universities all eligible would mean two sets of policies and requirements because of the very different nature of the educational programs they provide. Undue complexity would be created for the benefit of just a few institutions. The Department has also limited eligibility to community colleges because it believes it is important to encourage and assist their previously under-served disadvantaged student population to gain entry to pre-professional community building career paths. Increasing access to these career paths will not only benefit the students, but also the communities in which they live and will work.

The Department has decided to limit the program to non-profit two-year institutions of higher education because it does not believe that for-profit institutions should benefit from this program.

Areawide planning organizations (APOs) and States will not be eligible to apply for the HSI–WSP because the Department wishes to minimize the complexity of implementing a new program. With regard to the proposed rule published elsewhere in today's Federal Register, the Department requests comments on whether and under what circumstances, Hispanic-Serving community colleges could benefit from the eligibility of APOs and States.

III. Eligible Community Building Academic Programs

The statute authorizing the Community Development Work Study Program requires that participating students be enrolled in a full-time program in ''community or economic development, community planning, or community management.'' The regulation governing the CDWSP (at 24 CFR part 570.415) construes this statutory language rather narrowly and specifies such academic disciplines as public administration, public policy, urban economics, urban management, or urban planning. However, because community colleges usually do not offer courses in these specific fields of study, it is necessary for the HSI–WSP to encompass a wider range of academic programs.

Accordingly, this notice uses the terms ''community building associate degree program'' and ''community building academic program'' to reference the types of academic programs encompassed in the statutory phrase ''community or economic development, community planning, or community management,'' being construed broadly for purposes of the HSI–WSP. For the HSI–WSP, a community building associate degree program will encompass not only academic programs authorized under the CDWSP, but also other fields that promote community building or community or social services. For example, administration of justice, child development, and human services would all be eligible community building associate degree programs, while natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English or history) would not.

IV. Eligible Work Experiences

Work experiences under the HSI–WSP must complement the field of study the student is pursuing. For example, a student pursuing a degree in child development might work in a day care center, or a student pursuing a degree in the administration of justice might work with parole officers. Students are expected to work 12–20 hours a week during the academic year and 35–40 hours a week during the summer.

V. Eligible Students

All students must be economically disadvantaged, regardless of whether they are members of a minority group. While the program is restricted to eligible Hispanic-Serving Institutions, the program may not be restricted to Hispanic students nor provide any preferential treatment in the selection of students based on race or ethnicity.

Students must be attending the institution on a full-time basis, as defined by that institution, and pursuing an eligible community building associate degree. Students must have attained no more than half of the credits required for their degree at the time they first receive assistance under this program. If a student's participation terminates, the student may not be replaced; the grant will be reduced by the amount of unused funds allotted for that student.

Students are required to maintain a satisfactory level of performance, defined for this purpose as a B average. However, with regard to the proposed rule published elsewhere in today's Federal Register, because some community colleges provide only pass/fail grades, comments are requested on whether this definition is appropriate or what definition should be substituted for it.

VI. Amount of Assistance to a Student

Unlike the CDWSP, the amount of assistance that can be provided to a student will be a lump sum, allowing the institution to determine how much will be used for various eligible expenditures. The maximum amount that may be provided per student is $13,200 a year, for two years. Eligible expenditures are limited to tuition and fees, a work stipend, books, and an allowance of $1,000 per student per year to cover the cost of the institution's administration of the program. While HUD will not set a maximum on how much can be spent for each eligible expenditure, except for the administrative allowance, the institution must be able to document that the amounts paid are based on usual student expenditures for that institution and that it has actually paid that amount to the student.

VII. Number of Students Assisted

The minimum number of students that may be assisted is three per participating institution of higher education and the maximum is ten students per participating institution of higher education.

VIII. Graduation Rates

The CDWSP regulations require that, in order for institutions of higher education to be eligible for funding competitions under that program, a 50-percent rate of graduation for students participating in that program be maintained. The regulations also include the rate of graduation from previous CDWSPs as a selection criterion. It is important to select institutions that are providing a high-quality education and other services that will ensure that their students graduate. However, because the HSI–WSP has no previous track experience, it is unclear whether such a threshold requirement and/or a selection criterion are appropriate. Since no previous rates of graduation will be available for the first funding round, this notice specifies no such threshold requirement or selection criterion. However, with regard to the proposed rule published elsewhere in today's Federal Register, the Department solicits comments on whether such a threshold requirement and/or selection criterion should

be included in the final rule for the program, as well as how these should be applied.

IX. Definitions

The following definitions apply to HSI-WSP:

Applicant means a public or private non-profit institution of higher education that offers two year degree programs and qualifies as a Hispanic-Serving Institution.

Community building means community and economic development, community planning, community management, land use, and housing activities.

Community building associate degree program or academic program means the undergraduate associate degree program whose purpose and focus is to educate students in community building. The terms ''community building academic program'' or ''academic program'' refer to the types of academic programs encompassed in the statutory phrase ''community or economic development, community planning or community management.'' However, this statutory language is being construed broadly for the HSI-WSP to include but not be limited to associate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, urban planning, and related fields of study. Related fields of study that promote community building, such as administration of justice, child development, and human services are eligible, while fields such as natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English or history) would not.

Community building field means any of the fields of study eligible under a community building academic program.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, Asian/Pacific Islands, and including students with disabilities.

Hispanic-Serving Institution is an institution of higher education that the U.S. Department of Education has determined meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: an institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., 150 percent of the poverty level) who are first generation college students and another 25 percent are either low-income individuals or first generation college students. The U.S. Department of Education has determined the eligibility of specific institutions and has issued a list of institutions meeting this definition. A list of the community colleges on this list appears as Appendix A of this NOFA. Only institutions on this list, or subsequently added to the U.S. Department of Education's list prior to the application deadline, are eligible to apply for HSI–WSP funds under this Notice.

HSI–WSP means the Hispanic-Serving Institutions Work Study Program.

Institution of higher education means a public or private non-profit educational institution that offers two-year associate degrees in a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a person attending an institution of higher education on a full-time basis, as defined by that institution and pursuing an eligible community building degree. Students must have attained no more than half of the credits required for their degree at the time they first receive assistance under HSI–WSP.

Student with disabilities means a student who meets the definition of a ''person with disabilities'' in the Americans with Disabilities Act of 1990.

X. Assistance Provided

(a) *Types of assistance available*

HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(b) *Student assistance.*

Grant funds may be provided to students in the form of student stipends, tuition support, and additional support.

(1) *Student stipend.* The amount of the student stipend should be based on the hourly rate for initial entry positions in the community building field and the number of hours worked by the student at the work placement assignment. The hourly rate should be sufficiently high to allow the student to earn the full stipend, as determined by the recipient, without working over 20 hours per week during the school year and 40 hours per week during the summer.

(2) *Tuition support.* The amount of tuition support may not exceed the tuition and required fees charges at the participating institution of higher education.

(3) *Additional support.* The recipient may provide additional support for books and for travel related to the academic program or work placement assignment. Costs associated with reasonable accommodations for students with disabilities including, but not limited to, interpreters for the deaf/hard of hearing, special equipment, and braille materials are eligible under this category.

(c) *Administrative allowance.*

HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program; however no more than 20 percent of the grant may be used for planning and program administrative costs. The maximum amount that can be provided for each student is $13,200 a year, including $1,000 for the administrative allowance. HUD will not set a maximum on how much should be spent for each eligible expenditure, aside from the $1,000 limit on administrative costs. However, the institution must be able to document that the amounts paid are based on usual student expenditures for that institution and that it has actually paid that amount to the student.

(d) *Number of students assisted.*

The minimum number of students that may be assisted in three students per participating institution of higher education. The maximum number of students that may be assisted is ten students per participating institution of higher education.

XI. Recipient Eligibility and Responsibilities

(a) *Recipient eligibility.*

Hispanic-Serving Institutions of higher education offering undergraduate two-year associate degrees in a community building associate degree program are eligible for assistance under the HSI–WSP.

(b) *Recipient responsibilities.*

The recipient is responsible for administering the program, for compliance with all program requirements, and for coordination of program activities carried out by the work placement agencies. The recipient must:

(1) Recruit and select students for participation in the HSI–WSP. The recipient shall establish recruitment procedures that identify eligible economically disadvantaged and minority students pursuing careers in community building, and make them aware of the availability of assistance opportunities. While the program is restricted to HSIs, the recipient may neither restrict the program to any particular minority group or groups nor provide any preferential treatment in the selection of students based on race or ethnicity. Students must be selected before the beginning of the semester for which funding is being provided. If a student's participation terminates, the student may not be replaced; the grant will be reduced by the amount of unused funds allotted for that student.

(2) Provide the educational component for participating students.

(3) Recruit and select work placement agencies, and negotiate and execute an agreement covering each work placement assignment.

(4) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(5) Assign sufficient staff to administer and supervise the program on a day-to-day basis.

(6) Encourage participating students to obtain post-graduation employment with a unit of State or local government, APO, Indian tribe or nonprofit organization engaged in community building.

(7) Maintain records by racial and ethnic categories for each economically disadvantaged and minority student participating in the HSI–WSP.

(8) Keep such records and make such reports as HUD may require.

(9) Comply with all other applicable Federal requirements.

XII. Work Placement Agencies Eligibility and Responsibilities

(a) *Work placement agency eligibility*

To be eligible to participate in the HSI–WSP, the work placement agency must be an agency of a State or local government, an

areawide planning organization, an Indian tribe, or a private nonprofit organization involved in community building activities.

(b) *Work placement agency responsibilities*

Work placement agencies must:

(1) Provide practical experience and training in the community building field to participating students through work placement assignments.

(2) Consult with the institution of higher education to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work place agreement.

(3) Provide a sufficient number of work placement assignments to provide participating students with a wide choice of work experience.

(4) Require each student to devote 12–20 hours per week during the regular school year, and 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive a stipend payment only during the period when the student is placed with the work placement agency.

(5) Comply with all other applicable Federal requirements.

(6) Maintain such records as HUD may require.

XIII. Students Eligibility, Selection, and Responsibilities

(a) *Student eligibility*.

Students apply directly to recipients receiving grants under the HSI–WSP. To be eligible for the HSI–WSP, the student:

(1) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(2) Must be a full-time student enrolled in a community building associate degree program at the participating institution of higher education. The student must have attained no more than 50 percent of the credits required for his/her degree at the time the student first receives assistance under this program.

(3) Must demonstrate an ability to maintain a satisfactory level of performance in a community building associate degree program (i.e., maintain a B average, as defined by the institution) and in work placement assignments, and comply with the professional standards set by the recipient and the work placement agencies.

(4) May not have previously participated in the HSI–WSP.

(b) *Student selection*.

In selecting among the eligible students, the recipient must consider the extent to which each student has demonstrated:

(1) Financial need under the applicable guidelines established at the institution of higher education;

(2) An interest in, and commitment to, a career in community building;

(3) The ability to satisfactorily complete the academic and work placement responsibilities under the HSI–WSP.

(c) *Student responsibilities.*

Participating students must:

(1) Enroll or be enrolled in a two-year community building associate degree program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building associate degree program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and by the work placement agency. A satisfactory level of academic performance consists of maintaining a B average, as defined by the institution. A student's participation in the HSI–WSP shall be terminated for failure to meet these responsibilities and standards. If the student's participation is terminated, the student is ineligible for further HSI–WSP assistance.

(2) Agree to make a good-faith effort to obtain post-graduation employment in community building with a unit of State or local government, and APO, and Indian tribe, or a non-profit organization. However, If the student does not obtain such employment, the student is not required to repay the assistance received.

XIV. Application Process

HUD has developed an application package describing the information that applicants for HSI–WSP assistance must submit. The application due date is December 11, 1996. Because of the limited number of institutions eligible to apply for the HSI–WSP, the Department will be sending an application kit directly to the President of each eligible institution, without requiring institutions to request them. A list of the eligible institutions appears in Appendix A of this NOFA. Application kits may also be obtained by written request from the following address: HUD USER, ATTN: Hispanic-Serving Institutions Work Study Program, P.O. Box 6091, Rockville, MD 20850. Request for application kits may be faxed to: 301–251–5767 (this is not a toll-free number). Such requests must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to ''Document FR–4105.'' In addition, the application kit is available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://oup.aspensys.com:89; or from a Gopher Server at: gopher://oup.aspensys.com:77.

XV. Submitting Applications and Deadline Date and Time

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for receipt, by 4:30 p.m. Eastern Time on December 11, 1996. Facsimiles will not be accepted. The deadline date and time will be firm as to date, hour, and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

XVI. Selection process

The selection process for applications under the HSI–WSP consists of a threshold review, rating of eligible applications, and final selection.

(a) *Threshold*. To be eligible for rating and ranking, an applicant must meet all of the following threshold requirements:

(1) The application must be filed in the application form prescribed by HUD and physically received at the appropriate location by the required due date;

(2) The applicant must demonstrate that it is an HSI;

(3) The applicant must demonstrate that it is eligible to participate; and

(4) The applicant must demonstrate that it has the required academic programs to carry out its activities under the HSI–WSP.

(b) *Rating.* All applications that meet the threshold requirements will be rated according to the following selection factors.

1. Quality of the Academic Program (40 points)—In rating this factor, HUD will evaluate: (i) The quality of the academic program in terms of community building course offerings and academic requirements for students, including its appropriateness to prepare students for careers in community building fields (25 points); and

(ii) the qualifications of the faculty members and the percentage of time they will teach in the academic program and the qualifications of the academic supervisor to direct and manage the program (15 points).

2. Quality of the Proposed Student Work Placement Assignments (20 points)—In rating this factor, HUD will evaluate the extent to which the participating students will receive a sufficient number and variety of work placement assignments that will provide practical and useful experience and further the participating students' preparation for professional careers in community building.

3. Likelihood of Fostering Students' Permanent Post-Graduation Employment in Community Building (10 points)—In rating this factor, HUD will evaluate the extent to which the institution's educational program (based on past experience), including the assistance it provides to its students in finding post graduation permanent employment, has led directly and immediately to career opportunities in community building fields.

4. Effectiveness of Program Administration (20 points)—In rating this factor, HUD will evaluate: (i) the degree to which the Program Director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to coordinate the overall administration of the program; and (ii) the adequacy of the applicant's plan for placing students in work placement assignments and keeping track of students during the two-year academic period and work placement assignments.

5. Demonstrated Commitment of the Applicant to Meeting Economically Disadvantaged and Minority Students' Needs (10 points)—In rating this factor, HUD will evaluate the extent to which the applicant's recruitment activities, special education programs, and other means, including the provision of reasonable accommodations for students with disabilities, demonstrates an active, aggressive, and imaginative effort to identify, attract, and retain qualified minorities and economically disadvantaged students, including students with disabilities; and the extent to which the HSI–WSP award will not result in a decrease in the amount of the institution's own financial support available for minority and economically disadvantaged students, including students with disabilities, in the academic areas or the institution as a whole.

(c) *Corrections to Deficient Applications.* After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD may disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA. Substantive deficiencies or errors may not be corrected.

(d) *Final selection.* All applications that are rated will be rank ordered based on their total scores on the selection factors. Applications will be considered for selection based on their rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under an application in order to provide assistance to as many highly ranked applications as possible.

If there is a tie in the point scores of two applications, the rank order will be determined by the applicants' scores on selection factor (1). The application with the most points on selection factor (1) will be given the higher rank. If there is still a tie, the rank order will be determined by the applicants' scores on selection factor (5). The application with the most points for selection factor (5) will be given the higher rank.

XVII. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application content that will be specified in the application kit:

(a) Transmittal letter, identifying the agency accrediting the institutions of higher education on whose behalf the application is filed and further stating that such accrediting agency(ies) are recognized by the U.S. Department of Education. The transmittal letter should also include the name, address, phone number, facsimile number and e-mail address (if any) of the person responsible for administering the program.

(b) A completed and signed Standard Form 424, Application For Federal Assistance.

(c) Abstract.

(d) Table of Contents.

(e) Proposal narrative statement addressing the factors for award.

(f) Sample copy of student/recipient binding agreement.

(g) Sample copy of recipient/student work placement agreement.

(h) Management/Workplan.

(i) Resumes of key staff and faculty.

(k) Budget for the program.

(l) Audit/financial management system information.

(m) Certification by IPA or cognizant audit agency of applicant's financial management system.

(n) Drug-Free Workplace Certification.

(o) Disclosure of Lobbying Activities on SF–LLL, if applicable.

XVIII. Agreements

(a) *Grant agreement.*

The responsibilities of the recipient under the HSI–WSP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Student agreement.*

The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under the HSI–WSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in the HSI–WSP shall be terminated for failure to meet the responsibilities and standards in the agreement.

(c) *Work placement assignment agreement.*

The recipient, the student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of the supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

XIX. Grant Administration

(a) *Initial obligation of funds.*

When HUD selects an application for funding, HUD will obligate funds to cover the amount of the approved grant. The term of the award will be for two calendar years, unless subsequently altered by HUD at its discretion for good cause.

(b) *Disbursement.*

Recipients will receive grant payments by direct deposit. If that is not possible, grant payments will be made by U.S. Treasury Checks.

(c) *Deobligation.*

HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable period of time after selection.

XX. Other Federal Requirements

(a) *Applicability of part 570*

The HSI–WSP shall be subject to the policies and procedures set forth in subparts A, K, and O of 24 CFR part 570, as applicable, except as modified or limited under the provisions of this Notice. The provisions of subparts C and J of part 570 shall not apply to the HSI–WSP.

b. *Uniform Administrative requirements*

Recipients under the HSI–WSP shall comply with the requirements and standards of OMB Circular No. A–22, ''Cost Principles for Educational Institutions.'' Recipients that are private institutions of higher education shall comply with OMB Circular A–133, ''Non-Federal Audit Requirements for Institutions of Higher Education and other Nonprofit Institutions,'' which is implemented at 24 CFR part 45. Recipients that are public institutions of higher education shall comply with OMB circular A–128, ''Non-Federal Audit Requirements for State and Local Governments,'' which is implemented at 24 CFR part 44. Audits shall be conducted annually. In addition, all recipients under the HSI–WSP shall comply with the provisions of OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' which is implemented at 24 CFR part 84. OMB Circular A–110 shall apply to recipients in its entirety.

Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grant, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. *Required Reporting.* A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the *disclosure* will be made of payments for lobbying with other than federally appropriated funds. Also, there is a standard disclosure form, SF–LLL, ''Disclosure Form to Report Lobbying'', which must be use to disclose lobbying with other than Federally appropriated funds at the time of application.

1. Information Collection Requirements

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

2. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This notice merely invites applications from certain institutions of higher education for grants under the Hispanic-Serving Institutions Work Study Program. As a result, the notice is not subject to review under the Order.

3. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. This notice invites applications from certain institutions of higher education for grants under the Hispanic-Serving Institutions Work Study Program. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

4. Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

5. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than persons authorized to receive such information) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

6. Environmental Impact

In accordance with 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this NOFA relate only to training grants and technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

7. The Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Number is 14.513.

Dated: August 28, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

Appendix A—Hispanic-Serving Community Colleges (As Designated by the U.S. Department of Education)

SOURCE: 1993 Integrated Post-Secondary Education Data System (IPEDS) of the U.S. Department of Education

State	Institution
AZ	Arizona Western College.
AZ	Central Arizona College.
AZ	Cochise College
AZ	Prima Community College.
AZ	South Mountain Community College.
CA	Bakersfield College.
CA	Cerritos College.
CA	Chaffey Community College.
CA	Citrus College.
CA	College of the Desert.
CA	College of the Sequioas.
CA	Compton Community College.
CA	Don Bosco Technical Institute.
CA	East Los Angeles College.
CA	Evergreen Valley College.
CA	Fresno City College.
CA	Gavilan College.
CA	Hartnell College.
CA	Imperial Valley College.
CA	Kelsey-Jenney Business College.
CA	Kings River Community College.
CA	Los Angeles City College.
CA	Los Angeles Harbor College.
CA	Los Angeles Mission College.
CA	Los Angeles Southwest College.
CA	Los Angeles Trade Technical College.
CA	Los Angeles Valley College.
CA	Merced College.
CA	Mount San Antonio College.
CA	Fullerton College.
CA	Oxnard College.
CA	Palo Verde College.
CA	Pasadena City College.
CA	Porterville College.
CA	Rancho Santiago College.
CA	Rio Hondo College.
CA	San Bernardino Valley College.
CA	San Diego City College.
CA	San Jose City College.
CA	Skyline College.
CA	Southwestern College.
CA	West Hills Community College.
CO	Community College of Denver.
CO	Otero Junior College.
CO	Pueblo Community College.
CO	Trinidad State Junior College.
FL	Miami-Dade Community College/ North Campus (Main).
FL	Miami-Dade Community College/ Homestead College.
FL	Miami-Dade Community College/ Wolfson Campus.
IL	City Colleges of Chicago—Harry S Truman College.
IL	City Colleges of Chicago—Malcolm X College.
IL	City Colleges of Chicago—Richard J. Daley College.
IL	City Colleges of Chicago—Wilbur Wright College.
IL	Lexington Institute of Hospitality Careers.
IL	MacCormac Junior College.
IL	Morton College.
IL	Saint Augustine College.
NJ	Hudson County Community College.
NJ	Passaic County Community College.
NM	Albuquerque Technical Vocational Institute.
NM	Eastern New Mexico University—Roswell Campus.
NM	New Mexico State University—Carlsbad Campus.
NM	New Mexico State University—Dona Ana Campus.
NM	New Mexico State University—Grants Campus.
NM	Northern New Mexico Community College.
NM	Santa Fe Community College.
NM	University of New Mexico—Los Alamos Campus.
NM	University of New Mexico—Valencia Campus.

State	Institution
NY	CUNY Bronx Community College.
NY	CUNY Hostos Community College.
NY	CUNY F.H. La Guardia Community College.
PR	Collegio Tecnologico Del Municipio de San Juan.
PR	Collegio Universitario Del Este.
PR	University of Puerto Rico—Aguadilla Regional College.
PR	University of Puerto Rico—Carolina Regional College.
PR	University of Puerto Rico—La Montana Regional College.
TX	Bee County College.
TX	Del Mar College.
TX	El Paso Community College.
TX	Laredo Community College.
TX	Odessa Community College.
TX	Palo Alto College.
TX	San Antonio College.
TX	Southwest Texas Junior College.
TX	St. Philips College.
TX	Texas Southmost College.
TX	Texas State Technical College—Harlingen.

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Federal Register

Wednesday
October 2, 1996

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Policy and Research; Hispanic-Serving Institutions Work Study Program; Funding Availability FY 1996; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4105–N–01]

Office of the Assistant Secretary for Policy Development and Research; Hispanic-Serving Institutions Work Study Program Notice of Funding Availability—FY 1996

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1996.

SUMMARY: This notice invites applications from certain institutions of higher education (i.e., public and private non-profit Hispanic-Serving community colleges) for grants under the Hispanic-Serving Institutions Work Study Program (HSI–WSP), to assist economically disadvantaged and minority students participating in work study programs. The HSI–WSP program was created through an earmarking of funds under the Community Development Work Study Program. This notice announces the availability of up to $3 million in grants from FY 1996 appropriations to fund the HSI–WSP.

EFFECTIVE DATE: October 2, 1996.

DATES: *Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control, in Room 8230, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, by 4:30 p.m. Eastern Time on December 11, 1996.* Facsimiles will not be accepted. This deadline is *firm* as to *date, hour, and place.* In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submissions of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

ADDRESSES: Because of the limited number of institutions eligible to apply for the HSI–WSP, the Department will be sending an application kit directly to the President of each eligible institution, without requiring institutions to request them. Application kits may also be obtained by written request from the following address: HUD USER, ATTN: Hispanic-Serving Institutions Work Study Program, P.O. Box 6091, Rockville, MD 20850. Requests for application kits may be faxed to: 301–251–5767 (this is not a toll-free number). Such requests must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to ''Document FR–4105.'' In addition, the application kit is available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://oup.aspensys.com:89; or from a Gopher Server at: gopher://oup.aspensys.com:77.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1537, extension 218. The TTY number for the hearing impaired is (202) 708–1455. (These are not toll-free numbers.) The Federal Information Relay Service toll free number is 800–877–8339. Ms. Karadbil can also be reached via the Internet at Jane—R.—Karadbil@HUD.GOV.

SUPPLEMENTARY INFORMATION:

A. Background

''The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996'' (Public Law 104–134) appropriated funds for HUD's Community Development Work Study Program (CDWSP). The Conference Report, H. Rep. 104–384, dated December 6, 1995, which serves as guidance for that statute, earmarked funds for a new community development work study program for Hispanic-Serving Institutions (HSIs) as part of the existing CDWSP. HUD has determined that this Report provides sufficient legal basis for establishing the Hispanic-Serving Institutions Work Study Program (HSI–WSP).

CDWSP was created through section 501(b)(2) of the Housing and Community Development Act of 1987 (Public Law 100–242, enacted on February 5, 1987), which added a new Section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.). Under CDWSP regulations, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students, including students with disabilities, who participate in community development work study programs and are enrolled in full-time graduate programs in community or economic development, community planning, or community management. While the statute creating CDWSP authorized funding for students enrolled in eligible undergraduate or graduate programs, a recently issued regulation has limited that program to graduate programs. HSI–WSP is subject to the same statutory requirements applicable to the CDWSP. For the HSI–WSP, however, eligibility will be limited to two-year public or private non-profit institutions of higher education, designated as Hispanic-Serving Institutions by the U.S. Department of Education (see Appendix A). It should be noted that while the term ''undergraduate'' was never construed under CDWSP to include two-year institutions of higher education, the U.S. Department of Education includes these institutions in its definition of ''undergraduate.''

B. Purpose of Notice

This notice announces the requirements that will govern the use of funds earmarked for HSI–WSP for fiscal year 1996. HUD believes good cause exists for making these requirements effective for fiscal year 1996 without prior public comment, because the failure to make these requirements effective immediately would prevent the use of HSI–WSP funds during the 1996–1997 school year. The time period remaining before the end of the 1996–1997 school year will not allow HUD to publish proposed requirements, respond to public comments, publish a notice containing revised requirements, select recipients, and permit the recipients to bring their programs into operation. Today's notice will make funds available to recipients at the earliest possible date (i.e., the second semester of the 1996–1997 school year). Elsewhere in today's issue of the Federal Register, HUD is publishing a notice of proposed rulemaking for the HSI–WSP, based on the requirements of this NOFA. The notice of proposed rulemaking incorporates this NOFA by reference, states HUD's intention to use the requirements contained in this NOFA as the basis for a final rule amending 24 CFR part 570, and invites public comment on the announced requirements that will be used in subsequent funding rounds.

This notice also solicits applications for the $3 million in funding available for HSI–WSP grants. The applications requirements and deadlines are set forth in sections XIV. through XVII. of the program description below.

C. HSI–WSP Program Description

I. Applicability and Objectives

Under the HSI–WSP, HUD will make grants to certain public and private non-profit HSIs of higher education for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time community college programs in community building, and to provide entry to pre-professional careers in these fields.

II. Eligible Institutions

Title III of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(1)) defines an HSI generally as an eligible institution of education that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent of the Hispanic students are either low-income individuals or first generation college students. The Department will use this definition to determine eligibility for the HSI–WSP. Further, the U.S. Department of Education has issued a list of all institutions meeting this definition. A list of the community colleges on this list appears as Appendix A to this Notice of Funding Availability. Only institutions on this list, or subsequently added to the U.S. Department of Education's list of qualified HSI's, prior to the application deadline, are eligible to apply for HSI–WSP funds under this Notice.

The Department has decided to limit eligibility under the HSI–WSP to community colleges for several reasons. There are currently 200 institutions of higher education certified by the U.S. Department of Education as ''Hispanic-Serving.'' Of this number 60 are universities, 24 are four-year colleges, 27 are two-year proprietary, i.e., for-profit, colleges, and 89 are public or private non-profit community colleges. Hispanic-Serving universities are already eligible for the CDWSP and there is no compelling reason to make them eligible for both programs. Because community colleges are not eligible for the CDWSP, their students are not able to partake of the benefits the program has to offer. Hispanic-Serving four-year colleges are not to be eligible under this NOFA, nor under the new final rule for the CDWSP. Creating a program which makes community colleges and four-year colleges and universities all eligible would mean two sets of policies and requirements because of the very different nature of the educational programs they provide. Undue complexity would be created for the benefit of just a few institutions. The Department has also limited eligibility to community colleges because it believes it is important to encourage and assist their previously under-served disadvantaged student population to gain entry to pre-professional community building career paths. Increasing access to these career paths will not only benefit the students, but also the communities in which they live and will work.

The Department has decided to limit the program to non-profit two-year institutions of higher education because it does not believe that for-profit institutions should benefit from this program.

Areawide planning organizations (APOs) and States will not be eligible to apply for the HSI–WSP because the Department wishes to minimize the complexity of implementing a new program. With regard to the proposed rule published elsewhere in today's Federal Register, the Department requests comments on whether and under what circumstances, Hispanic-Serving community colleges could benefit from the eligibility of APOs and States.

III. Eligible Community Building Academic Programs

The statute authorizing the Community Development Work Study Program requires that participating students be enrolled in a full-time program in ''community or economic development, community planning, or community management.'' The regulation governing the CDWSP (at 24 CFR part 570.415) construes this statutory language rather narrowly and specifies such academic disciplines as public administration, public policy, urban economics, urban management, or urban planning. However, because community colleges usually do not offer courses in these specific fields of study, it is necessary for the HSI–WSP to encompass a wider range of academic programs.

Accordingly, this notice uses the terms ''community building associate degree program'' and ''community building academic program'' to reference the types of academic programs encompassed in the statutory phrase ''community or economic development, community planning, or community management,'' being construed broadly for purposes of the HSI–WSP. For the HSI–WSP, a community building associate degree program will encompass not only academic programs authorized under the CDWSP, but also other fields that promote community building or community or social services. For example, administration of justice, child development, and human services would all be eligible community building associate degree programs, while natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English or history) would not.

IV. Eligible Work Experiences

Work experiences under the HSI–WSP must complement the field of study the student is pursuing. For example, a student pursuing a degree in child development might work in a day care center, or a student pursuing a degree in the administration of justice might work with parole officers. Students are expected to work 12–20 hours a week during the academic year and 35–40 hours a week during the summer.

V. Eligible Students

All students must be economically disadvantaged, regardless of whether they are members of a minority group. While the program is restricted to eligible Hispanic-Serving Institutions, the program may not be restricted to Hispanic students nor provide any preferential treatment in the selection of students based on race or ethnicity.

Students must be attending the institution on a full-time basis, as defined by that institution, and pursuing an eligible community building associate degree. Students must have attained no more than half of the credits required for their degree at the time they first receive assistance under this program. If a student's participation terminates, the student may not be replaced; the grant will be reduced by the amount of unused funds allotted for that student.

Students are required to maintain a satisfactory level of performance, defined for this purpose as a B average. However, with regard to the proposed rule published elsewhere in today's Federal Register, because some community colleges provide only pass/fail grades, comments are requested on whether this definition is appropriate or what definition should be substituted for it.

VI. Amount of Assistance to a Student

Unlike the CDWSP, the amount of assistance that can be provided to a

student will be a lump sum, allowing the institution to determine how much will be used for various eligible expenditures. The maximum amount that may be provided per student is $13,200 a year, for two years. Eligible expenditures are limited to tuition and fees, a work stipend, books, and an allowance of $1,000 per student per year to cover the cost of the institution's administration of the program. While HUD will not set a maximum on how much can be spent for each eligible expenditure, except for the administrative allowance, the institution must be able to document that the amounts paid are based on usual student expenditures for that institution and that it has actually paid that amount to the student.

VII. Number of Students Assisted

The minimum number of students that may be assisted is three per participating institution of higher education and the maximum is ten students per participating institution of higher education.

VIII. Graduation Rates

The CDWSP regulations require that, in order for institutions of higher education to be eligible for funding competitions under that program, a 50-percent rate of graduation for students participating in that program be maintained. The regulations also include the rate of graduation from previous CDWSPs as a selection criterion. It is important to select institutions that are providing a high-quality education and other services that will ensure that their students graduate. However, because the HSI–WSP has no previous track experience, it is unclear whether such a threshold requirement and/or a selection criterion are appropriate. Since no previous rates of graduation will be available for the first funding round, this notice specifies no such threshold requirement or selection criterion. However, with regard to the proposed rule published elsewhere in today's Federal Register, the Department solicits comments on whether such a threshold requirement and/or selection criterion should be included in the final rule for the program, as well as how these should be applied.

IX. Definitions

The following definitions apply to HSI–WSP:

Applicant means a public or private non-profit institution of higher education that offers two year degree programs and qualifies as a Hispanic-Serving Institution.

Community building means community and economic development, community planning, community management, land use, and housing activities.

Community building associate degree program or academic program means the undergraduate associate degree program whose purpose and focus is to educate students in community building. The terms ''community building academic program'' or ''academic program'' refer to the types of academic programs encompassed in the statutory phrase ''community or economic development, community planning or community management.'' However, this statutory language is being construed broadly for the HSI–WSP to include but not be limited to associate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, urban planning, and related fields of study. Related fields of study that promote community building, such as administration of justice, child development, and human services are eligible, while fields such as natural sciences, computer sciences, mathematics, accounting, electronics, engineering, and the humanities (such as English or history) would not.

Community building field means any of the fields of study eligible under a community building academic program.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, Asian/Pacific Islands, and including students with disabilities.

Hispanic-Serving Institution is an institution of higher education that the U.S. Department of Education has determined meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: an institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., 150 percent of the poverty level) who are first generation college students and another 25 percent are either low-income individuals or first generation college students. The U.S. Department of Education has determined the eligibility of specific institutions and has issued a list of institutions meeting this definition. A list of the community colleges on this list appears as Appendix A of this NOFA. Only institutions on this list, or subsequently added to the U.S. Department of Education's list prior to the application deadline, are eligible to apply for HSI–WSP funds under this Notice.

HSI–WSP means the Hispanic-Serving Institutions Work Study Program.

Institution of higher education means a public or private non-profit educational institution that offers two-year associate degrees in a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a person attending an institution of higher education on a full-time basis, as defined by that institution and pursuing an eligible community building degree. Students must have attained no more than half of the credits required for their degree at the time they first receive assistance under HSI–WSP.

Student with disabilities means a student who meets the definition of a ''person with disabilities'' in the Americans with Disabilities Act of 1990.

X. Assistance Provided

(a) Types of assistance available.

HUD provides funding in the form of grants to recipients who make assistance available to eligible students. Grants are provided to cover the costs of student assistance and for an administrative allowance.

(b) Student assistance.

Grant funds may be provided to students in the form of student stipends, tuition support, and additional support.

(1) *Student stipend.* The amount of the student stipend should be based on the hourly rate for initial entry positions in the community building field and the number of hours worked by the student at the work placement assignment. The hourly rate should be sufficiently high to allow the student to earn the full stipend, as determined by the recipient, without working over 20 hours per week during the school year and 40 hours per week during the summer.

(2) *Tuition support.* The amount of tuition support may not exceed the tuition and required fees charged at the participating institution of higher education.

(3) *Additional support.* The recipient may provide additional support for books and for travel related to the academic program or work placement assignment. Costs associated with reasonable accommodations for students

with disabilities including, but not limited to, interpreters for the deaf/hard of hearing, special equipment, and braille materials are eligible under this category.

(c) Administrative allowance.

HUD provides an allowance to recipients to cover the administrative costs of the program. The administrative allowance is $1,000 per year for each student participating in the program; however no more than 20 percent of the grant may be used for planning and program administrative costs. The maximum amount that can be provided for each student is $13,200 a year, including $1,000 for the administrative allowance. HUD will not set a maximum on how much should be spent for each eligible expenditure, aside from the $1,000 limit on administrative costs. However, the institution must be able to document that the amounts paid are based on usual student expenditures for that institution and that it has actually paid that amount to the student.

(d) Number of students assisted.

The minimum number of students that may be assisted is three students per participating institution of higher education. The maximum number of students that may be assisted is ten students per participating institution of higher education.

XI. Recipient Eligibility and Responsibilities

(a) Recipient eligibility.

Hispanic-Serving Institutions of higher education offering undergraduate two-year associate degrees in a community building associate degree program are eligible for assistance under the HSI–WSP.

(b) Recipient responsibilities.

The recipient is responsible for administering the program, for compliance with all program requirements, and for coordination of program activities carried out by the work placement agencies. The recipient must:

(1) Recruit and select students for participation in the HSI–WSP. The recipient shall establish recruitment procedures that identify eligible economically disadvantaged and minority students pursuing careers in community building, and make them aware of the availability of assistance opportunities. While the program is restricted to HSIs, the recipient may neither restrict the program to any particular minority group or groups nor provide any preferential treatment in the selection of students based on race or ethnicity. Students must be selected before the beginning of the semester for which funding is being provided. If a student's participation terminates, the student may not be replaced; the grant will be reduced by the amount of unused funds allotted for that student.

(2) Provide the educational component for participating students.

(3) Recruit and select work placement agencies, and negotiate and execute an agreement covering each work placement assignment.

(4) Refer participating students to work placement agencies and assist students in the selection of work placement assignments.

(5) Assign sufficient staff to administer and supervise the program on a day-to-day basis.

(6) Encourage participating students to obtain post-graduation employment with a unit of State or local government, APO, Indian tribe or nonprofit organization engaged in community building.

(7) Maintain records by racial and ethnic categories for each economically disadvantaged and minority student participating in the HSI–WSP.

(8) Keep such records and make such reports as HUD may require.

(9) Comply with all other applicable Federal requirements.

XII. Work Placement Agencies Eligibility and Responsibilities

(a) Work placement agency eligibility.

To be eligible to participate in the HSI-WSP, the work placement agency must be an agency of a State or local government, an areawide planning organization, an Indian tribe, or a private nonprofit organization involved in community building activities.

(b) Work placement agency responsibilities.

Work placement agencies must:

(1) Provide practical experience and training in the community building field to participating students through work placement assignments.

(2) Consult with the institution of higher education to ensure that the student's work placement assignment provides the requisite experience and training to meet the required number of work hours specified in the student work placement agreement.

(3) Provide a sufficient number of work placement assignments to provide participating students with a wide choice of work experience.

(4) Require each student to devote 12–20 hours per week during the regular school year, and 35–40 hours a week during the summer, to the work placement assignment. Work placement agencies may provide flexibility in the work period, if such a schedule is consistent with the requirements of the student's academic program. However, a participating student may receive a stipend payment only during the period when the student is placed with the work placement agency.

(5) Comply with all other applicable Federal requirements.

(6) Maintain such records as HUD may require.

XIII. Student Eligibility, Selection, and Responsibilities

(a) Student eligibility.

Students apply directly to recipients receiving grants under the HSI–WSP. To be eligible for the HSI–WSP, the student:

(1) Must satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance.

(2) Must be a full-time student enrolled in a community building associate degree program at the participating institution of higher education. The student must have attained no more than 50 percent of the credits required for his/her degree at the time the student first receives assistance under this program.

(3) Must demonstrate an ability to maintain a satisfactory level of performance in a community building associate degree program (i.e., maintain a B average, as defined by the institution) and in work placement assignments, and comply with the professional standards set by the recipient and the work placement agencies.

(4) May not have previously participated in the HSI–WSP.

(b) Student selection.

In selecting among the eligible students, the recipient must consider the extent to which each student has demonstrated:

(1) Financial need under the applicable guidelines established at the institution of higher education;

(2) An interest in, and commitment to, a career in community building;

(3) The ability to satisfactorily complete the academic and work placement responsibilities under the HSI–WSP.

(c) Student responsibilities.

Participating students must:

(1) Enroll or be enrolled in a two-year community building associate degree program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building associate degree program and in work placement assignments; and compliance with the professional conduct standards

set by the recipient and by the work placement agency. A satisfactory level of academic performance consists of maintaining a B average, as defined by the institution. A student's participation in the HSI–WSP shall be terminated for failure to meet these responsibilities and standards. If the student's participation is terminated, the student is ineligible for further HSI–WSP assistance.

(2) Agree to make a good-faith effort to obtain post-graduation employment in community building with a unit of State or local government, an APO, an Indian tribe, or a non-profit organization. However, if the student does not obtain such employment, the student is not required to repay the assistance received.

XIV. Application Process

HUD has developed an application package describing the information that applicants for HSI–WSP assistance must submit. The application due date is December 11, 1996. Because of the limited number of institutions eligible to apply for the HSI–WSP, the Department will be sending an application kit directly to the President of each eligible institution, without requiring institutions to request them. A list of the eligible institutions appears in Appendix A of this NOFA. Application kits may also be obtained by written request from the following address: HUD USER, ATTN: Hispanic-Serving Institutions Work Study Program, P.O. Box 6091, Rockville, MD 20850. Requests for application kits may be faxed to: 301–251–5767 (this is not a toll-free number). Such requests must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to ''Document FR–4105.'' In addition, the application kit is available on the Internet from the Office of University Partnerships Clearinghouse. The Clearinghouse can be accessed from the World Wide Web at: http://oup.aspensys.com:89; or from a Gopher Server at: gopher://oup.aspensys.com:77.

XV. Submitting Applications and Deadline Date and Time

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for receipt, by 4:30 p.m. Eastern Time on December 11, 1996. Facsimiles will not be accepted. The deadline date and time will be firm as to date, hour, and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery related problems. Applicants hand-delivering applications are advised that considerable delays may occur in attempting to enter the building because of security procedures.

XVI. Selection Process

The selection process for applications under the HSI-WSP consists of a threshold review, rating of eligible applications, and final selection.

(a) *Threshold.* To be eligible for rating and ranking, an applicant must meet all of the following threshold requirements:

(1) The application must be filed in the application form prescribed by HUD and physically received at the appropriate location by the required due date;

(2) The applicant must demonstrate that it is an HSI;

(3) The applicant must demonstrate that it is eligible to participate; and

(4) The applicant must demonstrate that it has the required academic programs to carry out its activities under the HSI–WSP.

(b) *Rating.* All applications that meet the threshold requirements will be rated according to the following selection factors.

1. Quality of the Academic Program (40 points)—In rating this factor, HUD will evaluate: (i) the quality of the academic program in terms of community building course offerings and academic requirements for students, including its appropriateness to prepare students for careers in community building fields (25 points); and

(ii) the qualifications of the faculty members and the percentage of time they will teach in the academic program and the qualifications of the academic supervisor to direct and manage the program (15 points).

2. Quality of the Proposed Student Work Placement Assignments (20 points)—In rating this factor, HUD will evaluate the extent to which the participating students will receive a sufficient number and variety of work placement assignments that will provide practical and useful experience and further the participating students' preparation for professional careers in community building.

3. Likelihood of Fostering Students' Permanent Post-Graduation Employment in Community Building (10 points)—In rating this factor, HUD will evaluate the extent to which the institution's educational program (based on past experience), including the assistance it provides to its students in finding post graduation permanent employment, has led directly and immediately to career opportunities in community building fields.

4. Effectiveness of Program Administration (20 points)—In rating this factor, HUD will evaluate: (i) the degree to which the Program Director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to coordinate the overall administration of the program; and (ii) the adequacy of the applicant's plan for placing students in work placement assignments and keeping track of students during the two-year academic period and work placement assignments.

5. Demonstrated Commitment of the Applicant to Meeting Economically Disadvantaged and Minority Students' Needs (10 points)—In rating this factor, HUD will evaluate the extent to which the applicant's recruitment activities, special education programs, and other means, including the provision of reasonable accommodations for students with disabilities, demonstrates an active, aggressive, and imaginative effort to identify, attract, and retain qualified minorities and economically disadvantaged students, including students with disabilities; and the extent to which the HSI–WSP award will not result in a decrease in the amount of the institution's own financial support available for minority and economically disadvantaged students, including students with disabilities, in the academic areas or the institution as a whole.

(c) *Corrections to Deficient Applications.* After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD may disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA. Substantive deficiencies or errors may not be corrected.

(d) *Final selection.* All applications that are rated will be rank ordered based on their total scores on the selection factors. Applications will be considered for selection based on their rank order.

HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under an application in order to provide assistance to as many highly ranked applications as possible.

If there is a tie in the point scores of two applications, the rank order will be determined by the applicants' scores on selection factor (1). The application with the most points on selection factor (1) will be given the higher rank. If there is still a tie, the rank order will be determined by the applicants' scores on selection factor (5). The application with the most points for selection factor (5) will be given the higher rank.

XVII. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application content that will be specified in the application kit:

(a) Transmittal letter, identifying the agency accrediting the institutions of higher education on whose behalf the application is filed and further stating that such accrediting agency(ies) are recognized by the U.S. Department of Education. The transmittal letter should also include the name, address, phone number, facsimile number and e-mail address (if any) of the person responsible for administering the program.

(b) A completed and signed Standard Form 424, Application For Federal Assistance.

(c) Abstract.

(d) Table of Contents.

(e) Proposal narrative statement addressing the factors for award.

(f) Sample copy of student/recipient binding agreement.

(g) Sample copy of recipient/student work placement agreement.

(h) Management/Workplan.

(i) Resumes of key staff and faculty.

(k) Budget for the program.

(l) Audit/financial management system information.

(m) Certification by IPA or cognizant audit agency of applicant's financial management system.

(n) Drug-Free Workplace Certification.

(o) Disclosure of Lobbying Activities on SF–LLL, if applicable.

XVIII. Agreements

(a) Grant agreement

The responsibilities of the recipient under the HSI–WSP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) Student agreement

The recipient and each participating student must execute a written agreement incorporating their mutual responsibilities under the HSI–WSP. The agreement must be executed before the student can be enrolled in the program. A student's participation in the HSI–WSP shall be terminated for failure to meet the responsibilities and standards in the agreement.

(c) Work placement assignment agreement

The recipient, the student, and the work placement agency must execute a written agreement covering each work placement assignment. The agreement must address the responsibilities of each of the parties, the educational objectives, the nature of the supervision, the standards of evaluation, and the student's time commitments under the work placement assignment.

XIX. Grant Administration

(a) Initial obligation of funds.

When HUD selects an application for funding, HUD will obligate funds to cover the amount of the approved grant. The term of the award will be for two calendar years, unless subsequently altered by HUD at its discretion for good cause.

(b) Disbursement

Recipients will receive grant payments by direct deposit. If that is not possible, grant payments will be made by U.S. Treasury checks.

(c) Deobligation

HUD may deobligate amounts for grants if proposed activities are not begun or completed within a reasonable period of time after selection.

XX. Other Federal Requirements

(a) Applicability of part 570

The HSI–WSP shall be subject to the policies and procedures set forth in subparts A, K, and O of 24 CFR part 570, as applicable, except as modified or limited under the provisions of this Notice. The provisions of subparts C and J of part 570 shall not apply to the HSI–WSP.

(b) Uniform Administrative requirements

Recipients under the HSI–WSP shall comply with the requirements and standards of OMB Circular No. A–22, ''Cost Principles for Educational Institutions.'' Recipients that are private institutions of higher education shall comply with OMB Circular A–133, ''Non-Federal Audit Requirements for Institutions of Higher Education and Other Nonprofit Institutions,'' which is implemented at 24 CFR part 45. Recipients that are public institutions of higher education shall comply with OMB Circular A–128, ''Non-Federal Audit Requirements for State and Local Governments,'' which is implemented at 24 CFR part 44. Audits shall be conducted annually. In addition, all recipients under the HSI–WSP shall comply with the provisions of OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' which is implemented at 24 CFR part 84. OMB Circular A–110 shall apply to recipients in its entirety.

Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. *Required Reporting.* A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the *disclosure* will be made of payments for lobbying with other than federally appropriated funds. Also, there is a standard disclosure form, SF–LLL, ''Disclosure Form to Report Lobbying'', which must be use to disclose lobbying with other than Federally appropriated funds at the time of application.

1. Information Collection Requirements.

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless the collection displays a valid control number.

2. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This notice merely invites applications from certain institutions of higher education for grants under the Hispanic-Serving Institutions Work Study Program. As a result, the notice is not subject to review under the Order.

3. Impact on the Family.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. This notice invites applications from certain institutions of higher education for grants under the Hispanic-Serving Institutions Work Study Program. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

4. Accountability in the Provision of HUD Assistance.

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

5. Prohibition Against Advance Information on Funding Decisions.

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than persons authorized to receive such information) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

6. Environmental Impact.

In accordance with 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this NOFA relate only to training grants and technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

7. The Catalog of Federal Domestic Assistance program.

The Catalog of Federal Domestic Assistance Number is 14.513.

Dated: August 28, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

Appendix A—Hispanic-Serving Community Colleges (As Designated by the U.S. Department of Education)

Source: 1993 Integrated Post-Secondary Education Data System (IPEDS) of the U.S. Department of Education

State	Institution
AZ	Arizona Western College.
AZ	Central Arizona College.
AZ	Cochise College.
AZ	Pima Community College.
AZ	South Mountain Community College.
CA	Bakersfield College.
CA	Cerritos College.
CA	Chaffey Community College.
CA	Citrus College.
CA	College of the Desert.
CA	College of the Sequioas.
CA	Compton Community College.
CA	Don Bosco Technical Institute.
CA	East Los Angeles College.
CA	Evergreen Valley College.
CA	Fresno City College.
CA	Gavilan College.
CA	Hartnell College.
CA	Imperial Valley College.
CA	Kelsey-Jenney Business College.
CA	Kings River Community College.
CA	Los Angeles City College.
CA	Los Angeles Harbor College.
CA	Los Angeles Mission College.
CA	Los Angeles Southwest College.
CA	Los Angeles Trade Technical College.
CA	Los Angeles Valley College.
CA	Merced College.
CA	Mount San Antonio College.
CA	Fullerton College.
CA	Oxnard College.
CA	Palo Verde College.
CA	Pasadena City College.
CA	Porterville College.
CA	Rancho Santiago College.
CA	Rio Hondo College.
CA	San Bernardino Valley College.
CA	San Diego City College.
CA	San Jose City College.
CA	Skyline College.
CA	Southwestern College.
CA	West Hills Community College.
CO	Community College of Denver.
CO	Otero Junior College.
CO	Pueblo Community College.
CO	Trinidad State Junior College.
FL	Miami-Dade Community College/ North Campus (Main).
FL	Miami-Dade Community College/ Homestead College.
FL	Miami-Dade Community College/ Wolfson Campus.
IL	City Colleges of Chicago-Harry S Truman College.
IL	City Colleges of Chicago-Malcolm X College.
IL	City Colleges of Chicago-Richard J. Daley College.
IL	City Colleges of Chicago-Wilbur Wright College.

State	Institution
IL	Lexington Institute of Hospitality Careers.
IL	MacCormac Junior College.
IL	Morton College.
IL	Saint Augustine College.
NJ	Hudson County Community College.
NJ	Passaic County Community College.
NM	Albuquerque Technical Vocational Institute.
NM	Eastern New Mexico University-Roswell Campus.
NM	New Mexico State University-Carlsbad Campus.
NM	New Mexico State University-Dona Ana Campus.
NM	New Mexico State University-Grants Campus.
NM	Northern New Mexico Community College.
NM	Santa Fe Community College.
NM	University of New Mexico-Los Alamos Campus.
NM	University of New Mexico-Valencia Campus.
NY	CUNY Bronx Community College.
NY	CUNY Hostos Community College.
NY	CUNY F.H. La Guardia Community College.
PR	Collegio Tecnologico Del Municipio de San Juan.
PR	Collegio Universitario Del Este.
PR	University of Puerto Rico-Aguadilla Regional College.
PR	University of Puerto Rico-Carolina Regional College.
PR	University of Puerto Rico-La Montana Regional College.
TX	Bee County College.
TX	Del Mar College.
TX	El Paso Community College.
TX	Laredo Community College.
TX	Odessa Community College.
TX	Palo Alto College.
TX	San Antonio College.
TX	Southwest Texas Junior College.
TX	St. Philips College.
TX	Texas Southmost College.
TX	Texas State Technical College-Harlingen.

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