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WASHINGTON, DC

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- WHERE: Office of the Federal Register
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- RESERVATIONS: 202-523-4538



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV96-932-2 FR]

Olives Grown in California and Imported Olives; Establishment of Minimum Quality Requirements for California and Imported Olives, and Revision of Outgoing Inspection Requirements and Procedures for California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes minimum quality requirements for California olives under Marketing Order 932 and imported olives by replacing grade requirements which have been based on the U.S. Standards for Grades of Canned Ripe Olives (standards). This final rule also revises outgoing inspection requirements and procedures for California olives. This action is expected to result in reduced handling costs, especially inspection costs, and improved consumer satisfaction.

EFFECTIVE DATES: This final rule becomes effective January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487-5901; Fax # (209) 487-5906; or Caroline Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC. 20090-6456; telephone (202) 720-8139; 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 Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown 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."

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically-produced commodities.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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. A 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

The purpose of the RFA is to fit regulatory actions to the scale of 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 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 4 handlers of olives who are subject to regulation under the order, and approximately 1,350 producers of olives in the regulated area. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. None of the handlers is considered a small entity, but the majority of olive producers and some of the importers may be classified as small entities.

The California Olive Committee (committee) met on March 27, 1996, and unanimously recommended establishing minimum quality requirements to be incorporated within the rules and regulations of the order and revising outgoing inspection requirements and procedures. At a meeting on July 10, 1996, the committee recommended a change in their recommendations of March 27, 1996, with regard to an outgoing inspection requirement.

Incoming inspection requirements at § 932.51 require handlers to weigh and size-grade olives prior to processing, and dispose of non-canning size (undersized) olives into appropriate non-canning outlets. Such weighing and size-grading is done under the

supervision of the Federal or Federal-State Inspection Service. These requirements provide the basis for handler payments to producers, and ensure that olives are properly sized into the various canning and non-canning size categories.

Once the olives have been size-graded, they are stored in tanks, ensuring that the various sizes of olives remain segregated. Non-canning size olives are disposed of into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing inspection requirements at § 932.52 and § 932.149 specify the minimum quality of canned ripe olives as a modified U.S. Grade C as certified by inspectors of the USDA, Processed Products Branch (PPB). Certification as to grade provides handlers and their customers with a uniform level of quality familiar to both parties. The outgoing inspection requirements also ensure that canned ripe olives meet applicable size designations prior to shipment. Two methods of outgoing inspection are authorized: A Quality Assurance Program (QAP) approved by the PPB or in-line inspection.

This rule adds the option of lot inspection to assist handlers in reducing inspection costs. Currently, during in-line inspection, an inspector is required to be present any time olives are in the final stage of processing prior to packaging. The current cost for an inspector ranges from \$31.50 per hour for handlers in California under the marketing order to \$42.00 per hour depending on the contract. For an 8-hour day, the cost of one inspector ranges from \$252.00 to \$328.00. Because of this, handlers may benefit from economies of scale: the more canned olives packaged, the lower the cost per can of olives.

In 1994, QAPs were added as an option to reduce inspection costs. Under QAPs, savings are more likely to accrue to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from QAPs for similar reasons.

Adding lot inspection offers handlers a less-costly inspection option. During lot inspection, an inspector does not need to be present during the final processing, unlike in-line inspection. However, an inspector will inspect a statistical percentage of a lot of olives whether the lot is large or small. Thus, there is less benefit of economies of scale because for large lots more olives will be inspected and for small lots fewer olives will be inspected.

The committee recommended changes in some of the inspection requirements to reduce handlers' costs, especially the costs of inspection, and to address the concerns of consumers of canned ripe olives. The changes simplify the inspection process by eliminating steps which have been made unnecessary by modern olive processing and pitting equipment. This can reduce handling costs, including inspection costs, thereby improving returns to California producers and handlers.

The changes address consumer concerns, as identified through a 1995 consumer survey which the committee undertook. Surveyed consumers indicated that flavor, color, and character are quality criteria most important to them. The term "character" is used to include olive firmness, tenderness and texture. The changes address consumer concerns by evaluating quality based upon those criteria. This will help ensure that consumer satisfaction is met, benefitting the California olive industry, importers, and consumers.

Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Establishment of Minimum Quality Requirements

Currently, § 932.149 specifies that canned olives meet a minimum grade requirement of a modified U.S. Grade C. Additional specific requirements are established for the various styles of canned ripe olives, including whole, pitted, broken pitted, halved, segmented (wedged), sliced, and chopped styles. Section 932.149 references various definitions from the standards.

In place of these grades and definitions, the committee recommended a set of minimum quality requirements for four styles of canned olives: (1) Whole and pitted style olives; (2) sliced, segmented (wedged), and halved style olives; (3) chopped style olives; and (4) broken pitted olives. These quality requirements include criteria pertaining to flavor, saltiness, color, character, uniformity of size and freedom from defects. These factors are similar to those currently specified in the standards and handling regulations, and have been determined to be of importance to consumers through the committee's consumer survey.

Olives are currently graded based upon five factors: flavor, saltiness, color, character, and defects. Currently, Table

I in § 932.149 only sets limits for defects of canned ripe olives. Limits for the other four factors, flavor, saltiness, color, and character, are defined in the standards. In place of Table I, based upon information from the 1995 consumer survey, the committee recommended establishing four new tables which would specify the limits for defects for each of the canned ripe olive styles (whole and pitted styles; sliced, segmented (wedged), and halved styles; chopped style; and broken pitted style). The new tables also define the limits of the four characteristics (flavor, saltiness, color, and character) currently defined in the standards. The four new tables provide all the definitions and tolerances necessary to establish minimum quality requirements in place of grade requirements.

To effectuate the establishment of minimum quality requirements, references to "grade" in § 932.149 will be replaced with "quality", canned broken pitted olives will be defined separately in a new paragraph designated as (a)(4), and four new tables depicting minimum quality requirements for (1) canned whole and pitted olives; (2) canned sliced, segmented (wedged), and halved olives; (3) canned chopped style olives; and (4) canned broken pitted style olives will be added to § 932.149, replacing the current Table 1.

In conforming changes, the word "grade" will be replaced with the words "minimum quality" or "minimum quality requirements," as necessary, in § 932.150, § 932.152, § 932.153, and § 932.155.

Section 932.149(a)(2) currently sets the tolerance for identifiable pieces of pit caps, end slices, and slices at 5 percent, by weight, for canned chopped style olives. The committee recommended a relaxed tolerance of 10 percent, by weight, in an effort to encourage handlers to cut olives of the chopped style in larger pieces. The committee was concerned that canned chopped style olives are currently chopped too finely, rendering the product nearly an olive "flour" rather than identifiable pieces of olives consumers indicated they preferred. This change will reduce the costs of packing canned chopped style olives.

The committee recommended that the definition of "broken pitted" olives be modified from the definition provided in the standards. To accomplish this, the committee proposed a modified definition in § 932.149 of the regulations. The current definition is considered too restrictive by the committee. Under the current definition, broken pitted olives are

defined as "olives [which] consist substantially of large pieces that may have been broken in pitting but have not been sliced or cut." Currently, each handler packing broken pitted olives is prohibited from using olives which have been improperly pitted but unbroken because the olives have not been "broken" in the pitting process. (Improperly pitted olives do not contain pits or pit fragments.) Each such handler, therefore, pays an employee to "break" the unbroken, improperly pitted olives so that such olives meet the requirement for broken pitted olives. As recommended by the committee, the definition for broken pitted olives deletes the word "substantially," thereby permitting a greater percentage of unbroken, improperly pitted olives to be included in the broken pitted style category. Such change is intended to reduce the costs of packing broken pitted olives while maintaining the quality of the product.

The committee further recommended basing outgoing inspections on a pass-fail basis, eliminating the requirement that the inspection service certify that canned ripe olives are either Grade A, Grade B, or Grade C. Under a pass-fail outgoing inspection, canned ripe olives either meet the minimum quality requirements and pass inspection, or fail to meet the minimum quality requirements and not pass inspection. There will be no need to calculate the grade of each sample in order to assign Grade A, Grade B, or Grade C. Elimination of the requirement to certify to a grade will simplify the inspection of such olives, thereby reducing inspection time and overall inspection costs.

Authorized Methods of Outgoing Inspection

Pursuant to § 932.52 of the order and § 932.152 of the current outgoing regulations, handlers are required to maintain continuous in-line outgoing inspection or a certified QAP. Under continuous in-line outgoing inspection, at least one inspector must be present at all times when a plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products. The current cost for an inspector ranges from \$31.50 for handlers under the marketing order to \$42.00 per hour depending on the contract. For an 8-hour day the cost of one inspector ranges from \$252.00 to \$328.00.

By contrast, under a QAP, each certified plant has trained quality-control personnel who perform most of the same functions as a PPB inspector. The PPB inspectors continue to issue

certificates of inspection based upon the outgoing inspection records maintained by the certified quality-control personnel. These records are verified through spot-checks and samples taken by PPB inspectors.

A QAP may decrease outgoing inspection costs for a handler compared to inspection costs under continuous in-line outgoing inspection. However, cost savings under a QAP accrue more to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from a QAP for similar reasons. However, olive crop sizes may vary substantially from one year to the next due to the alternate-bearing characteristics. This variability further reduces the efficiency of operations at most of the olive processing plants and the cost-savings of QAP, since handlers' fixed costs must be paid independent of the size of the crop.

To enable handlers to minimize their inspection costs, the committee recommended that handlers be allowed to utilize any inspection method permitted by PPB, so that each may choose the method most economical for their operations. Thus, in addition to a QAP and in-line inspection, lot inspection will also be authorized for meeting outgoing inspection requirements. Under lot inspection, a specified number of containers of the same size and type, containing olives of the same type and style, at the same location, are inspected. Lot inspection occurs after processing, rather than during processing. Inspecting by lot has the potential to reduce costs for handlers because lot inspection does not require the presence of an inspector at all times while olives are being processed.

To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, are revised to add authority for handlers to use either continuous in-line outgoing inspection, QAP, or lot inspection. Because lot inspection does not require the presence of an inspector at all times during the processing of olives, paragraph (b)(1) is revised by deleting the final sentence, thereby removing the requirement that an inspector be present when olives are processed. This change is expected to reduce overall inspection costs by eliminating overtime hours which accrue when an inspector is required to remain in an olive processing plant at all times while processing is underway.

Outgoing Inspection for Size of Canning-Size Olives

The committee also recommended revising the current requirements that canning-size olives, which have been sized and stored in tanks prior to pitting, be inspected for size prior to packaging. Currently, such olives are required under incoming inspection requirements to be weighed and size-graded. Olives are then stored in tanks prior to processing. The outgoing requirements mandate that such olives be submitted for size inspection prior to packaging. However, handlers size olives upon receipt and keep the sizes separate throughout the packaging process because doing so facilitates more efficient operation of modern processing and pitting equipment. Eliminating the requirement for inspection for size prior to packaging will simplify the inspection process and reduce overall inspection costs while maintaining the integrity and quality of canned ripe olives.

To effectuate this change, paragraph (b)(2) of § 932.152 is deleted. This deletion necessitates the redesignation of paragraph (b)(1) as (b).

However, olives which are smaller than authorized for use as canned ripe olives (undersized olives) will still be held under surveillance by the inspection service, as required in the incoming inspection requirements and specified in paragraph (e)(2) of § 932.151, since handlers must dispose of such olives into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing Inspection for Size of Limited-Use Olives

Section 932.152, paragraphs (g)(1) and (g)(2), of the current outgoing regulations specify that olives used in the production of limited-use styles are not required to be submitted for an outgoing inspection for size prior to packaging if they were size-graded by the inspection service during the incoming inspection process. Limited-use styles include halved, segmented (wedged), sliced, or chopped styles. Typically, smaller olives may be used for limited-use styles rather than for whole styles.

According to the requirements of § 932.51(a)(ii) of the order, canning size olives are sized by the inspection service during the incoming inspection process. The olives are then either placed in storage tanks or sent immediately to processing.

Olives process more efficiently when all the olives in the processing tank are uniform in size. Modern, high-speed

pitting equipment produces higher yields and inflicts less damage to olives when the sizes being pitted are uniform. This is especially true for the smaller canning sizes. Currently, over 95 percent of all olives are pitted prior to packaging.

Olive handlers have an additional incentive to maintain strict control over various sizes of olives—retail customers' demands for uniform size and quality.

For those reasons, the committee recommended changes in § 932.152, paragraphs (g)(1) and (g)(2) to eliminate the requirement for inspection for size prior to packaging.

To effectuate the change, the words "without an outgoing inspection for size designation" are deleted from § 932.152, paragraphs (g)(1) and (g)(2).

These changes establish minimum quality requirements of flavor, saltiness, color, character, and defects for whole and pitted style olives; sliced, segmented (wedged), and halved style olives; chopped style olives; and broken pitted style olives. They also revise outgoing inspection requirements and procedures under the marketing order by eliminating requirements that sized and stored olives be submitted for sizing prior to packaging, and permitting lot inspection. These revisions eliminate requirements no longer deemed necessary, thereby reducing handling costs, while maintaining quality and size requirements needed to ensure customer satisfaction.

This rule also changes § 932.153 (as amended in the Federal Register on August 5, 1996, 61 FR 40507), which specifies current minimum grade and size requirements for limited use olives. All references to "grade" in that section are replaced by the words "minimum quality" or "minimum quality requirements," as necessary.

Olive Import Requirements

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This rule establishes minimum quality requirements to replace current minimum grade requirements for California olives under the marketing order. Therefore, a corresponding change is made in the olive import regulation.

This rule modifies paragraphs (a)(8), (b)(1), (g), and (j) of § 944.401 by deleting certain references to the standards and adding specific quality criteria for imported olives which are the same as those for California olives.

The proposed rule concerning this action was published in the November 8, 1996, Federal Register (61 FR 57782), with a 15-day comment period ending November 25, 1996. No comments were received.

Although no comments were received, the Department is making several changes in the regulatory text that appeared in the proposed rule for purposes of clarification.

In tables 1 through 4 of sections 932.149 and 944.401, with respect to color criteria, the proposed rule stated, in part, that olives must have "a color equal or darker than the comparator." This rule replaces the word "comparator" with the term "USDA Composite Color Standard." This is a more precise term for the standard used to determine the appropriate color of olives, and does not materially affect the color requirement. In table 1 of those same two sections, with respect to pits and pit fragments, the allowance of "Not more than 1.3 average by count" is changed to read "Not more than 1.3% by count." This is a clarifying change.

In section 932.152(c)(2)(xi), the word "standard" is replaced by the word "quality." This is a more accurate word. Finally, a paragraph (5) is added to section 932.149(a) and a paragraph (v) is added to section 944.401(b) to provide a tolerance for olives that do not meet the quality criteria set forth in those sections. Absent such tolerances, one failed unit would result in an entire lot failing to meet the specified quality requirements. The tolerances specified are those that appear in the standards and that are currently used by the olive industry. The proposed rule did not contain such tolerances. Adding these provisions to the final rule corrects this oversight.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this proposed rule.

After consideration of all relevant matter presented, including the information and recommendations 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should be implemented as soon as possible since the crop year for olives grown in California began on August 1, 1996, and olives from the 1996 crop are already being processed and shipped. Further, handlers are aware of this rule, which

was recommended at two public meetings. Additionally, interested parties had the opportunity to comment on the proposed rule, and no comments were received.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.149 is revised to read as follows:

§ 932.149 Modified minimum quality requirements for specified styles of canned olives of the ripe type.

(a) Except as otherwise provided in this section, the minimum quality requirements prescribed in § 932.52(a)(1) are modified as follows, for specified styles of canned olives of the ripe type:

(1) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 1 of this section;

(2) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 2 of this section;

(3) Canned chopped olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 3 of this section; and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and,

(4) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 4 of this section;

(5) A lot of canned ripe olives is considered to meet the requirements of this section if all or most of the sample units meet the requirements specified in Tables 1 through 4 of this section: *Provided*, That the number of sample units which do not meet the

requirements specified in Tables 1 through 4 of this section does not exceed the acceptance number

prescribed for in the sample size provided in Table I of 7 CFR 52.38:

Provided further, That there is no off flavor in any sample unit.

TABLE 1.—WHOLE AND PITTED STYLE

[Defects by count per 50 olives]

FLAVOR	Reasonably good; no "off" flavor.
FLAVOR (Green Ripe Type)	Free from objectionable flavors of any kind.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with not less than 60% having a color equal or darker than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 5 soft units or 2 excessively soft units.
UNIFORMITY OF SIZE	60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm.
DEFECTS:	
Pitter Damage (Pitted Style Only)	15.
Major Blemishes	5.
Major Wrinkles	5.
Pits and Pit Fragments (Pitted Style Only)	Not more than 1.3 % average by count.
Major Stems	Not more than 3.
HEVM	Not more than 1 unit per sample.
Mutilated	Not more than 3.
Mechanical Damage	Not more than 5.
Split Pits or Misshapen	Not more than 5.

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.
Broken Pieces and End Caps	Not more than 125 grams by weight.

TABLE 3.—CHOPPED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

TABLE 4.—BROKEN PITTED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S.

Standards for Grades of Canned Ripe Olives (7 CFR part 52): Provided, That the definition of "broken pitted olives"

is as follows: "Broken pitted olives" consist of large pieces that may have

been broken in pitting but have not been sliced or cut.

3. Section 932.150 is revised to read as follows:

§ 932.150 Modified minimum quality requirements for canned green ripe olives.

The minimum quality requirements prescribed in § 932.52 (a)(1) of this part are hereby modified with respect to canned green ripe olives so that no requirements shall be applicable with respect to color and blemishes of such olives.

4. In section 932.152, paragraphs (a), (b), (c)(2), the heading of paragraph (d), (d)(1), (g)(1) introductory text (table remains unchanged), and (g)(2) introductory text (table remains unchanged) are revised to read as follows:

§ 932.152 Outgoing regulations.

(a) *Inspection stations.* Processed olives shall be sampled and inspected only at an inspection station which shall be any olive processing plant having facilities for in-line or lot inspection which are satisfactory to the Inspection Service and the Committee; or an olive processing plant which has an approved Quality Assurance Program in effect.

(b) *Inspection—General.* Inspection of packaged olives for conformance with § 932.52 shall be by a Quality Assurance Program approved by the Processed Products Branch (PPB), USDA; or by in-line or lot inspection. A PPB approved Quality Assurance Program shall be pursuant to a Quality Assurance contract as referred to in § 52.2.

(c) * * *

(2) The Inspection Service shall issue for each day's pack a signed certificate covering the quantities of such packaged olives which meet all applicable minimum quality and size requirements. Each such certificate shall contain at least the following:

- (i) Date;
- (ii) Place of inspection;
- (iii) Name and address of handler;
- (iv) Can code;
- (v) Variety;
- (vi) Fruit size;
- (vii) Can size;
- (viii) Style;
- (ix) Total number of cases;
- (x) Number of cans per case;
- (xi) And statement that packaged olives meet the effective minimum quality requirements for canned ripe olives as warranted by the facts.

(d) *Olives which fail to meet minimum quality and size requirements.* (1) Whenever any portion of a handler's daily pack of packaged olives fails to meet all applicable minimum quality

and size requirements, the Inspection Service shall issue a signed report covering such olives. Each such report shall contain at least the following:

- (i) Date;
- (ii) Place of inspection;
- (iii) Name and address of handler;
- (iv) Can code;
- (v) Variety;
- (vi) Fruit size;
- (vii) Can size;
- (viii) Style;
- (ix) Total number of cases;
- (x) Number of cans per case; and
- (xi) Reason why the applicable requirements were not met.

* * * * *

(g) *Size Certification.* (1) When limited-use size olives for limited-use styles are authorized during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(i), any lot of limited-use size olives may be used in the production of packaged olives for limited-use styles if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

(2) When limited-use size olives are not authorized for limited-use styles during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(ii), any lot of canning-sized olives may be used in the production of packaged olives for whole, pitted, or limited-use styles if such olives are within the average count range in Table III contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

5. In § 932.153, the section heading and paragraph (a) are revised to read as follows:

§ 932.153 Establishment of minimum quality and size requirements for processed olives for limited uses.

(a) *Minimum quality requirements.* On or after August 1, 1996, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1996, and meet the minimum quality requirements specified in § 932.52(a)(1) as modified by § 932.149.

* * * * *

6. In § 932.155, paragraph (c) is revised to read as follows:

§ 932.155 Special purpose shipments.

* * * * *

(c) In accordance with the provisions of § 932.55(b), any handler may use processed olives in the production of packaged olives for repackaging, and ship packaged olives for repackaging, if the packaged olives meet the minimum quality requirements, except for the requirement that the packaged olives possess a reasonably good flavor: *Provided*, That the failure to possess a reasonably good flavor is due only to excessive sodium chloride.

PART 944—FRUITS; IMPORT REGULATIONS

7. In § 944.401, paragraphs (a)(8), (b)(1), (g), and (j) are revised to read as follows:

§ 944.401 Olive Regulation 1.

(a) * * *

(8) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR part 52) including the terms "size", "character", "defects" and "ripe type": *Provided*, That the definition of "broken pitted olives" is as follows: "Broken pitted olives" consist of large pieces that may have been broken in pitting but have not been sliced or cut.

(b) * * *

(1) *Minimum quality requirements.* Canned ripe olives shall meet the following quality requirements, except that no requirements shall be applicable with respect to color and blemishes for canned green ripe olives:

(i) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 1 of this section;

(ii) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements prescribed in Table 2 of this section;

(iii) Canned chopped olives of the ripe type shall meet the minimum quality requirements prescribed in Table 3 of this section and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and

(iv) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 4 of this section, *Provided*, That broken pitted olives consist of large

pieces that may have been broken in pitting but have not been sliced or cut.
 (v) A lot of canned ripe olives is considered to meet the requirements of this section if all or most of the sample units meet the requirements specified in

Tables 1 through 4 of this section: *Provided*, That the number of sample units which do not meet the requirements specified in Tables 1 through 4 of this section does not

exceed the acceptance number prescribed for in the sample size provided in Table I of 7 CFR 52.38: *Provided further*, That there is no off flavor in any sample unit.

TABLE 1.—WHOLE AND PITTED STYLE
 [Defects by count per 50 olives]

FLAVOR	Reasonably good; no "off" flavor.
FLAVOR (Green Ripe Type)	Free from objectionable flavors of any kind.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with not less than 60% having a color equal or darker than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 5 soft units or 2 excessively soft units.
UNIFORMITY OF SIZE	60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm.
DEFECTS:	
Pitter Damage (Pitted Style Only)	15.
Major Blemishes	5.
Major Wrinkles	5.
Pits and Pit Fragments (Pitted Style Only)	Not more than 1.3% average by count.
Major Stems	Not more than 3.
HEVM	Not more than 1 unit per sample.
Mutilated	Not more than 3.
Mechanical Damage	Not more than 5.
Split Pits or Misshapen	Not more than 5.

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES
 [Defects by count per 255]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.
Broken Pieces and End Caps	Not more than 125 grams by weight.

TABLE 3.—CHOPPED STYLE
 [Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

TABLE 4.—BROKEN PITTED STYLE
 [Defects by count per 255 grams]

FLAVOR	Reasonably good; no "off" flavor.
SALOMETER	Acceptable range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the USDA Composite Color Standard for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

* * * * *

(g) It is hereby determined, on the basis of the information currently available, that the minimum quality requirements and size requirements set forth in this part are comparable to those applicable to California canned ripe olives.

* * * * *

(j) The minimum quality, size, and maturity requirements of this section shall not be applicable to olives imported for charitable organizations or processing for oil, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-449 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[FV96-985-3 IFR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1996-97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule increases the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996-97 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

DATES: Effective on January 9, 1997 through May 31, 1997; comments received by February 10, 1997 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698. All comments should reference the docket number and the date and page number

of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2043; Fax: (503) 326-7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-8139; 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 Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the "order." This 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 provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1996-97 marketing year, which ends on May 31, 1997. 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. A 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 date of the entry of the ruling.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This rule increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1996-97 marketing year, which ends on May 31, 1997. This rule increases the salable quantity from 1,074,902 pounds to 1,213,692 pounds and the allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996-97 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1996-97 marketing year were recommended by the Committee at its September 26, 1995, meeting. The Committee recommended salable quantities of 989,303 pounds and 1,074,902 pounds, and allotment percentages of 55 percent and 54 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the January 24, 1996, issue of the Federal Register (61

FR 1855). Comments on the proposed rule were solicited from interested persons until February 23, 1996. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996-97 marketing year was published in the March 20, 1996, issue of the Federal Register (61 FR 11291).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996-97 marketing year be increased by 7 percent from 54 percent to 61 percent. The 1996-97 marketing year salable quantity of 1,074,902 pounds will therefore be increased to 1,213,692 pounds.

However, some Native spearmint oil producers did not produce all of their

individual salable quantities for the 1996-97 marketing year, or fill their deficiencies from the prior year's production. The marketing order authorizes such producers to have their deficiencies filled by other producers who have production in excess of their salable quantities. This is optional for producers, but must be done before November 1 of each marketing year.

The original total industry allotment base for Native spearmint oil for 1996-97 was established at 1,990,559 pounds and was revised to 1,989,659 pounds to reflect loss of base due to non-production of producer's total annual allotments. This adjustment resulted in a 900 pound loss of total industry base, which is reflected in the calculations for the revised salable quantity.

This interim final rule makes an additional amount of Native spearmint oil available by increasing the salable quantity which releases oil from the reserve pool. Only producers with Native spearmint oil in the reserve pool

will be able to use this increase in the salable quantity. Prior to November 1, 1996, producers without reserve pool oil or producers with an insufficient supply of reserve oil could have deficiencies in meeting their salable quantities filled by producers having excess Native spearmint oil. If all producers could use their salable quantity, this 7 percent increase in the allotment percentage would have made an additional 135,276 pounds of Native spearmint oil available (1,989,659 x 7 percent). However, Native spearmint oil producers having 25,546 pounds of Native spearmint oil will not be able to use their reserve pool deficiencies this marketing year. Deficiencies usually exist because of unplanned problems that may reduce spearmint production. Thus, rather than 135,276 additional pounds being made available, this action makes 113,730 additional pounds of Native spearmint oil available to the market.

The following table summarizes the Committee recommendation:

NATIVE SPEARMINT OIL RECOMMENDATION

(a) Actual Carry In on June 1, 1996	45,632 pounds.
(b) 1995-96 Salable Quantity	1,074,902 pounds.
(c) 1995-96 Available Supply	1,120,534 pounds (a + b).
(d) Total Sales as of November 14, 1996	1,036,058 pounds.
(e) Calculated Available Supply as of November 14, 1996	84,476 pounds ((c - d).
(f) Reserve Deficiency Affecting Salable Quantity	25,546 pounds.
(g) Revised Total Allotment Base	1,989,659 pounds.
(h) Recommended Allotment Percentage as of November 14, 1996	61 percent.
(i) Calculated Revised Salable Quantity	1,213,692 pounds (g x h).
(j) Actual Oil Available as Salable Quantity	1,188,146 pounds (i - f).

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1996-97 marketing year began on June 1, 1996. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 1997. Without the increase, the Committee believes the industry would not be able to meet market needs. As of November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991-92 to a low of 92,658 pounds in 1992-93. The five year average is 157,531 pounds. Therefore, based on past history the industry would be unlikely to meet market demand without this change. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1996-97 marketing year, it had

anticipated that the year would end with an ample available supply. This revision adds 113,730 pounds of Native spearmint oil to the amount available for market during the remainder of the 1996-97 marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 61 percent should be established for Native spearmint oil for the 1996-97 marketing year. This percentage will provide an increased salable quantity of 1,213,692 and a new allotment percentage from 54 percent to 61 percent for Native spearmint oil for the 1996-97 marketing year.

This rule relaxes the regulation of Native spearmint oil and will allow growers to meet market needs and improved returns. In conjunction with the issuance of this rule, the Department has reviewed the Committee's revised marketing policy statement for the 1996-97 marketing year. The Committee's marketing policy statement has been reviewed under the provisions

as set forth in 7 CFR §985.50 and with other USDA guidelines.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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 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 8 spearmint oil handlers subject to regulation under the marketing order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) oil allotment base, and approximately 115 producers hold

Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than \$500,000.

This interim final rule increases the quantity of Native spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1996-97 marketing year. This rule was recommended by the Committee, the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its November 14, 1996, meeting, the Committee unanimously recommended that the allotment percentage for Native spearmint oil for the 1996-97 marketing year be increased by 7 percent from 54 percent to 61 percent. The 1996-97 marketing year salable quantity of 1,074,902 pounds will therefore be increased to 1,213,692 pounds. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. A normal spearmint producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint producing farms would fall into the category of large businesses.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities as all are national and multinational corporations involved in the buying and selling of essential oils and the products of such essential oils. The Committee also estimates that 20 of

the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. This is based on production information gathered from assessments. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage of larger producers, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns. In addition, this change may potentially benefit the small producer more than large producers. This is because the change ensures that small producers are more likely to maintain a profitable cash flow and meet annual expenses.

Alternatives to this rule included not to increase the available supply of Native spearmint oil, which could potentially hurt small producers. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native class oil after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs. As of November 14, 1996, 84,476 pounds of Native spearmint oil was available for market. Demand for Native spearmint oil from December 1 to May 31 over the past five years has ranged from a high of 245,661 pounds in 1991-92 to a low of 92,658 pounds in 1992-93. The five year average is 157,531 pounds. Therefore, based on past history the industry would be unlikely to meet market demand without this change.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are

reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1996-97 marketing year, the Committee's recommendation and other available information, it is found that to revise section 985.215 (61 FR 11291) to change the salable quantity and allotment percentage for Native spearmint oil, 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which began on June 1, 1996; (2) The quantity of Native spearmint planted for the 1997-98 marketing year may be affected, thus handlers and producers should be apprised as soon as possible of the salable quantity and allotment percentage of Native spearmint oil contained in this interim final rule; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) This rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985—MARKETING ORDER
REGULATING THE HANDLING OF
SPEARMINT OIL PRODUCED IN THE
FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 985.215 is amended by revising paragraph (b) to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§985.215 Salable quantities and allotment percentages 1996-97 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,213,692 pounds and an allotment percentage of 61 percent.

Dated: January 3, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-450 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 997, 998, and 999

[Docket Nos. FV96-997-1 FR; FV96-998-4 FR and FV96-999-3 FR]

Peanuts Marketed in the United States; Changes in Handling and Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule relaxes, for 1996 and subsequent crop peanuts, several provisions regulating the handling and disposition of domestically and foreign-produced peanuts marketed in the United States. The rule eliminates several requirements covering the disposition of inedible peanuts. At the same time, it provides safeguard measures including amendments to the aflatoxin provisions to prevent inedible peanuts from entering human consumption outlets. The rule increases opportunities for reconditioning failing peanut lots and reduces inspection and handling costs to handlers and importers. The changes were recommended by the Peanut Administrative Committee (Committee), the administrative agency which oversees the quality assurance program under Peanut Marketing Agreement No. 146 (7 CFR Part 998, Agreement). By law, the same or similar regulations issued under the Agreement also must be issued under Part 997 regulating non-signatory peanut handlers, and Part 999.600 regulating peanut importers. This rule includes changes recommended by the Department to

help ensure effective safeguard measures. The changes should enable the industry to be more competitive in the changing international peanut market.

EFFECTIVE DATES: 1. Sections 997.20, 997.30, 997.40, 997.50, 997.51, 997.52, 997.53, 997.54, 998.100, and 998.200 are effective January 13, 1997. Section 999.600 is effective January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, D.C. 20090-6456; telephone: (202) 720-2170, or 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, D.C., 20090-6456; telephone: (202) 720-2491, fax: (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Peanut Marketing Agreement No. 146 (7 CFR Part 998); the non-signatory handler peanut regulation (7 CFR Part 997); and the peanut import regulation published in the June 19, 1996, issue of the Federal Register (61 FR 31306, 7 CFR Part 999.600). These programs regulate the quality of domestically produced peanuts handled by Agreement signers and non-signers as well as imported peanuts. The first two Parts are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." Part 999 is effective under section 108B(f)(2) of the Agricultural Act of 1949, as amended (7 U.S.C. 1445c-3).

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

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

Domestic peanut production in 1995 was 1.76 million tons, with a farm value of slightly over \$1 billion.

The objective of the two domestic programs and the import regulation is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United

States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop, have signed the Agreement. The remaining 30 percent are non-signatory handlers handling the remaining 5 percent of domestic production. The 1995 duty-free import quota was equal to approximately 2 percent of 1995 domestic production.

Under the three regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an assessment levied on handlers in the respective programs.

The Committee, which is composed of producers and handlers of peanuts, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department assesses Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Public Law 101-220 amended section 608b of the Act in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Similarly, recent amendments to the Agricultural Act of 1949 require that all foreign produced peanuts in the domestic market fully comply with all quality standards under the Agreement. Section 999.600—Specialty Crops; Import Regulations was added to 7 CFR part 999 on June 19, 1996 (61 FR 31306), to establish minimum quality, identification, certification and safeguard requirements for foreign-produced farmers stock, shelled and cleaned-in-shell peanuts presented for importation into the United States.

Thus, the changes to the Agreement's regulations, as established in this final rule, also are established for the peanut non-signer and import regulations.

According to the Committee, the domestic peanut industry is undergoing a period of great change. The Committee bases its view, in part, on findings in a

May, 1996 study entitled "United States Peanut Industry Revitalization Project" developed by the National Peanut Council and the Department's Agricultural Research Service.

According to the study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because of: (1) Decreasing consumption of peanuts and peanut products; (2) accompanying decreases in U.S. peanut production and increases in production costs; and (3) increasing imports of peanuts and peanut products.

The study shows that peanut consumption has declined. Between 1991 and 1994, per capita peanut consumption steadily declined a total of 11 percent. Peanuts used in primary products declined 12 percent, and peanuts used in peanut butter (the largest product usage) declined 20 percent.

Among other things, the study shows that harvested acreage of peanuts in the U.S. declined 25 percent between 1991 and 1995. Production has fluctuated downward, with 1995 production 30 percent below that of 1991. Farm value of peanut production has dropped 29 percent (from \$1.4 billion to slightly over \$1 billion) in the same period.

The study points to recent increases in the duty-free import quota for raw peanuts. The volume of imported peanuts has, indeed, increased due to recent relaxations of the duty-free quota enacted through the legislation to implement the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Prior to 1994, the volume of imported peanuts was limited, in most cases, to 1.71 million pounds annually. However, the Schedule of the United States annexed to NAFTA, implemented on January 1, 1994, provided duty-free entry for up to approximately 7.43 million pounds of qualifying peanuts from Mexico. The duty-free access for Mexican peanuts increased to approximately 7.88 million pounds in 1996 and is scheduled to be approximately 8.1 million pounds in 1997. In calendar year 2008, access for Mexican peanuts will be unlimited. In addition, the United States Schedule to the Uruguay Round Agreements under GATT increased the peanut import quota to 76.8 million pounds in 1996 from all countries except Mexico, with additional annual increases of approximately 10 million pounds to reach a ceiling of 125 million pounds by the year 2000 for all imported peanuts.

The study shows that imports of peanut butter from 1991 to 1996 increased 116 percent. More

significantly, the study reports that imported peanut butter's share of U.S. peanut butter consumption increased 12 fold between 1988 and 1993.

The study also makes projections for the near future. Farmer production costs and revenue are projected to be equal by the year 2000, as are handler costs and revenue. Total imports of shelled peanuts and paste are expected to increase 50 percent by the year 2000 and the U.S. position in the world market is expected to drop 7 percent between 1995 and 1996.

In addition, the modifications in the Federal government's peanut quota and price support program under the Federal Agriculture Improvement and Reform Act of 1996 will result in the domestic industry undergoing changes over the next few years. The study shows that the quota poundage was reduced over 20 percent between 1991 and 1995, and the support price dropped from \$670 per ton in 1995 to \$610 in 1996.

The Committee contended that all of these factors combined show that the domestic peanut industry is in decline and that the outlook is not expected to change without some positive intervention by the industry.

In mid-1994, the Committee appointed a subcommittee to evaluate the present program and to recommend changes. The Agreement's handling regulations were evaluated with the intent of streamlining procedures and making them consistent with current industry economies and technological developments.

Different recommendations were developed for streamlining both incoming and outgoing handling procedures. The recommendations focused on handlers' freedom to prepare and dispose of peanut lots according to economic incentives of the marketplace. For instance, restrictions that prevent certain lots failing quality requirements from being blanched or remilled would be removed so that more peanuts could be reconditioned to meet human consumption requirements. Also, provisions throughout the Agreement regulations require that certain lots be kept separate and apart from other, similar peanut lots. For the most part, these provisions tend to limit handlers' flexibility to move and recondition peanuts. The subcommittee contended that such provisions may work against optimum utilization of equipment and facilities and prevent handlers from making the most economic use of their peanut inventories. Further, peanut processing machinery has been improved through technological advances to the point that virtually any

lot of peanuts, regardless of original (incoming) quality, can now be shelled, remilled and/or blanched (processed) to meet outgoing quality requirements of the Agreement and the non-signer program. It was the opinion of the subcommittee that handlers should have the option of deciding whether it is more economically advantageous to recondition a lot or send it to an inedible peanut outlet.

Subcommittee members also recommended that many of the requirements controlling disposition of inedible peanuts be removed because those requirements should be placed on buyers rather than handlers. The subcommittee contended that peanuts either pass or fail quality and aflatoxin requirements, and the requirements limiting disposition based on aflatoxin content (restricted and unrestricted dispositions) should be removed.

The subcommittee contended further that these changes, primarily relaxations, could be made without limiting the effectiveness of the Agreement's quality assurance program. As long as all peanut lots intended for human consumption continue to be sampled and tested against current outgoing requirements, the industry's high quality standards would be maintained.

These recommendations represented a fundamental change in the Agreement's handling regulations. The full Committee met three times from March to May 1996, to review all of the recommendations. At a May 23, 1996, meeting the Committee recommended the changes to the Agreement's incoming and outgoing regulations for 1996 and subsequent crop peanuts. After review and modifications to some of the recommendations, the Department added an additional safeguard procedure for imported peanuts and published the recommendations in the Federal Register (61 FR 51811) on October 4, 1996. Because of extent of the recommended changes, the three peanut regulations were published in their entirety. A three-week comment period was provided for interested parties to submit comments. Twelve comments were received by the end of the comment period, October 24, 1996.

Seven comments were received from signatory handlers, two from growers cooperatives, and one on behalf of the Committee. All of the comments support the changes which effect the domestic signer and non-signer programs. Two comments were received from importers opposing the proposed additional reporting requirement on importers.

The Department requested comments on whether implementation of the proposed changes after the beginning of the crop year would have an unequal effect on one or more of the production areas or unequally affect small or large handlers. Nine commenters responded that the proposed changes should be implemented as soon as possible and should be in effect for the entire 1996 crop year. No comments were received opposing implementation of the changes for the 1996 crop year.

Further, seven commenters stated that the proposed changes would not have an adverse affect on small peanut handlers. No comments were received from persons claiming to be or to represent small businesses.

The comment submitted on behalf of the Committee recommended revising the proposed regulatory text covering the requirement that all peanuts be chemically tested for aflatoxin prior to disposition for human consumption. The comment does not change the meaning or intention of the proposal. This comment is addressed below.

One commenter suggested that the handling regulations be further changed by eliminating the Segregation categories specified in the incoming regulations. Such a relaxation could increase the volume of cheaper peanuts available for processing for edible consumption. The idea was considered and ultimately rejected by the Committee at meetings prior to the May meeting because no agreement could be reached on provisions to ensure appropriate compensation for producers. After considering the comment and deliberations taken by the Committee at the previous meetings, the Department has determined that the comment should not be included in this rulemaking action.

Two commenters correctly pointed out that the support price of the Department's Farm Service Agency (FSA) peanut quota program is not scheduled to be reduced below the current \$610 per ton, as indicated in the proposed rule. This statement is corrected.

One comment was received from a peanut producers association which addressed several issues relating to FSA's quota program. The comments did not have relevance to the proposed handling changes in this rulemaking.

Three commenters addressed the Department's proposed additional import requirement covering foreign-produced peanuts which are admitted into the U.S. and stored in warehouses for more than 30 days prior to the opening of the duty-free import quota. Two importers opposed the requirement

and one commenter representing a domestic growers cooperative agreed with the additional requirement. The requirement and the Department's decision not to accept the opposing comments are discussed below.

Of the nine comments received which addressed the effective date of the regulations, all indicated that the rule should be implemented as soon as possible. Several commenters stated that the entire industry is expecting the changes to be made effective for the entire 1996 crop year. However, handling actions already taken should not be subject to such requirements. Thus, the actions taken in this final rule are not intended to cover the entire 1996 crop year. Four commenters stated that additional delays in implementation will adversely affect the industry.

This final rule changes, for 1996 and subsequent crop peanuts, several provisions regulating the handling of domestic and foreign-produced peanuts and relaxes disposition requirements of such peanuts to inedible peanut outlets. The rule increases the volume of peanuts that can be handled and used for human consumption without decreasing the quality requirements for such disposition. Restrictions are removed on handler acquisition for human consumption use of certain farmers stock lots failing incoming inspection because of excess loose shelled kernels and fall-through peanuts. Positive lot identification (P.L.I.) requirements for seed peanuts are removed. Shelled peanut lots meeting Indemnifiable Grade or Superior Grade requirements may be sent to human consumption outlets prior to the handler receiving aflatoxin certification of the lot. Restrictions are removed on remilling and blanching of peanut lots exceeding certain damage and foreign material content levels. The maximum allowable aflatoxin content of peanut lots disposed to inedible peanut outlets, such as animal feed or wildlife seed, or are exported, is raised from 25 ppb to 300 ppb. Previous provisions on "restricted" and "unrestricted" dispositions, "fragmented" peanuts, and peanut meal are removed. Peanut lots testing above 300 ppb aflatoxin content, which are not reconditioned, may only be crushed for oil. Safeguard measures are established requiring aflatoxin certifications for inedible lots exceeding 15 ppb aflatoxin content. Finally, the volume and storage location of foreign-produced peanuts arriving in the U.S., which are inspected and stored in Customs bonded warehouses for more than one month prior to filing for consumption entry, must be filed with AMS.

Because this rulemaking involves substantial changes to the text of the three peanut regulations, the explanation of the changes to each program is repeated in this final rule. Comments received are included in the discussion of each change in regulation. The Department also makes a few changes to correct inadvertent omissions and redundancies in the regulatory text of the three programs.

Incoming Regulations

Loose shelled kernels: The Committee recommended amending § 998.100 Incoming quality regulation by removing paragraph (d) *Loose shelled kernels* which regulates the acquisition of loose shelled kernels (LSKs) and other defective kernels. The regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. New, high technology milling and blanching equipment enables handlers to recondition failing peanut lots that could not have been reconditioned when the regulations were promulgated. It is no longer necessary to impose restrictions that hinder efficiency of handling operations and result in the loss of potentially good quality peanuts. Therefore, this final rule removes paragraph (d)(1) from the incoming regulations. In doing so, restrictions are removed on acquiring farmers stock peanuts with more than 14.49 percent LSKs and 5 percent fall-through from specified screen sizes.

For the non-signer regulation, paragraph (d) *Loose shelled kernels* in § 997.20 corresponds to paragraph (d) of the Agreement's § 998.100 and is removed for the reasons cited above and to be consistent with corresponding changes to the Agreement. For the import regulation, paragraph (b)(1)(iv) *Loose shelled kernels* of § 999.600 also is removed for the reasons cited above.

The Committee recommended removing paragraph (d)(2) of § 998.100 which requires that handlers submit to the Committee diagrams of their handling facilities and procedures. This provision is no longer considered necessary for the Committee's oversight of the signatory handlers and is removed.

The non-signer regulation and the import regulation do not have paragraphs corresponding to paragraph (d)(2) of § 998.100.

Seed peanuts: The Committee recommended removing the requirement in old § 998.100, paragraph (e) *Seed peanuts* that required handlers who receive or acquire seed residuals to hold and mill such peanuts separate and

apart from other edible quality peanuts. As long as the peanuts sent to human consumption outlets must ultimately meet outgoing requirements, including certification as negative to aflatoxin, it is not necessary to hold those peanuts separate and apart from other lots also destined for edible consumption. Therefore, this final rule amends paragraph (e) of § 998.100 by removing the requirement that handlers hold and mill seed residuals separate and apart from other edible quality peanuts.

The Department makes a correction to paragraph (d)(2) as published on page 51824 of the proposed rule. The second sentence is not correctly worded and should refer to seed peanuts which "have" visible *Aspergillus flavus* mold. The words "are free from" are removed from the second sentence as published in the proposed rule. The sentence has been revised accordingly in this final rule.

For the non-signer regulation, paragraph (e) *Seed peanuts* in § 997.20 contains different wording but the same meaning and intent as the Agreement regulation's seed provisions. The changes made to paragraph (e) of the Agreement regulation concerning holding and milling seed peanuts separate and apart from other peanuts also are made to § 997.20 paragraph (e) of the non-signer regulation for the reasons cited above and to be consistent with corresponding changes to the Agreement.

For the import regulation, paragraph (b)(2) *Seed peanuts* in § 999.600, also is changed accordingly. Further, old paragraph (b)(2) provided that Segregation 2 and 3 peanuts may be shelled for seed purposes, but must be dyed or chemically treated to indicate the peanuts are unfit for human or animal consumption. That requirement was provided in paragraphs (i)(1) and (2) of § 998.200—which are removed in this final rule (discussed below). Thus, this rule finalizes changes to import regulation paragraph (b)(2) by removing the requirement that Segregation 2 and 3 seed peanuts must be dyed or chemically treated. Finally, the second sentence of the import regulation paragraph (b)(2), which covered reporting disposition to the Secretary, is removed because the information is adequately covered in the last two sentences of the same paragraph.

Oilstock: In old paragraph (f) of § 998.100, the Committee recommended removing the prohibition on exporting inedible quality peanuts to Canada or Mexico and removing references to "fragmented" peanuts. The Committee members expressed the point that other countries ship inedible and

unfragmented peanuts to Canada, Mexico, and other international markets, so domestic handlers should not deny themselves access to the same international markets. Further, removing the term "fragmented" from paragraph (f) of § 998.100 allows the term "peanuts" to refer to peanuts in any form, including fragmented kernels, which may be acquired by handlers for crushing or export. Therefore, this final rule removes from old paragraph (f), the prohibition on exporting inedible quality peanuts to Canada and Mexico, and references to fragmented peanuts and the term "shelled" is also removed, where appropriate, for the same reason. Old paragraph (f) also is redesignated as paragraph (e).

For the non-signer regulation, the prohibition on exports to Canada and Mexico and the requirement of fragmentation is removed to make paragraph (f) of § 997.20 consistent with the changes to the regulations under the Agreement.

In § 999.600 of the import regulation, paragraph (b)(3) *Oilstock and exportation* does not restrict exports and so no corresponding change is needed.

Finally, in § 998.100, the Committee recommended removing paragraph (j) which covers disposition of shelled peanuts for use as animal feed. This paragraph contained restrictions which are not necessary to safeguard the quality of peanuts for human consumption. Appropriate safeguard measures are provided in replacement provisions discussed below. Therefore, this final rule removes paragraph (j) from the Agreement regulations.

In this final rule, corresponding paragraph (h) in § 997.20 of the non-signer regulation is removed for the reason cited above. Paragraph (i) of § 997.29 is retained because it applies to producer/handlers handling peanuts of their own production. Such farm-stored peanuts must meet the requirements of the non-signer regulation. Paragraph (i) is redesignated as paragraph (g) in § 997.20.

The import regulation does not have a paragraph corresponding specifically to the Agreement regulation's paragraph (j) on animal feed. The topic is addressed in paragraph (e) of the outgoing regulations, the removal of which is discussed below.

Outgoing Regulations

Paragraph (a) of § 998.200 Outgoing quality regulation provides that peanut lots meeting the indemnifiable grade requirements in Table 2 do not have to be tested and certified as negative as to aflatoxin. The Committee recommended modifying this requirement to provide

that all lots (including indemnifiable grade lots) intended for human consumption be chemically tested and certified "negative" as to aflatoxin content. The change makes the Agreement regulations consistent with current industry practice. Most, if not all, buyers require that all peanuts for human consumption be certified negative as to aflatoxin. This change has a twofold purpose—it codifies a practice which is common in the industry, and ensures that the regulations effectuate the objectives of the Agreement. This final rule modifies paragraph (a) accordingly.

Currently, peanut lots meeting the grade requirements of Table 1, Other Edible Quality, must be certified negative to aflatoxin prior to shipment to the buyer. This requirement is not changed. Further, under previous industry practice, indemnifiable grade peanut lots were chemically tested and certified while the lot was in transit to the buyer. This practice is continued under the final rule and the actual transfer of lot ownership should not normally occur until certification has been received by the handler. A shorter turn-around time for chemical analysis is now possible with current testing practices and equipment, overnight and express mail services, and fax transmissions of test results.

The comment filed on behalf of the Committee correctly points out that proposed paragraph (a)(2) in § 998.200, which is between the two tables on page 51826, could be interpreted to mean that all shelled peanut lots must meet indemnifiable grade requirements. The Department agrees that this is not the intent of the Committee's recommendation. The commenter suggested that paragraph (a)(2) in the proposed rule be re-arranged to read as follows: "Prior to disposition to human consumption outlets, peanuts which have been certified as meeting the requirements for indemnifiable grades must also be certified "negative" as to aflatoxin. Maximum limitations for indemnifiable grades are as follows:" This final rule makes the commenter's recommended change to paragraph (a)(2) of § 998.200 of the Agreement regulations and also to paragraph (a)(1)(ii) of § 997.30 of the non-signer regulations. The corresponding paragraph in the import regulation does not need to be changed.

The Department also corrects the title of Table 1 in § 998.200 of the Agreement regulations. The word "Non" was inadvertently left out of the title, which should read: Table 1—"Other Edible Quality" (Non-Indemnifiable) Grades—Whole Kernels and Splits. This error

appears twice in the proposed rule because Table 1 begins on page 51825 and is continued on page 51826. The titles of the corresponding tables in the non-signer or import regulation do not refer to "indemnifiable" peanuts and do not have to be corrected.

The Committee recommended changing the title of paragraph (c) of § 998.200 to read *Sampling and testing shelled peanuts*. The new title includes the peanut sampling process which comprises a significant part of paragraph (c). As a conforming change, the beginning of the first sentence of revised paragraph (c) is changed to add the words "Prior to shipment, * * *". In addition, this final rule designates the old introductory paragraph (c) as paragraph (c)(1) because a paragraph (c)(2) is cited in the Code of Federal Regulations. New paragraph (c)(1) is otherwise unchanged.

A conforming change is made to the title of corresponding paragraph (c) of § 997.30 of the non-signer regulation. No conforming change is necessary in the import regulation. A conforming change also is made to non-signer paragraph (c)(2) to specify that handlers shall cause samples to be ground by the Federal or Federal-State Inspection Service (inspection service) prior to shipment.

Paragraph (c)(4) of § 998.200 specifies the maximum allowable aflatoxin content for edible peanut lots as 15 parts per billion (ppb). Such lots are certified as "negative" to aflatoxin. Consistent with current industry practice, the aflatoxin certificates for such lots are not required to specify the numerical aflatoxin count of the lot. This requirement is not changed in this final rule.

Previous paragraph (c)(4) of § 998.200 also specified a "negative" content for inedible peanut lots as 25 ppb or less. Under the regulation, failing lots with aflatoxin content in excess of 15 ppb but 25 ppb or less were considered "unrestricted," which means the peanuts could be used in certain non-human consumption peanut outlets such as animal feed, wildlife feed, etc. "Unrestricted" uses could provide more of a financial return for handlers while not posing a food safety threat to consumers. Peanut lots with aflatoxin content of more than 25 ppb were certified as "restricted" and could only be crushed for oil or exported. Aflatoxin certificates from USDA and Committee-approved private laboratories specified unrestricted lots as "negative" and usually did not include the numerical count of the lot's aflatoxin content. Restricted lot certificates cited the

numerical aflatoxin count of the failing lot.

The Committee recommended revising paragraph (h) and removing paragraphs (j) and (l) of § 998.200 to remove, among other things, procedures relevant to "unrestricted" and "restricted" lots of peanuts. Under the proposal, restrictions on the disposition of failing peanut lots would be relaxed under the proposed rule. Failing lots of peanuts composed of LSKs, fall through and pickouts from initial shelling operations would be limited to crushing or export unless certified as to aflatoxin content. If so certified, the lots could be disposed to other non-edible uses. Other failing lots and residuals from blanching and remilling also could be sold to any buyer provided that the lot is PLI, certified as to aflatoxin content, and in specified containers. Therefore, under the proposal, there is no reason to retain the phrase in paragraph (c)(4) of § 998.200 that specifies 25 ppb or less as "negative" to aflatoxin for inedible peanuts. Continued reference to 25 ppb relative to inedible peanuts would only cause confusion in the revised regulations. The Department accepts these recommendations of the Committee and revises, in this final rule, the paragraphs as stated.

Replacement paragraphs (f), (g), and (h) of the new § 998.200 (discussed below) require that failing lots disposed to inedible outlets other than crushing or export be "certified as to aflatoxin content"—which means entering a numerical count rather than a general statement covering a ppb spread from 16 to 26 ppb. Therefore, this final rule establishes that, for peanut lots testing more than 15 ppb, the aflatoxin certificate must show the lot's numerical aflatoxin count.

This final rule establishes that aflatoxin laboratories specify the numerical aflatoxin content on certificates issued on inedible peanut lots testing more than 15 ppb. Also, aflatoxin certificates on lots which fail grade requirements but are tested at 15 ppb or less should be certified as "negative to aflatoxin" for inedible peanuts. The certificates for such lots may specify the ppb aflatoxin content of the lots.

This final rule makes corresponding changes to paragraph (a)(2) of § 997.30 of the non-signer regulations and paragraph (f)(3) of § 999.600 of the import regulation.

The Department believes these certification guidelines will assist handlers in marketing inedible quality peanuts.

Paragraph (d) *Identification* of § 998.200 is amended in this final rule

by adding a clause in the first sentence establishing the maximum lot size as 200,000 pounds. Two hundred thousand pounds of peanuts is the largest lot size which the inspection service has determined can be efficiently and accurately sampled. The maximum limit specification is removed from other paragraphs in the Agreement's regulatory language and is added to paragraph (d) for consistency and clarity. The 200,000 pound maximum lot size applies to all sampling situations.

The Department makes a correction to the regulatory text of paragraph (d) of § 998.200. Text regarding P.L.I. was inadvertently left out of the second to last sentence at the end of paragraph (d). The corrected text does not change the meaning or regulatory nature of the paragraph.

In the non-signer regulation, § 997.50 Inspection, chemical analysis, certification and identification applies to identification, among other topics. While the maximum lot size of 200,000 pounds is specified elsewhere in the regulations, the 200,000 pound maximum lot size is added to § 997.50. In the import regulation, paragraph (d)(3)(ii) in § 999.600 specifies the 200,000 pound maximum lot size and is not changed.

Paragraph (f) *Interplant transfer* of § 998.200 was revised last year and provides that peanut lots may be transferred to any handler or storage without P.L.I. and certification, and that, upon disposition for human consumption such transferred peanuts must meet edible requirements. This paragraph is consistent with the Committee's intention to remove provisions which restrict movement and increase costs of handling peanuts. As long as any lot of peanuts intended for human consumption are required to be sampled and meet outgoing quality requirements and are P.L.I., any additional requirements on the transfer of peanuts between a handler's plants, that do not affect outgoing quality, are irrelevant. Therefore, paragraph (f) is not changed in this final rule. Handlers are required to keep records of all such transfers.

Corresponding paragraph (f) of § 997.30 of the non-signer regulation covers the transfer of non-signer peanuts between plants. This paragraph is removed (as discussed below). The import regulation does not have corresponding requirements on the transfer of imported peanuts between plants, and, therefore, no conforming change is necessary.

Disposition of Failing Quality, Inedible Peanuts

The Committee recommended streamlining § 998.200 Outgoing regulation by removing 16 paragraphs covering disposition requirements and procedures concerning inedible (failing quality) peanuts used for research projects, wildlife feed, rodent bait, chemically treated seed, fragmented export, meal from crushing, and animal feed. The paragraphs removed from § 998.200 are:

- (1) Paragraph (g)(1) which defined LSKs, fall through, and pickouts and inedible quality peanuts;
- (2) Paragraph (g)(2) which required that inedible peanuts be kept separate and apart from edible quality peanuts;
- (3) Paragraph (g)(3) which provided for: (a) disposition of inedible peanuts to research projects, wildlife feed, rodent bait, chemical treatment for seed, and export to countries other than Canada and Mexico; (b) designations of restricted and unrestricted failing lots; and (c) limits on disposition of meal from crushing;
- (4) Paragraph (g)(4) which specified further requirements on the transfer of inedible peanuts;
- (5) Paragraph (h)(1) which specified further requirements on identifying and reporting the transfer of inedible peanuts;
- (6) Paragraph (h)(3) which specified further requirements regarding the disposition of failing quality Segregation 1 peanuts to specified outlets;
- (7) Paragraph (i)(1) which specified disposition of seed peanuts and seed residuals;
- (8) Paragraph (i)(2) which required chemical treatment of seed peanuts;
- (9) Paragraph (j)(1) which specified requirements on commingling and disposition of Segregation 2 and 3 peanuts;
- (10) Paragraph (j)(2) which specified further requirements on commingling and disposition of Segregation 2 and 3 peanuts;
- (11) Paragraph (k)(1) which regulated exportation of Segregation 1 peanuts;
- (12) Paragraph (k)(2) which specified further requirements on the disposition of Segregation 1 peanuts to inedible outlets;
- (13) Paragraph (l)(1) which specified categories of unrestricted shelled peanuts for disposition to crushing or export;
- (14) Paragraph (l)(2) which specified categories of restricted shelled peanuts for disposition to crushing or export;
- (15) Paragraph (m)(1) which specified requirements for the disposition of shelled peanuts for domestic animal feed; and

(16) Paragraph (m)(2) which specified coloring or dyeing and other requirements for inedible peanuts disposed to domestic animal feed.

This final rule removes paragraphs (j) and (k) which specified disposition requirements for farmers stock peanuts. The Committee believed that these two paragraphs are no longer needed because paragraph (f) *Oilstock* of § 998.100 *Incoming quality regulation* provides that handlers may acquire Segregation 2 and 3 peanuts for crushing or export and that the Area Association supervise such dispositions. Handlers may also acquire for crushing or export peanuts originating from Segregation 1 farmers stock which are milled and fail human consumption quality and are P.L.I.

Under the previous Agreement regulations, paragraph (j)(3) of § 998.200 provided handlers with an exemption from assessments for acquisitions of Segregation 2 and 3 peanuts used for crushing or export. Paragraph (j)(3) was added to the regulatory language last year (60 FR 36208, July 14, 1995) to clarify Agreement provisions §§ 998.31 and .48. The Department clarifies in this final rule that the assessment exemption applies to Segregation 2 and 3 peanuts acquired only for crushing, whether domestic or export. The exemption paragraph is redesignated as paragraph (i) in § 998.100 of the incoming regulation, and is revised to remove the references to the removed paragraphs (j)(1) and (j)(2) in § 998.200.

This final rule also relaxes restrictions on blanching and remilling certain inedible lots. The Committee recommended relaxing restrictions in paragraphs (h)(2) and (h)(4) which prohibited blanching or remilling peanut lots exceeding defect levels of 10 percent total unshelled peanuts and damaged kernels, 10 percent foreign material, and, for remilling, 10 percent fall through. The restrictions on the amount of damage and foreign material in out-of-grade lots are removed so that handlers have more opportunity to recondition failing lots. This change increases handler flexibility, reduces inspection and handling costs, and enables more peanuts to be reconditioned and shipped for human consumption. The restriction on 10 percent fall-through for remilling peanuts remains in effect.

The corresponding paragraphs of the non-signer and import regulations (§ 997.40(a) and § 999.600(f) respectively) do not contain similar limitations on blanching and remilling of defective lots and do not need to be changed.

The Committee indicated that the regulations were too restrictive and limited handlers' ability to recondition potentially edible peanuts. Further, as long as peanuts are required to meet the outgoing requirements, including negative aflatoxin certification, it should not matter from which categories the peanuts originated. The Committee recommended removal of many restrictions and the addition of appropriate safeguards. The Committee believed these safeguard requirements would help ensure that inedible peanuts do not end up in human consumption outlets.

The provisions covering peanut disposition are replaced by two new paragraphs and revisions are made in two existing paragraphs. New paragraphs (f) (1), (2) and (3) of the outgoing regulation modify § 998.32 of the Agreement and specify disposition requirements for edible and non-edible peanut lots. New paragraph (g) provides for disposition of inedible milled peanuts ("sheller oilstock residuals"). New paragraph (h)(1) covers the blanching of inedible peanuts (revised from current paragraph (h)(2)). New paragraph (h)(2) covers the remilling of inedible peanuts (revised from current paragraph (h)(4)).

The Committee believed that safeguard measures in the regulations should be maintained because peanut lots sent to human consumption outlets still need to meet the quality requirements of paragraph (a) and be certified negative to aflatoxin. Peanuts which cannot be reconditioned (or which a handler chooses not to recondition) to meet outgoing quality requirements would continue to be required to be P.L.I., red tagged, and maintained in appropriate containers. If disposed of to inedible peanut outlets other than domestic or export crushing, failing peanuts would be required to be certified as to aflatoxin content and that certification would accompany the lot to the inedible peanut outlet. In addition, new paragraph (f)(2) also requires that the shipping papers state that the inedible peanuts are not to be used for human consumption. All inedible dispositions would continue to be reported to the Committee.

In new paragraph (f)(3) of § 998.200, failing quality peanuts not sent to inedible outlets such as livestock feed, wild animal feed, rodent bait, etc., must be either crushed or exported as prescribed in new paragraph (g) or blanched or remilled pursuant to new paragraphs (h) (1) and (2), respectively. Segregation 2 and 3 farmers stock peanuts may be milled for seed.

New paragraph (g) of § 998.200 provides that peanuts and portions of peanuts which result from milling operations be identified as "sheller oilstock residuals." Such peanuts include loose shelled kernels, fall through, and pick-outs as defined in that paragraph and whole lots of failing peanuts that a handler may choose to crush or export for crushing. Under new paragraph (g), sheller oilstock residuals which are certified as to aflatoxin content may be disposed of "domestically," which means that the peanuts may be used for livestock feed, wild animal feed, rodent bait, or other non-human consumption uses, pursuant to paragraph (f)(2), or crushed for oil. Such peanuts also may be exported. Seller oilstock residuals not certified as to aflatoxin content must be crushed or exported as specified in new paragraph (g). Further, shipping papers accompanying such crushed or exported lots must specify that disposition limitation. All sheller oilstock residuals moved under paragraph (g) of § 998.200 must be reported to the Committee—which is consistent with current reporting requirements. Corresponding reporting requirements to report disposition of inedible peanut lots to the AMS are established for non-signatory handlers in paragraph (c) of § 997.40 and for importers in paragraph (e)(4) of § 999.600.

This final rule removes nearly all restrictions on handlers selling peanuts to inedible peanut outlets. To help ensure the peanut lots with excessively high aflatoxin content are not used in inedible outlets where aflatoxin contamination could be transferred to human consumption products, the Department establishes in this final rule that no peanut lot exceeding 300 ppb aflatoxin content may be disposed to an inedible peanut outlet, other than crushing or export. The 300 ppb content ceiling is the maximum aflatoxin content recommended by the Food and Drug Administration (FDA) for peanuts used for finishing (i.e. feedlot) beef cattle. To make this change, an additional paragraph (2) specifying the restriction is added to paragraph (g) covering sheller oilstock residuals. The same provision is added to the non-signer regulation as paragraph (c)(2) of § 997.40 and the import regulation as paragraph (e)(2)(ii) of § 999.600. This requirement will help ensure peanut lots which are excessively high in aflatoxin are not disposed to inedible outlets such as livestock feed where the aflatoxin can be transferred in the food chain to other food products intended for human consumption.

Thus, this final rule raises the aflatoxin content limit to 300 ppb from the current 25 ppb for failing peanut lots which can be disposed of to any inedible outlet.

Under this final rule, handlers are allowed to recondition failing peanut lots, and have more incentive to do so. Handlers have the option of crushing a lot for oil or reconditioning the lot. Lots above 300 ppb aflatoxin content which are not economically beneficial to recondition must be crushed or exported. Only lots testing 300 ppb or less should be disposed of for use as animal feed. With current technologies, reconditioning should be possible for most all failing peanut lots. Whole and residual lots exceeding 300 ppb aflatoxin content may be commingled until sufficient volume is accumulated for crushing disposition.

According to the FDA, residuals from the reconditioning of lots exceeding 300 ppb and the meal from crushed lots exceeding 300 ppb should not be used as animal feed. The recommended maximum aflatoxin content for domestic animal feed, provided below, is summarized from FDA's Compliance Policy Guides (Sec. 683.100). The section is entitled "Action Levels for Aflatoxin in Animal Feed" and was last revised March 28, 1994. The action levels provided below apply to peanut products, peanuts, peanut meal, peanut hulls, peanut skins and ground peanut hay. The FDA guide provides the following action levels for animal feeds:

- Peanut products intended for finishing (i.e., feedlot) beef cattle: Action level 300 ppb.
- Peanut products intended for finishing swine of 100 pounds or greater: Action level 200 ppb.
- Peanut products intended for breeding beef cattle, breeding swine, or mature poultry: Action level 100 ppb.
- Peanut products and feed ingredients intended for immature animals: Action level 20 ppb.
- Peanut products and other feed ingredients intended for dairy animals, for animal species or uses not specified above, or when the intended use is not known: Action level 20 ppb.

In the previous Agreement regulations, inedible peanut lots certified at 26 or more ppb could not be sent to inedible peanut outlets where the peanuts would not be subject to heating in the preparation for inedible use or sent to outlets which allow the aflatoxin to be passed to another food product entering human consumption channels. This is a food safety measure

which helps prevent aflatoxin-contaminated peanut lots from being used in certain inedible outlets—such as dairy cattle feed where the aflatoxin could be passed to human consumption in the milk.

This final rule continues to require that handlers dispose of inedible peanuts based on aflatoxin content. However, the action level restricting inedible disposition is relaxed significantly and the restrictions limiting disposition to different inedible peanut outlets are removed, except that lots containing aflatoxin in excess of 300 ppb are required to be crushed for oil.

This final rule retains, as proposed, the phrase "which originated from Segregation 1 peanuts" in paragraphs (h)(1) and (h)(2) of § 998.200. This phrase was not included in the text for the revised blanching and remilling paragraphs recommended by the Committee and no explanation was provided by the Committee as to the benefit of removing this important safeguard provision. The phrase, at the very least, serves as a reminder that only Segregation 1 peanuts may be shelled and sent to edible consumption outlets. The phrase is included in corresponding paragraphs (d) and (e) of § 997.400 and the introductory paragraph (e) of § 999.600.

Also, the Committee recommended that the titles of the revised blanching (h)(1) and remilling (h)(2) paragraphs include reference to Committee-approved blanchers and remillers. However, the references are not necessary for the meaning of the paragraphs and are not included in this final rule.

In non-signer § 997.30 Outgoing regulation, paragraphs (f) *Transfer between plants* and (g) *Residuals from seed peanuts* correspond to the same topics covered in the Agreement's outgoing regulation, and are removed in this final rule. The subject matter in the two paragraphs is replaced with revised § 997.40 Reconditioning and disposition of peanuts failing quality requirements. Paragraphs (a)(1) and (2) of old § 997.40, covering remilling and blanching of inedible shelled peanuts are revised and the order is reversed to conform with revised blanching and remilling paragraphs in § 998.200. The new non-signer blanching and remilling paragraphs are designated as paragraphs (d) and (e), respectively. These new paragraphs are not identical to the Agreement's blanching and remilling paragraphs because non-signers are not required to receive approval prior to moving a failing shelled lot to a blancher or remiller (as are signatory

handlers under the Agreement regulations). Also, the non-signer regulations do not limit remilling and blanching to Committee-approved remillers, blanchers or exporters. Therefore, those requirements are not included in revised non-signer paragraphs (d) blanching and (e) remilling finalized in this rule.

The provisions of the previous non-signer paragraph (a)(3) of § 997.40 covering the ownership of peanuts moved for custom blanching or remilling, and the certification and reporting of such peanuts, are included in new § 997.40 blanching and remilling paragraphs (d) and (e). Likewise, previous paragraph (a)(4) provisions on the bagging, red tagging and disposition of blanched and remilled peanuts are included in the revised paragraphs (d) and (e) of § 997.40. These changes make the non-signer blanching and remilling paragraphs conform with the Agreement regulation's revised blanching and remilling paragraphs.

Four paragraphs in old § 997.40(b) *Disposition of shelled peanuts failing quality requirements for human consumption* cover the various disposition procedures and outlets for failing quality, inedible peanuts. These requirements are the same as, but are organized and worded differently from corresponding paragraphs (g) through (m) in § 998.200 of the Agreement regulations. The provisions removed from old paragraph (b) of § 997.40 are:

(1) Paragraph (b)(1) which regulated the disposition of shelled peanuts to unrestricted crushing, fragmenting or dyeing, export, animal feed, wildlife feed, and rodent bait;

(2) Paragraph (b)(2) which specified further requirements for disposition to animal feed (coloring or dyeing, P.L.I., valid aflatoxin certification, and reporting);

(3) Paragraph (b)(3) which regulated the disposition of shelled peanuts to restricted crushing, and export;

(4) Paragraph (b)(4) which regulated the disposition of Segregation 2 and 3 farmers stock peanuts to restricted and unrestricted meal, crushing and export; and

(5) Paragraph (b)(5) which specified reporting requirements for LSKs, fall through, and pickouts.

These paragraphs are removed for the same reasons cited above and to correspond to changes to the Agreement's outgoing regulation. This final rule removes all references to "restricted" and "unrestricted" failing imported peanuts and limitations on the disposition of restricted and unrestricted lots.

Old paragraph (b)(6) of § 997.40 is retained because it exempts from assessments, Segregation 2 and 3 farmers stock peanuts acquired by non-signatory handlers for crushing or export. The corresponding paragraph in the Agreement is retained and redesignated in this final rule. Therefore, such Segregation 2 and 3 peanuts acquired by non-signatory handlers also continues to be exempt from assessments. Old paragraph (b)(6) is revised and redesignated as paragraph (b) under § 997.51 Assessments and the existing text in § 997.51 is redesignated as paragraph (a).

There is no authority to assess imported peanuts.

Several changes are made to § 999.600 of the import regulation regarding disposition of inedible peanuts. Old paragraph (c)(3) (reconditioned peanuts) is redesignated as the new introductory paragraph of paragraph (e). Further, the provisions in old paragraphs (e) and (f) (disposition and reconditioning of failing peanuts, respectively) are revised and combined in new paragraph (e). Also, paragraphs (g) and (h) (safeguard procedures and additional requirements, respectively) are redesignated as paragraphs (f) and (g), respectively.

The introductory paragraph of new paragraph (e) of § 999.600 provides an overview for reconditioning imported peanut lots. New paragraphs (e)(1), (e)(2), and (e)(3) of the import regulation correspond to new paragraphs (f), (g), and (h) of the Agreement regulations. New paragraph (e)(1) covers failing lots disposed of to inedible uses such as animal feed, wildlife feed, seed peanuts and meal—specified in previous paragraphs (e) and (f). Disposition to these inedible outlets must be positive lot identified with red tags, bagged, and the bill of lading must state that the peanuts cannot be used for human consumption.

New paragraph (e)(2) of the import regulation covers disposition of failing quality peanuts ("sheller oilstock residuals") to crushing or export. Peanuts covered under the new paragraph (e)(3) are primarily loose shelled kernels, fall through and pickouts from milling operations, but may also include any other failing lot that an importer chooses to crush or export.

New paragraph (e)(4) specifies that identification, certification, and movement of inedible peanuts covered under paragraph (e) must be reported to AMS pursuant to safeguard procedures in paragraphs (f)(2) and (f)(3) of § 999.600. This does not represent additional reporting or recordkeeping

requirements of inedible dispositions for importers. The requirements correspond to reporting requirements in the revised Agreement regulations for signatory handlers who are required to report dispositions and maintain records of all inedible peanut transactions.

Finally, a new paragraph (i) is added at the end of § 998.200 of the Agreement regulations. The new paragraph specifies that certain records are required to be maintained pursuant to § 998.43 of the Agreement. The records pertain to peanuts which are not certified for human consumption. In addition to maintaining certain records, the Agreement provides that all records are made available to Committee staff and to representatives of the Secretary, as is necessary to document compliance with Agreement regulations.

The additional provision does not represent an increase in the number of forms handlers and importers complete, report, or maintain under the three programs.

No corresponding changes in reporting and recordkeeping requirements are necessary in the non-signer and import regulations. However, in § 997.52 Reports of acquisition and shipments and elsewhere in the non-signer regulation, references regarding specific Fruit and Vegetable Division form numbers are replaced with the generic statement "forms provided by the Division." This will enable the Department to revise the forms and reduce the number of forms without the additional rulemaking expense of changing the non-signer peanut regulation each time a form is revised or deleted. All such changes still must be submitted for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The unchanged portions of incoming and outgoing regulations of all three peanut programs, in effect for 1995 and subsequent crop peanuts, remain in effect for 1996 and subsequent crop peanuts.

Additional Change to § 999.600 Import Regulation

Early Entry and Bonded Storage Pending New Quota

Experience shows that some importers ship peanuts to the U.S. several months prior to filing a consumption entry for the peanuts. Such peanuts are sampled and inspected when off-loaded at the port and then stored in Customs Service bonded warehouses until the opening of the next year's duty-free quota.

Depending on how quickly one year's quota fills, storage could be as long as 10 or 11 months. For instance, new crop peanuts from Argentina may be harvested as early as May or June but arrive in the U.S. too late to be included in the duty-free quota that opened a month or two earlier on April 1. The peanuts are then placed in bonded storage awaiting the next quota year the following April 1. Further, if the quota is filled before all peanuts in storage can be entered for one year, it is possible that some peanuts would have to be stored for another full year, and the total storage time could approach 2 years.

Because of the possibility of deterioration while in storage, the Department needs to know which peanut shipments are held in bonded storage for an extended period of time, so that the wholesomeness of such peanuts can be verified, if necessary, when the peanuts are removed from storage and entered for consumption. The Department proposed adding an additional safeguard measure, new paragraph (f)(6) *Early arrival and storage*, to the import regulation. This provision requires that importers report peanut shipments which are sampled, inspected, and held in bonded storage in excess of a stated period of time.

AMS sought comments on this new requirement, including comments as to whether one month is an appropriate maximum storage period that does not have to be reported. Two comments opposed the new requirement and one comment concurred with the new requirement.

Both comments opposing the added provision stated that similar requirements concerning reporting are not required under Agreement regulations for domestically produced peanuts placed in storage, and therefore should not be required of imported peanuts. Domestic peanut handlers maintain records of all peanuts placed in storage and make those records available to Committee employees (fieldmen) who routinely visit handler offices to review records and inspect facilities. The Department, not the Committee, is responsible for monitoring the storage of imported peanuts. It is not practical for the Department to make such routine on-site inspections of all importers' records and facilities to monitor arrival on new shipments. Therefore, the Department believes that such notification of shipments after arrival and inspection is, at this time, the least burdensome and most practical way for the Department to meet its safeguard obligation.

AMS is working with the Customs Service to obtain a weekly data base of information on shipments of fresh agricultural commodities, including peanuts, imported into the U.S. The data received will include shipments of commodities submitted for warehouse entries. When those procedures are complete, and when AMS has assurance that all incoming shipments are included in the weekly computerized report, AMS will remove this requirement on importers.

The rule proposed that entry data, as well as grade and aflatoxin certificates for the stored peanut lot, be filed with AMS. One commenter stated that this is logistically cumbersome and requires additional paperwork for importers. After review of the information needed, AMS agrees that the only information necessary for AMS awareness is a copy of the Customs Service documentation identifying the location and identification of the storage warehouse, the quantity of peanuts entered for storage, and the date of storage entry. This information is shown on Customs Form 7501 and is sufficient for notification of lots placed in bonded storage. Therefore, it is not necessary, as stated in the proposed rule, that importers file copies of the grade and aflatoxin certificates for peanut lots admitted for bonded warehouse storage. This final rule is changed to reflect this change.

The wording of two comments indicated a possible misunderstanding of the focus of this requirement. It is added to the import regulation to apply to peanut lots that arrive in the U.S. and are placed in storage prior to the filing of a Customs Service consumption entry when the next quota period opens. It does not apply to peanut lots which the Customs Service has already entered for consumption or peanut lots which have met all import requirements and are placed in storage pending shipment to buyers.

The Department indicated in the proposed rule, and establishes in this final rule, that the grade and aflatoxin certificates issued on such peanuts upon arrival continue to be valid for the following quota year. This is consistent with Agreement regulation which does not place any time limits on the applicability of grade and aflatoxin inspection certificates or the storage of domestically produced peanuts.

One commenter suggested that as long as the Customs Service knows the location of the bonded warehouses where peanuts are stored, the importer should not have to report storage to AMS. Storage data is not currently available from the Customs Service.

The commenter suggested also that as long as the Customs Service knows the condition of the bonded warehouses where peanuts are stored, the importer should not have to certify as to the storage conditions when later filing for consumption entry. It is true that the Customs Service inspects and certifies the structural integrity and security of bonded warehouses. However, the Customs Service does not monitor such things as whether cold storage equipment is available and maintained, or whether the peanuts are protected from rodent or insect infestation or rain damage from leaks in the roof. Therefore, for compliance purposes, it is necessary that the importer certify to the Customs Service that the peanuts have been stored consistent with industry standards.

The commenter suggested that AMS should inspect the warehouses. AMS will inspect such warehouses when necessary. However, inspection does not guarantee that peanuts subsequently placed in the warehouses will be maintained in conditions consistent with industry standards. Knowledge of which warehouses contain imported peanuts will allow AMS to spot check warehouses which are used and monitor weather conditions in the area so that potentially adverse situations are known to AMS.

Finally, one commenter stated that the reinspection requirement should not be included in the import regulations. However, to meet the Department's statutory mandate that all peanuts in the domestic market meet requirements applied to peanuts under the Agreement regulations, it is necessary that the Secretary have the authority to reinspect imported peanuts, particularly those that might be subject to deteriorating conditions while in storage. As stated above, the Secretary has the same reinspection authority over domestically produced peanuts under Agreement and non-signer regulations. The Department exercises this oversight only to ensure that wholesome peanuts enter human consumption channels.

The proposed rule asked for comments on the minimum length of the storage period which would require notification of AMS. One month was proposed. No comments were received suggesting other lengths of time. Therefore, this final rule establishes the minimum storage period requiring notification of AMS as any period exceeding one month. Peanuts produced in Mexico arriving in the U.S. and placed in storage prior to December 1—in anticipation of withdrawal and entry for consumption on or after the following January 1—must be reported

to AMS. Peanuts produced in Argentina or any other country, except Mexico, which arrive and are placed in storage prior to March 1 of any year—in anticipation of withdrawal and entry for consumption on or after the following April 1—must be reported to AMS. The reports may be sent via facsimile transmission or mailed pursuant to paragraphs (f) (2) and (3) of § 999.600 at the time of entry into a bonded warehouse for storage. The report should be a copy of Customs Form 7501 identifying the importer and showing the volume of peanuts being stored and the location of the storage warehouse.

As a safeguard measure, old paragraph (b)(4) of the import regulation provided that if the Secretary has reason to believe that imported peanuts have been damaged or deteriorated while in storage, the Secretary may reject the then effective inspection certificate and require reinspection of the peanuts. This paragraph is redesignated as safeguard paragraph (f)(5) *Reinspection*. This reinspection authority corresponds to paragraph (e) of § 998.200 of the Agreement regulations.

To avoid deterioration, peanuts should be stored in clean, dry, odor free, warehouses and under sanitation and cold storage conditions consistent with industry standards. While Agreement regulations do not specify cold storage conditions, the following points should be used as a cold storage guide:

- Temperatures should range from 34 to 41 degrees Fahrenheit with a relative humidity of 55 to 70 percent.
- Daily or weekly recording charts of temperature and humidity should be maintained.
- Interior air circulation should be adequate to maintain uniform temperatures.
- Pans under refrigeration equipment should prevent condensation from dripping onto the peanuts.
- Peanuts should be gradually removed from cold storage over 2 to 3 days.

This and other information on sanitation, facilities, management practices, and dry storage is taken from *Good Management Practices for Shelled Goods Cold Storage and Shelled Goods Dry Storage* distributed by the National Peanut Council. Copies are available for a nominal price to non-members by calling (703)–838–9500.

Imported peanut lots certified as meeting human consumption requirements and subsequently stored under such conditions and in appropriate warehouses, may be entered for consumption when the next quota year begins—without further reporting to AMS.

One commenter stated that importers should not have to certify to the Customs Service that stored peanuts have been stored consistent with industry standards for the entire length of the storage period. However, the Department believes that such certification is necessary for compliance purposes.

Paragraph (b)(4) of the import regulation provides authority for the Secretary to require a reinspection of an imported peanut lot. If the documentation provided to AMS, or if any evidence subsequently received by AMS, indicates that appropriate storage standards have not been met or maintained and that the peanuts may have been damaged or deteriorated while in storage, the Secretary will demand reinspection of the lot prior to the importer's filing for consumption entry of the lot.

Paragraph (b)(4) of § 999.600 is moved from incoming quality regulation to paragraph (f)(5) and entitled *Reinspection*. Experience indicates that reinspections are more likely to be needed when shelled peanuts are placed under bonded storage several months prior to the beginning of the next quota year, as discussed above. As a safeguard provision, the paragraph applies to farmers stock, shelled, and inshell imported peanuts. The intent and requirements of the paragraph remain unchanged.

The new requirements as applied to imports are effective five days after publication of this rule in the Federal Register, should any peanuts be imported under duty prior to the opening of the next duty-free quota periods. The reporting requirement is not made retroactive for shipments which have already arrived and been placed in storage. Peanut shipments from countries other than Mexico arriving five days after publication and before March 1, 1977, should be reported to AMS under the new requirement. Importers may voluntarily notify AMS of shipments which have been entered into warehouses since closure of the 1996 duty-free quotas and currently are in storage pending the 1997 quota year.

Some paragraphs of the three peanut regulations are not changed in this final rule. However, for a better understanding of all changes, the three regulations are published in their entirety in this final rule, including paragraphs which are not changed.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

About 80 signatory and non-signatory peanut handlers are subject to regulation under the two domestic programs. There are about 47,000 peanut producers in the 16-state production area. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. Approximately 25 percent of the signatory handlers, most all of the non-signers, and virtually all of the producers may be classified as small entities. The import requirements have not been in place long enough to determine the number of peanut importers or the percentage which qualify as small businesses. However, it can be assumed that some importers are small entities.

This final rule removes or relaxes several provisions regulating the handling and disposition of domestic and foreign-produced peanuts. Overall, the changes are intended to increase the amount of peanuts that can be prepared for and meet the requirements for human consumption. Such peanuts almost always bring the highest prices in the marketplace. Thus, the value of farmers stock peanuts that can be prepared for human consumption is higher than the value of those that must be disposed of to inedible outlets. Producers receive increased returns for farmers stock peanuts that can be prepared for human consumption. Handlers and importers also receive increased returns from shelled and inshell peanuts that are prepared for and meet human consumption requirements. Peanut lots that fail human consumption requirements, and that a handler or importer decides not to try to recondition, must be disposed of as inedible peanuts to different inedible peanut outlets. Such inedible disposition brings varying prices for the handler or importer, almost always less than prices for human consumption quality peanuts. The changes finalized in this rulemaking should increase the value of certain failing peanut lots, and thus, increase returns for both producers and handlers.

- Restrictions are removed on acquisitions of certain farmers stock lots failing incoming inspection because of excess loose shelled

kernels and fall-through peanuts. This relaxation enables more farmers stock peanuts to be processed into product that meets requirements for human consumption. Producers receive higher prices for such farmers stock peanut lots and handlers are able to shell and recondition those lots into shelled peanuts which meet human consumption requirements.

- Restrictions on remilling and blanching for human consumption use are removed on shelled peanut lots exceeding certain damage and foreign material content levels. This change enables handlers to recondition more lots of failing peanuts for disposition to human consumption outlets.
- This rule also removes requirements that handlers and importers maintain PLI, and report and keep disposition records on “restricted” and “unrestricted” inedible peanut lots. This should reduce some inspection and reporting and recordkeeping costs.
- The maximum allowable aflatoxin content of domestically- produced and imported shelled peanut lots which could be used as animal feed, wildlife seed, and rodent bait is raised from 25 ppb to 300 ppb. Depending on several market factors, such inedible peanut use can bring higher prices than crushing the peanuts. This change provides more opportunity for handlers and importers to increase the value, and thus, the returns, of the peanuts they handle or import.
- Positive lot identification (PLI) requirements for seed peanuts are removed. This will save handlers and importers inspection costs and enable better use of storage space.
- Shelled peanut lots meeting Indemnifiable Grade or Superior Grade requirements may be sent to human consumption outlets prior to the handler or importer receiving aflatoxin certification of the lot. This is a clarification of requirements to make the domestic requirements consistent with current industry practice. Handler and importer inspection costs should not be increased because of this provision.

The changes to handling requirements in this final rule will enable more peanuts to be prepared for human consumption, save some inspection and storage costs, enable handlers and importers to more efficiently manage their peanut inventories, and make better use of inedible peanut lots, thus, increasing returns to both producers, handlers and importers. The changes are made without jeopardizing safeguard

provisions in the current domestic and import regulations because all peanuts intended for human consumption still must be certified for such use. Finally, these changes are intended to benefit peanut handlers, peanut importers, and consumers by ensuring that all peanuts in domestic U.S. human consumption markets are wholesome.

The proposed rule requested comments on the effect of the rule on small businesses and no comments were received stating that the changes would adversely affect small entities in the peanut industry.

This final rule does not increase the reporting and recordkeeping burden on domestic peanut handlers and peanut importers regulated under the three programs, and should result in an overall reduction in reporting and recordkeeping burden. To verify the reduced burden, another OMB reporting and recordkeeping burden analysis will be conducted after the regulations and the sharing of computerized import data between Customs Service and AMS have been implemented.

Therefore, the AMS determines that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), information collection requirements in this final rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581-0067 (for signatory handlers), 0581-0163 (for non-signatory handlers), and 0581-0176 (for importers).

Because these changes could not be implemented before the beginning of the 1996 domestic crop year, comments were requested on whether final implementation of the changes after the beginning of the crop year would have an unequal effect on one or more of the three production areas. No commenters claimed implementation after the start of the year would unequally affect the three production areas. Seven of the commenters stated that the regulations should be in place as soon as possible for the 1996-97 domestic marketing season. Several of the comments suggested that unnecessary delays in implementation would hurt the industry.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to postpone the effective date of this rule until 30 days after publication in the Federal Register because: (1) The changes should be in effect as soon as possible to cover as much of the

remaining crop year as possible; (2) the rule relaxes requirements currently in place with the exception of one requirement which codifies current industry practice; (3) the domestic industry has been aware of the issues and proposed changes since May when the Committee recommended the changes; (4) all known handlers and other affected members of the domestic industry, as well as all known importers, were sent copies of the proposed rule and they and all other interested persons were given a 20-day opportunity to file comments on the recommended changes; and (5) comments addressing the effective date were unanimous in recommending immediate implementation and several commented that further delays in implementation would be harmful to the industry. Thus, the Department sets the effective date of this final rule as three days after publication in the Federal Register for domestically produced peanuts and five days after publication in the Federal Register for imported peanuts.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Peanuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 997, 998 and 999 are amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Under the center heading “Quality Regulations,” §§ 997.20, 997.30, 997.40 and 997.50 are revised to read as follows:

Quality Regulations

§ 997.20 Incoming regulation.

(a) No handler shall receive or acquire peanuts intended for human

consumption, either from a producer or other person, unless such peanuts are inspected pursuant to § 997.50 and are determined to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1 and meet the following additional requirements specified in this section: *Provided*, That a handler may—

(1) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from other handlers, a handler as defined in 7 CFR 998.8, or from buyers who have purchased such peanuts from handlers or from the CCC, if the lot has been certified as meeting the requirements of § 997.30(a) and the identity is maintained; and/or

(2) Perform services for an area association pursuant to a peanut receiving and warehouse contract.

(b) *Moisture and foreign material.* (1) *Moisture.* Except as provided under paragraph (d) of § 997.20, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. For farmers stock peanuts, moisture determinations shall be rounded to the nearest whole number. Moisture determinations on shelled peanuts shall be carried to the hundredths place.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Seed peanuts.* Peanuts which are not Segregation 1 peanuts and therefore cannot be acquired for human consumption may be acquired, shelled and delivered for seed purposes. Peanuts intended for seed use, produced under the auspices of a State agency which regulates or controls the production of seed peanuts, which do not meet Segregation 1 requirements shall be stored and shelled separate from peanuts intended for human consumption. However, Segregation 2 seed peanuts, produced under the auspices of the State agency, which contain up to 3.00 percent damaged kernels and are free from visible *Aspergillus flavus* may be stored and shelled with Segregation 1 peanuts which are also produced under the auspices of the State agency. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the requirements of this section and, therefore, shall not be required to be inspected and certified as meeting these requirements, and the handler shall report to the Division the weight of each lot of farmers stock peanuts received on such basis on a form provided by the Department. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another person may mill such residuals with other receipts or acquisitions of the handler, and such peanuts which meet the requirements specified in § 997.30(a) may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. Handlers may act as accumulators and acquire, for other handlers; a handler as defined in 7 CFR 998.8 or from other persons, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire shelled peanuts originating from Segregation 2 or 3 farmers stock or the

entire mill production of peanuts from Segregation 1 farmers stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in § 997.30(d), which failed to meet the requirements for human consumption pursuant to § 997.30(a): *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions to the Division as prescribed on a form prescribed by the Division. Handlers who acquire grades or sizes of shelled peanuts which fail to meet the requirements for human consumption for disposition to domestic crushing and subsequent export to countries shall report such disposition on a form provided by the Division.

(f) *Shelled peanuts.* Handlers may acquire shelled peanuts (which originated from "Segregation 1 peanuts") from other handlers or a handler as defined in 7 CFR 998.8, for remilling and subsequent disposition to human consumption outlets. Further disposition of such peanuts shall be regulated by § 997.40.

(g) No producer may handle, process, prepare for sale, or otherwise alter peanuts of his own production from the condition of farmers stock, for disposition in human consumption outlets unless such peanuts are first inspected and certified pursuant to § 997.50 and meet the applicable requirements of this section.

§ 997.30 Outgoing Regulation.

(a) *Shelled peanuts.* (1)(i) No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin and certified as meeting the requirements in Table 1:

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

Maximum limitations

Excluding lots of "splits"

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 19/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 19/64 inch; round screen.	3.00%; 15/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64 x 1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 x 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels)..	1.50	2.50	3.00%; 19/64 inch; round screen.	3.00%; 13/64 x 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Prior to disposition to human consumption outlets, peanuts which have been certified as meeting the requirements for Indemnifiable Grades must also be certified "negative" as to aflatoxin. Maximum limitations for Indemnifiable Grades are as follows:

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No. 1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 19/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better..	1.25	2.00	3.00%; 19/64 inch, round screen.	2.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 20/64 inch round screen).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64 x 1 inch, slot screen.	4.00%; both screens.	.20	9.00

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued
 [Whole Kernels and Splits]
 Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 1 ⁵ / ₆₄ inch, round screen.	3.00%; 1 ³ / ₆₄ × ³ / ₄ inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁶ / ₆₄ × ³ / ₄ inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁵ / ₆₄ ×1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 1 ⁶ / ₆₄ inch, round screen.	2.00%; 1 ⁵ / ₆₄ × ³ / ₄ inch, slot screen.	4.00%; both screens.	.10	9.00

(2) The term "fall through", as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (c) of this section from each lot of Superior Quality peanuts. For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements.

(b) *Cleaned inshell peanuts.* No handler shall ship, sell, or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") or a laboratory listed in paragraph (c) of this section and found to be wholesome relative to aflatoxin;

(2) With more than 2.00 percent peanuts with damaged kernels;

(3) With more than 10.00 percent moisture; or

(4) With more than 0.50 percent foreign material.

(c) *Sampling and testing shelled peanuts.* (1) Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis,

for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1N", "Sample #2N", and "Sample #3N" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service. Sample #1N may be prepared for immediate testing or Sample #1N, Sample #2N, and Sample #3N may be returned to the handler for testing at a later date.

(2) The handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service, a USDA laboratory or a laboratory listed herein, in a "subsampling mill" approved by the Division. The resultant ground subsample from Sample #1N shall be of a size specified by the Division and shall be designated as "Subsample 1—ABN" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1N. It shall be designated as "Subsample 1—CDN". Subsample 1—CDN may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or other laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1—CDN shall be for the account of the requester. Subsample 1—ABN shall be analyzed only in a USDA laboratory or a laboratory listed herein. Both Subsamples 1—ABN and 1—CDN shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper),

the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Division.

(3) The samples designated as Sample #2N and Sample #3N shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1N are known.

(4) Upon call from the laboratory, handler shall cause Sample #2N to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #2N shall be of a size specified by the Division and it shall be designated as "Subsample #2—ABN." Upon call from the laboratory, the handler shall cause Sample #3N to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3N shall be of a size specified by the Division and shall be designated as "Subsample #3—ABN". "Subsamples 2—ABN and 3—ABN" shall be analyzed only in a USDA laboratory or a laboratory listed herein and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Division. The results of each assay shall be reported by the laboratory to the handler and to the Division. All costs involved in the sampling and testing of peanuts required by this regulation shall be for the account of the applicant.

(5) Information on making arrangements for the required inspection and certification can be obtained by contacting the Fresh

Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2049-S, Washington, DC, 20090-6456, telephone (202) 690-0604 or facsimile (202)720-0393.

(i) Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Science and Technology Division.

Science and Technology Division, AMS, USDA, P.O. Box 279, 301 West Pearl St., Aulander, NC 27805, Tel: (919) 345-1661 Ext. 156, Fax: (919) 345-1991

Science and Technology Division, AMS, USDA, 1211 Schley Ave., Albany, GA 31707, Tel: (912) 430-8490/8491, Fax: (912) 430-8534

Science and Technology Division, AMS, USDA, P.O. Box 488, Ashburn, GA 31714, Tel: (912) 567-3703

Science and Technology Division, AMS, USDA, 610 North Main St., Blakely, GA 31723, Tel: (912) 723-4570, Fax: (912) 723-3294

Science and Technology Division, AMS, USDA, 1557 Reeves St., Dothan, AL 36303, Tel: (334) 794-5070, Fax: (334) 671-7984

Science and Technology Division, AMS, USDA, 107 South Fourth St., Madill, OK 73446, Tel: (405) 795-5615, Fax: (405) 795-3645

Science and Technology Division, AMS, USDA, P.O. Box 272, 715 N. Main Street, Dawson, GA 31742, Tel: (912) 995-7257, Fax: (912) 995-3268

Science and Technology Division, AMS, USDA, P.O. Box 1130, 308 Culloden St., Suffolk, VA 23434, Tel: (804) 925-2286, Fax: (804) 925-2285

ABC Research, 3437 SW 24th Avenue, Gainesville, FL 32607-4502, Tel: (904) 372-0436, Fax: (904) 378-6483

J. Leek Associates, Inc., P.O. Box 50395, 1200 Wyandotte (31705), Albany, GA 31703-0395, Tel: (912) 889-8293, Fax: (912) 888-1166

J. Leek Associates, Inc., P.O. Box 368, 675 East Pine, Colquitt, GA 31737, Tel: (912) 758-3722, Fax: (912) 758-2538

J. Leek Associates, Inc., P.O. Box 6, 502 West Navarro St., DeLeon, TX 76444, Tel: (817) 893-3653, Fax: (817) 893-3640

Pert Laboratories, P.O. Box 267, Peanut Drive, Edenton, NC 27932, Tel: (919) 482-4456, Fax: (919) 482-5370

Pert Laboratory South, P.O. Box 149, Hwy 82 East, Seabrook Drive, Sylvester, GA 31791, Tel: (912) 776-7676, Fax: (912) 776-1137

Professional Service Industries, Inc., 3 Burwood Lane, San Antonio, TX

78216, Tel: (210) 349-5242, Fax: (210) 342-9401

Southern Cotton Oil Company, 600 E. Nelson Street, P.O. Box 180, Quanah, TX 79252, Tel: (817) 663-5323, Fax: (817) 663-5091

Quanta Lab, 9330 Corporate Drive, Suite 703, Selma, TX 78154-1257, Tel: (210) 651-5799, Fax: (210) 651-9271.

(ii) Handlers should contact the nearest laboratory from the list in paragraph (c)(5)(i) of this section to arrange to have samples chemically analyzed for aflatoxin content, or for further information concerning the chemical analyses required pursuant to this part handlers may contact: The Science and Technology Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 3507-S, Washington, D.C., 20090-6456, telephone (202) 720-5231, facsimile (202) 720-6496.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for appeal inspection. Handler shall keep

and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Division on request.

(e) *Reinspection.* Whenever the Division has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Division may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed of for non-human consumption uses which are not regulated or limited by the provisions specified in this section: *Provided*, That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(b) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of § 997.30 shall be disposed of as prescribed hereinafter in this section.

(c) *Sheller Oil Stock Residuals—For Crushing or Export.* Peanuts, or portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or they may be commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market, in bulk or bags or other suitable containers. The movement of such peanuts shall be reported to the Division by the shipping handler and the crusher, as requested by the Division.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the

following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(d) *Blanching peanuts failing quality requirements.* Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by a negative aflatoxin certificate. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher to crushers who agree to comply with the terms of paragraph (c) of this section.

(e) *Remilling peanuts failing quality requirements.* Handlers may remill or cause to have remilled shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption

outlets specified in paragraph (a) of this section, and be accompanied by a negative aflatoxin certificate. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to crushers who agree to comply with the terms of paragraph (c) of this section. § 997.50 Inspection, chemical analysis, certification and identification.

Each handler shall, at the handler's own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether such peanuts meet the applicable grade requirements effective pursuant to this part, and shall comply with such identification requirements prescribed by this part or which the Secretary may prescribe. Each handler shall also cause appropriate samples to be drawn and chemically analyzed by a USDA laboratory, or laboratory listed in § 997.30, for wholesomeness as provided in § 997.30 of this part. Such handler shall obtain grade and aflatoxin certificates stating that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the Division. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary and USDA laboratories or those listed in § 997.30 of this part. Each handler shall furnish, or cause the inspection service or the laboratory to furnish, to the Division, a copy of the inspection certificate and a copy of the results of the chemical analyses issued to the handler on each lot of shelled peanuts or cleaned inshell peanuts.

3. Under the center heading "Assessments," section 997.51 is revised to read as follows:

Assessments

§ 997.51 Assessments.

(a) Each first handler shall pay to the Secretary, with respect to Segregation 1 peanuts received or acquired by the handler, including the handler's own

production, an administrative assessment as approved by the Secretary. The rate of assessment shall be the same as the administrative assessment approved by the Secretary and applied to signatory handlers under the Peanut Marketing Agreement No. 146. Such administrative assessment shall be applied during the crop year beginning July 1 and ending June 30 of the following year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired, other than those peanuts described in § 997.20(a) (1) and (2). During the crop year, the Secretary may increase the rate of assessment if such an increase is established under the Agreement.

(b) Segregation 2 and Segregation 3 farmers stock peanuts disposed to crushing or exported are exempt from assessments under this section.

4. Under the center heading "Reports, Books and Records," §§ 997.52, 997.53 and 997.54 are revised to read as follows:

Reports, Books and Records

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers stock peanuts on a form provided by the Division and file such other reports of acquisitions and shipments of peanuts, as prescribed in this part. Upon the request of the Division, each handler shall furnish such other reports and information as necessary to enable the Division to carry out the provisions of this part. All reports and records furnished or submitted by handlers to the Division which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler shall not be disclosed unless such disclosure is determined necessary by the Secretary to enforce the provisions of this part.

§ 997.53 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed

of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Under the center heading "Implementing Regulations," §§ 998.100 and 998.200 are revised to read as follows:

Implementing Regulations

§ 998.100 Incoming quality regulation for 1996 and subsequent crop peanuts.

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers stock peanuts to read respectively as follows:

(b) *Segregation 1. Segregation 1 peanuts* means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(c) *Segregation 2. Segregation 2 peanuts* means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(d) *Segregation 3. Segregation 3 peanuts* means farmers stock peanuts with visible *Aspergillus flavus*.

(b) *Moisture and foreign material.—*

(1) *Moisture.* Except as provided under paragraph (d) of this section, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a

higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus*, and, in addition, the following moisture content, as applicable:

(1) Seed peanuts produced in the Southeastern and Virginia-Carolina areas, may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) Seed peanuts produced in the Southwestern area may contain up to 10.49 percent moisture.

Any seed peanuts produced under the auspices of a State agency which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus*, may be stored and shelled with Segregation 1 seed peanuts which are also produced under the auspices of the State agency. Any seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residuals not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be

exempt from the Incoming Quality Regulation requirements, and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee, as requested, the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. Handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another producer or sheller may mill such residuals with other receipts or acquisitions of the handler, and such residuals which meet the Outgoing Quality Regulation requirements, may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of § 998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified pursuant to § 998.34, to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire for crushing or export from other handlers peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled peanuts from Segregation 1 farmers stock or lots of peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of § 998.200, Outgoing quality regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of § 998.200, Outgoing quality regulation: *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled peanuts originating therefrom, a handler shall pay to the Area Association a fee

for the purpose of covering cost of supervision of the disposition of such peanuts.

(f) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(g) *Farmers stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers stock

peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the

Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(h) *Shelled peanuts.* Handlers may acquire shelled peanuts, which originated from "Segregation 1 peanuts," from other handlers, for remilling and subsequent disposition to human consumption outlets.

(i) Segregation 2 and Segregation 3 farmers stock peanuts held separate and apart or commingled, and disposed of to domestic or export crushing are exempt from assessments under this section.

§ 998.200 Outgoing quality regulation for 1996 and subsequent crop peanuts.

The following modify or in addition to the peanut marketing agreement restrictions of §998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* (1) No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin, and certified as meeting the requirements in the following "Other Edible Quality * * *" grades:

TABLE 1.—"OTHER EDIBLE QUALITY" (NON-INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS
[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 19/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64×1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 19/64 inch; round screen.	3.00%; 15/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64×1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64×1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 19/64 inch; round screen.	3.00%; 13/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(2) Prior to disposition to human consumption outlets, peanuts which have been certified as meeting the requirements for Indemnifiable Grades must also be certified "negative" as to aflatoxin. Maximum limitations for Indemnifiable Grades are as follows:

TABLE 2.—INDEMNIFIABLE GRADES
[Maximum limitations]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better..	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 20/64 inch round screen).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64 x 1 inch, slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels).	1.25	2.00	2.00%; 16/64 inch, round screen.	3.00%; 13/64 x 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 x 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 x 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

(3) The term "fall through", as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin;

(2) with more than 2.00 percent peanuts with damaged kernels;

(3) with more than 10.00 percent moisture; or

(4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Sampling and testing shelled peanuts.* (1) Prior to shipment, each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1," "Sample #2," and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be

prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1-AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1-CD." Subsample 1-CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on

such samples in 36 hours. Subsample 1-AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1-AB and 1-CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2-AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3-AB." Subsamples 2-AB and 3-AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2-AB and 3-AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1-CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of \$0.0027 per pound or \$0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler,

who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements as determined by the Committee's sampling plan applicable to the respective grade categories.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the

Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Further modification of § 998.32.*

(1) The provisions of § 998.32(a) restricting the disposition of peanuts which fail to meet the requirements specified heretofore in this section to the Commodity Credit Corporation or in such manner as may be prescribed by the Committee with the approval of the Secretary, is hereby modified to specify that only peanuts which have been certified as meeting the requirements specified in paragraphs (a) or (b) of this section, which have been sampled pursuant to paragraph (c) of this section, and which have been identified pursuant to paragraph (d) of this section are eligible for disposition to human consumption outlets.

(2) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed for non-human consumption uses which are not regulated or limited by the provisions specified hereinafter in this section: *Provided*, That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(3) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set forth in paragraphs (a) or (b) of this section shall be disposed of as prescribed hereinafter in this section.

(g) *Sheller oil stock residuals—for crushing or export.* Peanuts and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to handlers who are crushers or to domestic crushers who

are not handlers under the Agreement only on the condition that they agree to comply with the terms of this paragraph and all other applicable requirements of the Agreement. The movement of such peanuts shall be reported to the Committee by the shipping handler and the crusher, as requested by the Committee.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(h) *Blanching and remilling peanuts failing quality requirements.* (1) Handlers may blanch or cause to have blanching positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to domestic crushers who are not handlers under the Agreement only on the

condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee-approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Prior to movement of such peanuts under these provisions to a Committee-approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who

are approved by the Committee to do such remilling.

(i) *Documentation of compliance.* Each handler shall keep and maintain records of all receipts and acquisitions and all milling, remilling, blanching, use and disposition of peanuts which have not been certified as meeting the requirements for disposition to human consumption, pursuant to paragraph (a) or (b) of this section, as will document and substantiate compliance and performance under this agreement.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601-674; and 7 U.S.C. 1445c-3.

2. Section 999.600 is revised to read as follows:

§ 999.600 Regulation governing imports of peanuts.

(a) *Definitions.* (1) *Peanuts* means the seeds of the legume *Arachis hypogaea* and includes both inshell and shelled peanuts produced in countries other than the United States, other than those marketed in green form for consumption as boiled peanuts.

(2) *Farmers stock peanuts* means picked and threshed raw peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the form in which customarily marketed by producers.

(3) *Inshell peanuts* means peanuts, the kernels or edible portions of which are contained in the shell.

(4) *Incoming inspection* means the sampling and inspection of farmers stock peanuts to determine Segregation quality.

(5) *Segregation 1 peanuts*, unless otherwise specified, means farmers stock peanuts with not more than 2.00 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus* mold.

(6) *Segregation 2 peanuts*, unless otherwise specified, means farmers stock peanuts with more than 2.00 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus* mold.

(7) *Segregation 3 peanuts*, unless otherwise specified, means farmers stock peanuts with visible *Aspergillus flavus* mold.

(8) *Shelled peanuts* means the kernels of peanuts after the shells are removed.

(9) *Outgoing inspection* means the sampling and inspection of either: shelled peanuts which have been cleaned, sorted, sized and otherwise prepared for human consumption markets; or inshell peanuts which have been cleaned, sorted and otherwise prepared for inshell human consumption markets.

(10) *Negative aflatoxin content* means 15 parts-per-billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements, and 25 ppb or less for inedible quality peanuts.

(11) *Person* means an individual, partnership, corporation, association, or any other business unit.

(12) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture (Department or USDA) who is, or who may hereafter be, authorized to act on behalf of the Secretary.

(13) *Inspection service* means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, USDA.

(14) *USDA laboratory* means laboratories of the Science and Technology Division, Agricultural Marketing Service, USDA, that chemically analyze peanuts for aflatoxin content.

(15) *PAC approved laboratories* means laboratories approved by the Peanut Administrative Committee, pursuant to Peanut Marketing Agreement No. 146 (7 CFR Part 998), that chemically analyze peanuts for aflatoxin content.

(16) *Conditionally released* means released from Customs Service custody for further handling (sampling, inspection, chemical analysis, or storage) before final release.

(17) *Importation* means the arrival of a peanut shipment at a port-of-entry

with the intent to enter the peanuts into channels of commerce of the United States.

(b) *Incoming regulation.* (1) Farmers stock peanuts presented for consumption must undergo incoming inspection. Only Segregation 1 peanuts may be used for human consumption. All foreign produced farmers stock peanuts for human consumption must be sampled and inspected at a buying point or other handling facility capable of performing incoming sampling and inspection. Sampling and inspection shall be conducted by the inspection service. Only Segregation 1 peanuts certified as meeting the following requirements may be used in human consumption markets:

(i) *Moisture.* Except as provided under paragraph (b)(2) *Seed peanuts*, of this section, peanuts may not contain more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storage or milling.

(ii) *Foreign material.* Peanuts may not contain more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(iii) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(2) *Seed peanuts.* Farmers stock peanuts determined to be Segregation 1 quality, and shelled peanuts certified negative to aflatoxin (15 ppb or less), may be imported for seed purposes. Residuals from the shelling of Segregation 1 seed peanuts may be

milled with other imported peanuts of the importer, and such residuals meeting quality requirements specified in paragraph (c)(1) of this section may be disposed to human consumption channels. Any portion not meeting such quality requirements shall be disposed to inedible peanut channels pursuant to paragraphs (f) and (g) of this section. All disposition of seed peanuts and residuals from seed peanuts, whether commingled or kept separate and apart, shall be reported to the Secretary pursuant to paragraphs (f)(2) and (f)(3) of this section. The receiving seed outlet must retain records of the transaction, pursuant to paragraph (g)(7) of this section.

(3) *Oilstock and exportation.* Farmers stock peanuts of lower quality than Segregation 1 (Segregation 2 and 3 peanuts) shall be used only in inedible outlets. Segregation 2 and 3 peanuts may be commingled but shall be kept separate and apart from edible quality peanut lots. Commingled Segregation 2 and 3 peanuts and Segregation 3 peanuts shall be disposed only to oilstock or exported. Shelled peanuts and cleaned-inshell peanuts which fail to meet the requirements for human consumption in paragraphs (c)(1) or (c)(2), respectively, of § 997.600, may be crushed for oil or exported.

(c) *Outgoing regulation.* No person shall import peanuts for human consumption into the United States unless such peanuts are lot identified and certified by the inspection service as meeting one of the following requirements:

(1) *Shelled peanuts.* (i) No importer shall ship or otherwise dispose of shelled peanuts to human consumption markets unless such peanuts are lot identified, certified as "negative" to aflatoxin, and meet the requirements specified in Table 1.

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]
Maximum limitations
Excluding lots of "splits"

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64 × 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 15/64 inch; round screen.	3.00%; 15/64 × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

TABLE 1.—MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued
 [Whole Kernels and Splits]
 Maximum limitations
 Excluding lots of "splits"

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64 × 1 inch; slot screen.	6.00%; both screens.	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not less than 90% splits).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 14/64 × 1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 13/64 × 3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(ii) Shelled peanuts which are lot identified, certified as "negative" to aflatoxin pursuant to paragraph (d)(4)(v) of this section, and meet requirements specified in the Table 2, may be shipped to human consumption markets prior to the importer receiving such aflatoxin certification.

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION
 [Whole Kernels and Splits]
 Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Runner U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Virginia U.S. No.1 and better.	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 15/64 × 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia U.S. No.1 and better.	1.25	2.00	3.00%; 16/64 inch, round screen.	2.00%; 15/64 × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00
Runner U.S. Splits (not more than 4% sound, whole kernels)..	1.25	2.00	2.00%; 17/64 inch, round screen.	3.00%; 14/64 × 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 29/64 inch round screen)..	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 14/64 × 1 inch, slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia U.S. Splits (not more than 4% sound, whole kernels)..	1.25	2.00	2.00%; 16/64 inch, round screen.	3.00%; 13/64 × 3/4 inch, slot screen.	4.00%; both screens.	.20	9.00
Runner with splits (not more than 15% sound splits)..	1.25	2.00	3.00%; 17/64 inch, round screen.	3.00%; 16/64 × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

TABLE 2.—SUPERIOR QUALITY REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION—Continued
[Whole Kernels and Splits]
Maximum limitations

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total		
Virginia with splits (not more than 15% sound splits)..	1.25	2.00	3.00%; 1 ⁷ / ₆₄ inch, round screen.	3.00%; 1 ⁵ / ₆₄ × 1 inch, slot screen.	4.00%; both screens.	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits)..	1.25	2.00	3.00%; 1 ⁹ / ₆₄ inch, found screen.	2.00%; 1 ⁵ / ₆₄ × 3/4 inch, slot screen.	4.00%; both screens.	.10	9.00

(iii) The term “fall through”, as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (d) of this section from each lot of Superior Quality peanuts.

(2) *Cleaned-inshell peanuts.* Peanuts declared as cleaned-inshell peanuts may be presented for sampling and outgoing inspection in bags at the port-of-entry. Alternatively, peanuts may be conditionally released as cleaned-inshell peanuts but shall not subsequently undergo any cleaning, sorting, sizing or drying process prior to presentation for outgoing inspection as cleaned-inshell peanuts. Cleaned-inshell peanuts which fail outgoing inspection may be reconditioned or redelivered to the port-of-entry, at the option of the importer. Cleaned-inshell peanuts determined to be unprepared farmers stock peanuts must be inspected against incoming quality requirements and determined to be Segregation 1 peanuts prior to outgoing inspection for cleaned-inshell peanuts. Cleaned-inshell peanuts intended for human consumption may not contain more than:

(i) 1.00 percent kernels with mold present, unless a sample of such peanuts is drawn by the inspection service and analyzed chemically by a USDA or PAC approved laboratory and certified “negative” as to aflatoxin.

(ii) 2.00 percent peanuts with damaged kernels;

(iii) 10.00 percent moisture (carried to the hundredths place); and

(iv) 0.50 percent foreign material.

(d) *Sampling and inspection.* (1) All sampling and inspection, quality certification, chemical analysis, and lot identification, required under this

section, shall be done by the inspection service, a USDA laboratory, or a PAC-approved laboratory, as applicable, in accordance with the procedures specified herein. The importer shall make arrangements with the inspection service for sampling, inspection, lot identification and certification of all peanuts accumulated by the importer. The importer also shall make arrangements for the appropriate disposition of peanuts failing edible quality requirements of this section. All costs of sampling, inspection, certification, identification, and disposition incurred in meeting the requirements of this section shall be paid by the importer. Whenever peanuts are offered for inspection, the importer shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection.

(2) For farmers stock inspection, the importer shall cause the inspection service to perform an incoming inspection and to issue an CFSA-1007, “Inspection Certificate and Sales Memorandum” form designating the lot as Segregation 1, 2, or 3 quality peanuts. For shelled and cleaned-inshell peanuts, the importer shall cause the inspection service to perform an outgoing inspection and issue an FV-184-9A, “Milled Peanut Inspection Certificate” reporting quality and size of the shelled or cleaned-inshell peanuts, whether the lot meets or fails to meet quality requirements for human consumption of this section, and that the lot originated in a country other than the United States. The importer shall provide to the Secretary copies of all CFSA 1007 and FV-184-9A applicable to each peanut lot conditionally released to the importer. Such reports shall be

submitted as provided in paragraphs (f)(2) and (f)(3) of this section.

(3) *Procedures for sampling and testing peanuts.* Sampling and testing of peanuts for incoming and outgoing inspections of peanuts presented for consumption into the United States will be conducted as follows:

(i) *Application for sampling.* The importer shall request inspection and certification services from one of the following inspection service offices convenient to the location where the peanuts are presented for incoming and/or outgoing inspection. To avoid possible delays, the importer should make arrangements with the inspection service in advance of the inspection date. A copy of the Customs Service entry document specific to the peanuts to be inspected shall be presented to the inspection official prior to sampling of the lot.

(A) The following offices provide incoming farmers stock inspection:
Dothan, AL, tel: (334) 792-5185,
Graceville, FL, tel: (904) 263-3204,
Winter Haven, FL, tel: (941) 291-5820,
ext 260,
Albany, GA, tel: (912) 432-7505,
Williamston, NC, tel: (919) 792-1672,
Columbia, SC, tel: (803) 253-4597,
Suffolk, VA, tel: (804) 925-2286,
Portales, NM, tel: (505) 356-8393,
Oklahoma City, OK, tel: (405) 521-3864,
Gorman, TX, tel: (817) 734-3006,
Yuma, AZ, tel: (602) 344-3869.

(B) The following offices, in addition to the offices listed in paragraph (A), provide outgoing sampling and/or inspection services, and certify shelled and cleaned-inshell peanuts as meeting or failing the quality requirements of this section:

Eastern U.S.

Mobile, AL, tel: (205) 690-6154,

Jacksonville, FL, tel: (904) 359-6430,
Miami, FL, tel: (305) 592-1375,
Tampa, FL, tel: (813) 272-2470,
Presque Isle, ME, tel: (207) 764-2100,
Baltimore/Washington, tel: (301) 344-1860,
Boston, MA, tel: (617) 389-2480,
Newark, NJ, tel: (201) 645-2670,
New York, NY, tel: (212) 718-7665,
Buffalo, NY, tel: (716) 824-1585,
Philadelphia, PA, tel: (215) 336-0845,
Norfolk, VA, tel: (804) 441-6218,

Central U.S.

New Orleans, LA, tel: (504) 589-6741,
Detroit, MI, tel: (313) 226-6059,
St. Paul, MN, tel: (612) 296-8557,
Las Cruces, NM, tel: (505) 646-4929,
Alamo, TX, tel: (210) 787-4091,
El Paso, TX, tel: (915) 540-7723,
Houston, TX, tel: (713) 923-2557,

Western U.S.

Nogales, AZ, tel: (602) 281-0783,
Los Angeles, CA, tel: (213) 894-2489,
San Francisco, CA, tel: (415) 876-9313,
Honolulu, HI, tel: (808) 973-9566,
Salem, OR, tel: (503) 986-4620,
Seattle, WA, tel: (206) 859-9801.

(C) Questions regarding inspection services or requests for further assistance may be obtained from: Fresh Products Branch, P.O. Box 96456, room 2049-S, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20090-6456, telephone (202) 690-0604, fax (202) 720-0393.

(ii) *Sampling.* Sampling of bulk farmers stock lots shall be performed at a facility that utilizes a pneumatic sampler or approved automatic sampling device. The size of farmers stock lots, shelled lots, and cleaned-inshell lots, in bulk or bags, shall not exceed 200,000 pounds. For farmers stock, shelled and cleaned-inshell lots not completely accessible for sampling, the applicant shall be required to have lots made accessible for sampling pursuant to inspection service requirements. The importer shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by the inspection service. The amount of such peanuts drawn shall be large enough to provide for a grade and size analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. Because there is no acceptable method of drawing official samples from bulk conveyances of shelled peanuts, the importer shall arrange to have bulk conveyances of shelled peanuts sampled during the unloading process. A bulk lot sampled in this manner must be positive lot identified by the inspection service and held in a sealed bin until the associated inspection and aflatoxin test results have been reported.

(4) *Aflatoxin assay.* (i) The importer shall cause appropriate samples of each lot of shelled peanuts intended for edible consumption to be drawn by the inspection service. The three 48-pound samples shall be designated by the inspection service as "Sample 1IMP," "Sample 2IMP," and "Sample 3IMP" and each sample shall be placed in a suitable container and lot identified by the inspection service. Sample 1IMP may be prepared for immediate testing or Samples 1IMP, 2IMP and 3IMP may be returned to the importer for testing at a later date, under lot identification procedures.

(ii) The importer shall cause Sample 1IMP to be ground by the inspection service or a USDA or PAC-approved laboratory in a subsampling mill. The resultant ground subsample shall be of a size specified by the inspection service and shall be designated as "Subsample 1-ABIMP." At the importer's option, a second subsample may also be extracted from Sample 1IMP and designated "Subsample 1-CDIMP" which may be sent for aflatoxin assay to a USDA or PAC-approved laboratory. Both subsamples shall be accompanied by a notice of sampling signed by the inspector containing identifying information as to the importer, the lot identification of the shelled peanut lot, and other information deemed necessary by the inspection service. Subsamples 1-ABIMP and 1-CDIMP shall be analyzed only in a USDA or PAC-approved laboratory. The methods prescribed by the Instruction Manual for Aflatoxin Testing, SD Instruction-1, August 1994, shall be used to assay the aflatoxin level. The cost of testing and notification of Subsamples 1-ABIMP and 1-CDIMP shall be borne by the importer.

(iii) The samples designated as Sample 2IMP and Sample 3IMP shall be held as aflatoxin check-samples by the inspection service or the importer until the analyses results from Sample 1IMP are known. Upon call from the USDA or PAC-approved laboratory, the importer shall cause Sample 2IMP to be ground by the inspection service in a subsampling mill. The resultant ground subsample from Sample 2IMP shall be designated as "Subsample 2-ABIMP." Upon further call from the laboratory, the importer shall cause Sample 3IMP to be ground by the inspection service in a subsampling mill. The resultant ground subsample shall be designated as "Subsample 3-ABIMP." The importer shall cause Subsamples 2-ABIMP and 3-ABIMP to be sent to and analyzed only in a USDA or PAC-approved laboratory. Each subsample

shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the importer. All costs involved in the sampling, shipment and assay analysis of subsamples required by this section shall be borne by the importer.

(iv)(A) Importers should contact one of the following USDA or PAC-approved laboratories to arrange for chemical analysis.

Science and Technology Division, AMS, USDA, P.O. Box 279, 301 West Pearl St., Aulander, NC 27805, Tel: (919) 345-1661 Ext. 156, Fax: (919) 345-1991

Science and Technology Division, AMS, USDA, 1211 Schley Ave., Albany, GA 31707, Tel: (912) 430-8490 / 8491, Fax: (912) 430-8534

Science and Technology Division, AMS, USDA, P.O. Box 488, Ashburn, GA 31714, Tel: (912) 567-3703

Science and Technology Division, AMS, USDA, 610 North Main St., Blakely, GA 31723, Tel: (912) 723-4570, Fax: (912) 723-3294

Science and Technology Division, AMS, USDA, 1557 Reeves St., Dothan, AL 36303, Tel: (334) 794-5070, Fax: (334) 671-7984

Science and Technology Division, AMS, USDA, 107 South Fourth St., Madill, OK 73446, Tel: (405) 795-5615, Fax: (405) 795-3645

Science and Technology Division, AMS, USDA, P.O. Box 272, 715 N. Main Street, Dawson, GA 31742, Tel: (912) 995-7257, Fax: (912) 995-3268

Science and Technology Division, AMS, USDA, P.O. Box 1130, 308 Culloden St., Suffolk, VA 23434, Tel: (804) 925-2286, Fax: (804) 925-2285

ABC Research, 3437 SW 24th Avenue, Gainesville, FL 32607-4502, Tel: (904) 372-0436, Fax: (904) 378-6483

J. Leek Associates, Inc., P.O. Box 50395, 1200 Wyandotte (31705), Albany, GA 31703-0395, Tel: (912) 889-8293, Fax: (912) 888-1166

J. Leek Associates, Inc., P.O. Box 368, 675 East Pine, Colquitt, GA 31737, Tel: (912) 758-3722, Fax: (912) 758-2538

J. Leek Associates, Inc., P.O. Box 6, 502 West Navarro St., DeLeon, TX 76444, Tel: (817) 893-3653, Fax: (817) 893-3640

Pert Laboratories, P.O. Box 267, Peanut Drive, Edenton, NC 27932, Tel: (919) 482-4456, Fax: (919) 482-5370

Pert Laboratory South, P.O. Box 149, Hwy 82 East, Seabrook Drive, Sylvester, GA 31791, Tel: (912) 776-7676, Fax: (912) 776-1137

Professional Service Industries, Inc., 3 Burwood Lane, San Antonio, TX 78216, Tel: (210) 349-5242, Fax: (210) 342-9401

Southern Cotton Oil Company, 600 E. Nelson Street, P.O. Box 180, Quanah, TX 79252, Tel: (817) 663-5323, Fax: (817) 663-5091

Quanta Lab, 9330 Corporate Drive, Suite 703, Selma, TX 78154-1257, Tel: (210) 651-5799, Fax: (210) 651-9271.

(B) Further information concerning the chemical analyses required pursuant to this section may be obtained from: Science and Technology Division, AMS, USDA, P.O. Box 96456, room 3507-S, Washington, DC 20090-6456, telephone (202) 720-5231, or facsimile (202) 720-6496.

(v) *Reporting aflatoxin assays.* A separate aflatoxin assay certificate, Form CSSD-3 "Certificate of Analysis for Official Samples" or equivalent PAC approved laboratory form, shall be issued by the laboratory performing the analysis for each lot. The assay certificate shall identify the importer, the volume of the peanut lot assayed, date of the assay, and numerical test result of the assay. The results of the assay shall be reported as follows.

(A) For the current peanut quota year, "negative" aflatoxin content means 15 parts per billion (ppb) or less aflatoxin content for peanuts which have been certified as meeting edible quality grade requirements. Such lots shall be certified as "Meets U.S. import requirements for edible peanuts under § 999.600 with regard to aflatoxin."

(B) Lots containing more than 15 ppb aflatoxin content shall be certified as "Fails to meet U.S. import requirements for edible peanuts under § 999.600 with regard to aflatoxin." The certificate of any inedible peanut lot also shall specify the aflatoxin count in ppb. The importer shall file USDA Form CSSD-3, or equivalent form, with the Secretary, regardless of the test result.

(5) *Appeal inspection.* In the event an importer questions the results of a quality and size inspection, an appeal inspection may be requested by the importer and performed by the inspection service. A second sample will be drawn from each container and shall be double the size of the original sample. The results of the appeal sample shall be final and the fee for sampling, grading and aflatoxin analysis shall be charged to the importer.

(e) *Disposition of peanuts failing edible quality requirements.* Peanuts shelled, sized and sorted in another country prior to arrival in the U.S. and shelled peanuts which originated from imported Segregation 1 peanuts that fail quality requirements of Table 1 (excessive damage, minor defects, moisture, or foreign material) or are positive to aflatoxin may be

reconditioned by remilling and/or blanching. After such reconditioning, peanuts meeting the quality requirements of Table 1 and which are negative to aflatoxin (15 ppb or less) may be disposed for edible peanut use. Residual peanut lots resulting from milling or reconditioning of such lots shall be disposed of as prescribed below:

(1) Failing peanut lots may be disposed for non-human consumption uses (such as livestock feed, wild animal feed, rodent bait, seed, etc.) which are not otherwise regulated by this section; *Provided*, that each such lot is lot identified and certified as to aflatoxin content (actual numerical count). On the shipping papers covering the disposition of each such lot, the importer shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice) are not to be used for human consumption."

(2) Peanuts, and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process ("sheller oilstock residuals"), may be sent to inedible peanut markets pursuant to paragraph (e)(1) of this section, crushed or exported. Such peanut may be commingled with other milled residuals. Such peanuts shall be positive lot identified, red tagged in bulk or bags or other suitable containers.

(i) If such peanuts have not been certified as to aflatoxin content, as prescribed in paragraph (d) of this section, disposition is limited to crushing and the importer shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(ii) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(3) Shelled peanuts which originated from Segregation 1 peanuts that fail quality requirements of Table 1, peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, and peanuts which are positive to aflatoxin may be remilled or blanched. Residuals of remilled and/or blanched peanuts which continue to fail quality requirements of Table 1 shall be disposed of pursuant to paragraphs (e) (1) or (2) of this section.

(4) All certifications, lot identifications, and movement to inedible dispositions, sufficient to account for all peanuts in each consumption entry, shall be reported to the Secretary by the importer pursuant

to paragraphs (f)(2) and (f)(3) of this section.

(f) *Safeguard procedures.* (1) Prior to arrival of a foreign produced peanut lot at a port-of-entry, the importer, or customs broker acting on behalf of the importer, shall mail or send by facsimile transmission (fax) a copy of the Customs Service entry documentation for the peanut lot or lots to the inspection service office that will perform sampling of the peanut shipment. More than one lot may be entered on one entry document. The documentation shall include identifying lot(s) or container number(s) and volume of the peanuts in each lot being entered, and the location (including city and street address), date and time for inspection sampling. The inspection office shall sign, stamp, and return the entry document to the importer. The importer shall present the stamped document to the Customs Service at the port-of-entry and send a copy of the document to the Secretary. The importer also shall cause a copy of the entry document to accompany the peanut lot and be presented to the inspection service at the inland destination of the lot.

(2) The importer shall file with the Secretary copies of the entry document and grade, aflatoxin, and lot identification certifications sufficient to account for all peanuts in each lot listed on the entry document filed by the importer. Positive lot identification of residual lots, transfer certificates, and other documentation showing inedible disposition or export, such as bills of lading and sales receipts, export declarations, or certificates of burying, which report the weight of peanuts being disposed and the name, address and telephone number of the inedible peanut receiver, must be sent to the Marketing Order Administration Branch, Attn: Report of Imported Peanuts. Facsimile transmissions and overnight mail may be used to ensure timely receipt of inspection certificates and other documentation. Fax reports should be sent to (202) 720-5698. Overnight and express mail deliveries should be addressed to USDA, AMS, FV, Marketing Order Administration Branch, 14th and Independence Avenue, SW, Room: 2525-S, Washington, D.C., 20250, Attn: Report of Imported Peanuts. Regular mail should be sent to FV, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, Attn: Report of Imported Peanuts. Telephone inquiries should be made to (202) 720-6862.

(3) Certificates and other documentation for each peanut lot must be filed within 23 days of the date of filing for consumption entry, or, if a

redelivery notice is issued on the peanut lot, subsequently filed prior to conclusion of the redelivery period which will be 60 days, unless otherwise specified by the Customs Service.

(4) The Secretary shall ask the Customs Service to issue a redelivery demand for foreign produced peanut lots failing to meet requirements of this section. Extensions in a redelivery period granted by the Customs Service will be correspondingly extended by the Secretary, upon request of the importer. Importers unable to account for the disposition of all peanuts covered in a redelivery order, or redeliver such peanuts, shall be liable for liquidated damages. Failure to fully comply with quality and handling requirements or failure to notify the Secretary of disposition of all foreign produced peanuts, as required under this section, may result in a compliance investigation by the Secretary. Falsification of reports submitted to the Secretary is a violation of Federal law punishable by fine or imprisonment, or both.

(5) *Reinspection.* Whenever the Secretary has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Secretary may reject the then effective inspection certificate and may require the importer to have the peanuts reinspected to establish whether or not such peanuts may be disposed of for human consumption.

(6) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to AMS at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. Pursuant to paragraph (f)(5) of this section, the Secretary may require reinspection of the lot at the time the lot is declared for entry with the Customs Service.

(g) *Additional requirements.* (1) Nothing contained in this section shall preclude any importer from milling or reconditioning, prior to importation, any shipment of peanuts for the purpose of making such lot eligible for importation into the United States. However, all peanuts presented for entry for human consumption use must be certified as meeting the quality requirements specified in paragraph (c) of this section.

(2) Conditionally released peanut lots of like quality and belonging to the same importer may be commingled. Defects in an inspected lot may not be blended out by commingling with other lots of higher quality. Commingling also must be consistent with applicable Customs Service regulations. Commingled lots must be reported and disposed of pursuant to paragraphs (f)(2) and (f)(3) of this section.

(3) Inspection by the Federal or Federal-State Inspection Service shall be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). The importer shall make each conditionally released lot available and accessible for inspection as provided herein. Because inspectors may not be stationed in the immediate vicinity of some ports-of-entry, importers must make arrangements for sampling, inspection, and certification through one of the offices and laboratories listed in paragraphs (d)(3) and (d)(4) of this section, respectively.

(4) Imported peanut lots sampled and inspected at the port-of-entry, or at other locations, shall meet the quality requirements of this section in effect on the date of inspection.

(5) A foreign-produced peanut lot entered for consumption or for warehouse may be transferred or sold to another person: *Provided*, That the original importer shall be the importer of record unless the new owner applies for bond and files Customs Service documents pursuant to 19 CFR §§141.113 and 141.20; and *Provided further*, That such peanuts must be certified and reported to the Secretary pursuant to paragraphs (f)(2) and (f)(3) of this section.

(6) The cost of transportation, sampling, inspection, certification, chemical analysis, and identification, as well as remilling and blanching, and further inspection of remilled and blanched lots, and disposition of failing peanuts, shall be borne by the importer. Whenever peanuts are presented for inspection, the importer shall furnish any labor and pay any costs incurred in moving, opening containers, and shipment of samples as may be necessary for proper sampling and inspection. The inspection service shall bill the importer for fees covering quality and size inspections; time for sampling; packaging and delivering aflatoxin samples to laboratories; certifications of lot identification and lot transfer to other locations, and other inspection certifications as may be necessary to verify edible quality or inedible disposition, as specified herein.

The USDA and PAC-approved laboratories shall bill the importer separately for fees for aflatoxin assay. The importer also shall pay all required Customs Service costs as required by that agency.

(7) Each person subject to this section shall maintain true and complete records of activities and transactions specified in these regulations. Such records and documentation accumulated during entry shall be retained for not less than two years after the calendar year of acquisition, except that Customs Service documents shall be retained as required by that agency. The Secretary, through duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted, at any such time, to inspect such records and any peanuts held by such person.

(8) The provisions of this section do not supersede any restrictions or prohibitions on peanuts under the Federal Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, any other applicable laws, or regulations of other Federal agencies, including import regulations and procedures of the Customs Service.

Dated: December 31, 1996.

Larry B. Lace,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97-283 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-51-AD; Amendment 39-9878; AD 97-01-07]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146-RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 and Avro 146-RJ series airplanes, that requires modification of the left and right elevators, and replacement of the elevator spring with a stiffer spring. This amendment is prompted by reports indicating that water and ice have accumulated at the trailing edge of the left and right elevators; this accumulation can cause

the elevators to become unbalanced, and oscillate or flutter. The actions specified by this AD are intended to prevent this oscillation or flutter. Elevator oscillation, if not corrected, could result in reduced controllability of the airplane. Elevator flutter, if not corrected, could couple with the natural vibrations of the airplane, and result in loss of the airplane's structural integrity.

DATES: Effective February 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Avro 146-RJ series airplanes was published in the Federal Register on October 18, 1996 (61 FR 54362). That action proposed to require modification of the left and right elevators by installation of mass balance weights at the leading edge of the horn, forward of the hinge line; and replacement of the elevator spring with a stiffer spring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 52 British Aerospace Model BAe 146 and Avro 146-RJ series airplanes of U.S. registry will be affected by this AD, that it will

take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$700 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$73,840, or \$1,420 per airplane.

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

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-01-07 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Amendment 39-9878. Docket 96-NM-51-AD.

Applicability: All Model BAe 146 and Avro 146-RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the left and right elevators from oscillating or fluttering, which could result in either reduced controllability of the airplane, or loss of the airplane's structural integrity, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the left and right elevators by installing mass balance weights at the leading edge of the horn, forward of the elevator hinge line, in accordance with British Aerospace Service Bulletin SB.55-014-01510A, dated December 15, 1995. And

(2) Replace the left and right elevator spring with a stiffer spring, in accordance with British Aerospace Service Bulletin SB.27-150-01510B, dated December 15, 1995.

(b) As of 12 months after the effective date of this AD, no person shall install on any airplane an elevator that has not been modified in accordance with paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification and replacement shall be done in accordance with British Aerospace Service Bulletin SB.55-014-01510A, dated December 15, 1995; and British Aerospace Service Bulletin SB.27-150-01510B, dated December 15, 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 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 13, 1997.

Issued in Renton, Washington, on January 2, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-365 Filed 1-8-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-28-AD; Amendment 39-9879; AD 97-01-08]

RIN: 2120-AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower wing skin, and repair, if necessary. In lieu of the one-time visual inspection or in addition to that inspection, the AD also requires replacement of certain rivets with certain new rivets in all applicable rib-to-stringer connections of the upper and lower wings. This amendment is prompted by reports of missing rivet heads at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6. The actions specified

by this AD are intended to prevent reduced structural integrity of the wings that is caused by problems associated with missing and/or loose rivets.

DATES: Effective February 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 13, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1721; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the Federal Register on July 24, 1996 (61 FR 38407). That action proposed to require a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, and repair, if necessary. In lieu of the one-time visual inspection, or in addition to that inspection, that action also proposed to require replacement of certain rivets with certain new rivets in all applicable rib-to-stringer connections of the upper and lower wings.

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

Support for the Proposal

One commenter supports the proposed rule.

Request to Cite the Latest Dutch AD

One commenter notes that the preamble to the notice stated that "the RLD classified [Fokker Service Bulletin F27/57-74, dated November 15, 1994] as mandatory and issued Dutch airworthiness directive BLA 93-094 (A), dated July 16, 1993 * * *." The

commenter points out that the reference to BLA 93-094 (A) is incorrect, since that BLA 93-094 (A) was issued in 1993, a year earlier than the release of Fokker Service Bulletin F27/57-74. The commenter states that the Dutch BLA that mandated that service bulletin is BLA 94-148, dated November 24, 1994.

The FAA concurs. The FAA inadvertently referenced the wrong BLA number and issue date in the preamble to the notice; it should have referenced BLA 94-148 as the applicable Dutch airworthiness directive. However, since that information is not restated in this final rule, no specific change is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 6 Fokker Model 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry will be affected by this AD.

The required inspection will take approximately 4 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the required inspection action on U.S. operators is estimated to be \$240 per airplane.

The required replacement will take approximately 19 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be \$1,140 per airplane.

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

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-01-08 Fokker: Amendment 39-9879.
Docket 96-NM-28-AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, serial numbers 10653 through 10692 inclusive; on which Part 1 of the Accomplishment Instructions of Fokker Service Bulletins F27/57-68 and F27/57-70 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose or missing rivets at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6, which could result in reduced structural integrity of the wings; accomplish the following:

(a) Except as provided by paragraph (c) of this AD: Prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57-74, dated November 15, 1994.

(1) If no missing rivet head and no loose rivet is detected, no further action is required by paragraph (a) of this AD.

(2) If any missing rivet head or loose rivet is detected, prior to further flight, repair the affected rib-to-stringer connection, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(b) Prior to the accumulation of 10,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, replace rivets having part number (P/N) MS20600AD4W2 with new rivets having P/N CR3553P4 in all applicable rib-to-stringer connections of the upper and lower wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57-74, dated November 15, 1994.

(c) Airplanes on which the replacement required by paragraph (b) of this AD is performed within the compliance time specified in paragraph (a) of this AD are not required to accomplish the inspection required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspection, repair, and replacement shall be done in accordance with Fokker Service Bulletin F27/57-74, dated November 15, 1994. 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 13, 1997.

Issued in Renton, Washington, on January 2, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-362 Filed 1-8-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-SW-03-AD; Amendment 39-9877; AD 97-01-06]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.-Manufactured Restricted Category Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI)-manufactured restricted category Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P helicopters, that requires a one-time inspection of the tail rotor slider (slider) to verify that it was manufactured with the correct outside diameter. This amendment is prompted by a United States (U.S.) Army Safety of Flight message that reports that some sliders may have been improperly manufactured with an undersized wall thickness by U.S. Army vendors. The actions specified by this AD are intended to prevent fatigue failure of the slider, which could cause loss of tail rotor control and subsequent loss of control of the helicopter.

EFFECTIVE DATE: February 13, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5157, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Bell Helicopter

Textron, Inc. (BHTI)-manufactured restricted category Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P helicopters was published in the Federal Register on September 5, 1996 (61 FR 46742). That action proposed to require a one-time inspection of the tail rotor slider (slider) to verify that it was manufactured with the correct outside diameter.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with one exception. The word "barrel" was added to paragraph (a) of the AD to indicate that the splined shaft of the slider is also known as the barrel of the slider. This change neither increases the costs associated with the AD nor increases the scope of the AD.

The FAA estimates that 80 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the required inspection, and that the average labor rate is \$60 per work hour. Replacement of the slider requires 8 hours, and required parts cost approximately \$72 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$46,560 if replacement of the slider is required in all of the fleet.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 adding a new airworthiness directive to read as follows:

AD 97-01-06 California Department of Forestry; Erickson Air Crane Co.; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Smith Helicopters; Southwest Florida Aviation; West Coast Fabrications; Western International Aviation, Inc.; Williams Helicopter Technology, Inc.; and UNC Helicopters: Amendment 39-9877. Docket No. 96-SW-03-AD.

Applicability: Bell Helicopter Textron, Inc.-manufactured Model HH-1K, TH-1F, TH-1L, UH-1A, UH-1B, UH-1E, UH-1F, UH-1H, UH-1L, and UH-1P helicopters, certificated in the restricted category.

Note 1: This AD applies to each helicopter 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 helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 5 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the tail rotor slider (slider), which could cause loss of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Using a calibrated caliper or micrometer, measure the outside diameter of the splined shaft (barrel) of the slider, part number (P/N) 204-010-720-3 or P/N 204-010-720-003, at two points that are 90 degrees apart on the outside circumference of

the barrel, one-half to one inch from either end of the slider. If the outside diameter of the slider is less than 1.300 inches, remove the slider and replace it, prior to further flight, with a slider that has an outside diameter of 1.300 inches or greater.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

(e) This amendment becomes effective on February 13, 1997.

Issued in Fort Worth, Texas, on December 31, 1996.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97-404 Filed 1-8-97; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-38110; File No. S7-30-95]

RIN 3235-AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; revised effective date; revised compliance dates.

SUMMARY: The Securities and Exchange Commission is revising: (1) The effective date of Rule 11Ac1-4 ("Limit Order Display Rule") and amendments

to Rule 11Ac1-1 ("ECN Amendment" to the "Quote Rule") from January 10 to January 13, 1997; (2) the effective date of the amendment to subsection (a)(25)(ii) of the Quote Rule ("Subject Security Definition") to April 10, 1997; and (3) the compliance dates of the ECN Amendment with respect to most over-the-counter ("OTC") securities.

DATES: Effective January 9, 1997, the effective date for the Limit Order Display Rule, and the amendments to the Quote Rule, adopted August 28, 1996, by the Securities and Exchange Commission, and published on September 12, 1996 (61 FR 48290) (collectively, "Order Execution Rules"), is being changed to January 13, 1997, except that the effective date for the amendment to § 240.11Ac1-1(a)(25)(ii) the Subject Security Definition in the Quote Rule is April 10, 1997. The compliance date with respect to the ECN Amendment (except for the Subject Security Definition) for exchange-traded securities and 50 of the 1000 most actively traded OTC securities is January 13, 1997. The compliance date of the ECN Amendment for an additional 100 of these 1,000 securities is January 31, 1997, and the compliance date for the remaining 850 most actively traded securities is February 21, 1997. The final compliance date for the remainder of the securities is March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Betsy Prout Lefler, Special Counsel, Gail Marshall-Smith, Special Counsel, or David Oestreicher, Special Counsel, (202) 942-0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1996, the Securities and Exchange Commission ("Commission") adopted Rule 11Ac1-4,¹ the "Limit Order Display Rule," and amendments to Rule 11Ac1-1, the "ECN Amendment," to require OTC market makers and exchange specialists to display certain customer limit orders, and to publicly disseminate the best prices that the OTC market maker or exchange specialist has placed in certain electronic communications networks ("ECNs"), or to comply indirectly with the ECN Amendment by using an ECN that furnishes the best market maker and specialist prices therein to the public quotation system. The Commission also expanded the definition of "subject security" under

the Quote Rule, which brought all exchange-traded securities, rather than just the subset of such securities known as "Rule 19c-3 securities," under the scope of the mandatory quotation requirements of the Quote Rule. In the Adopting Release, the Commission deemed the effective date of all these initiatives January 10, 1997. Thereafter, the Commission modified the compliance dates with respect to the Limit Order Display Rule so that the display of customer limit orders in OTC securities now will be phased-in over several months.²

More recently, the Commission received a letter from the National Association of Securities Dealers ("NASD") requesting additional relief from the Limit Order Display Rule and the ECN Amendment.³ First, the NASD letter requests that the implementation date of both the Limit Order Display Rule and the ECN Amendment be delayed by one business day to ensure an orderly and safe introduction of the software necessary to operate in accordance with the new rules. Second, the NASD letter requests that the ECN Amendment be phased-in according to the same schedule as the Limit Order Display Rule.

The Commission is hereby modifying the effective dates and compliance dates in response to the NASD letter. In addition, in order to address concerns about the impact on marketwide quotation systems and third market makers upon implementation of the mandatory quotation requirement of the Order Execution Rules, the Commission is moving from January 10, to April 10, 1997, the effective date of the new definition of "subject security" under the Quote Rule (Rule 11Ac1-1(a)(25)(ii)), as discussed below.

II. Discussion

A. Implementation Date of the ECN Amendment

With regard to the implementation date of the Limit Order Display Rule and the ECN Amendment (collectively, "rules"), the NASD letter expresses concern that introducing software that has been significantly revised during the evening of January 9 poses a serious risk of potential system malfunction or an untimely start-up of the market. Instead, the NASD believes that introduction of the new software over the weekend preceding Monday, January 13, 1997,

would provide the NASD with an opportunity to take the appropriate time to carefully load the software and build the necessary databases to ensure a smooth transition. According to the NASD letter, the NASD's technology staff, several ECNs, and many industry members including members of the Quality of Markets Committee (made up of institutions, retail investors and broker-dealers) agree that it would be imprudent to commence implementation, and the attendant software changes, on Friday, January 10th. Moreover, the NASD letter notes that several broker-dealers that are revising their own internal systems would not introduce their software changes on January 10 because of the risks in migrating to the new code within a limited period of time during a trading week.

B. ECN Amendment Phase-in

The NASD letter also requests that the phase-in schedule for securities under the Limit Order Display Rule be extended to the ECN Amendment. This request is intended to ensure that investors and other market participants have an opportunity to obtain experience with the ECN Amendment scaled over a manageable set of securities. The NASD believes this phase-in will enable all interested parties to more accurately determine the impact that full implementation of the ECN Amendment will have on issues such as system capacity and trading patterns.

C. Implementation of the Subject Security Definition

The Order Execution Rules' amendment to the definition of the term "subject security" under the Quote Rule brought all exchange-traded securities, rather than just the subset of such securities known as "Rule 19c-3 securities," under the scope of the mandatory quotation requirements of the Quote Rule. Under this amendment, an OTC market maker must publish firm two-sided quotations for any exchange-traded security in which its executed volume, during the most recent calendar quarter, comprised more than one percent of the aggregate trading volume of the security. Thus, firms that previously did not quote in certain exchange-traded securities may be required to publish quotations in such securities when the amendment becomes effective. In the Adopting Release, the Commission asked the NASD and the Intermarket Trading System ("ITS") Participants to review their existing limitations on the automated generation of quotations.

² See Securities Exchange Act Release No. 37972 (November 22, 1996), 61 FR 63709.

³ See Letter from Alfred R. Berkeley, III, President Nasdaq, to Richard R. Lindsey, Director, Division of Market Regulation ("Division"), Commission, dated December 18, 1996 ("NASD letter").

¹ 17 CFR 240.11Ac1-4.

This review has not been completed. The Commission believes that additional time should be provided for this review, prior to implementation of the expanded definition of "subject security," because of the additional quotation obligations that may result from the rules. The Commission also believes that extending the effective date will give additional time to evaluate the effect on existing systems of the potential increase in quotation traffic that may be caused by the mandatory quotation requirement for exchange-traded securities.

III. Conclusion

For the reasons described above, the Commission is modifying the effective date of the Limit Order Display Rule and the amendments to the Quote Rule (except as discussed below concerning subsection (a)(25)(ii) of the Quote Rule) until the start of business on Monday, January 13, 1997, rather than on January 10, 1997.

In addition the Commission is modifying the compliance dates of the ECN Amendment in order to phase-in the implementation of the ECN Amendment. Accordingly, beginning on January 13, 1997, compliance with the ECN Amendment will be required with respect to all exchange-traded securities and 50 of the 1000 Nasdaq securities, as identified by Nasdaq for the first phase of compliance with the Limit Order Display Rule. On January 31, 1997, compliance with the ECN Amendment will be required with respect to the additional 100 of these 1,000 securities selected by Nasdaq. The ECN Amendment will apply to the remaining 850 of the 1,000 securities on February 21, 1997, as identified by Nasdaq. The next phase-in date will be on March 28, 1997, and, unlike the Limit Order Display Rule, will cover all remaining Nasdaq securities. The Commission will review the operation of the markets during this phase-in period.

Finally, the Commission is modifying the effective date of the amendment to Rule 11Ac1-1(a)(25)(ii) from January 10, 1997, to April 10, 1997. In the interim, the Commission expects the NASD and the ITS Participants to continue to review the NASD's and ITS Plan's limitations on automated quotations.

Dated: January 2, 1997.

By the Commission.
Jonathan G. Katz,
Secretary.
[FR Doc. 97-440 Filed 1-8-97; 8:45 am]
BILLING CODE 8010-01-M

FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 33, 34, 35, 36, 292 and 300

[Docket No. RM96-16-000; Order No. 593]

Revision of Form of Notice Requirements; Final Rule

Issued January 2, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising the form of notice requirements applicable to filings under several parts of its regulations. The final rule establishes requirements for submitting diskette copies of the notices of filing for the Federal Register, in addition to the paper copies currently required, in order to speed the process of noticing such filings. In addition, the final rule makes a minor correction to the regulations being revised, to delete a reference to filing fees.

EFFECTIVE DATE: This final rule is effective on February 10, 1997.

FOR FURTHER INFORMATION CONTACT:

L. Jorn Dakin, (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St. NE., Washington, D.C. 20426, (202) 208-2172

Michael Miller, (Technical Information), Office of Executive Director, Federal Energy Regulatory Commission, 888 First St. NE., Washington, D.C. 20426, (202) 208-1415.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street N.E., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the

texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202-208-1397, if dialing locally, or 1-800-856-3920 if dialing long distance. CIPS is also available on the Internet through the FedWorld System (by modem or Internet). To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ACSII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street N.E., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission is revising the form of notice requirements for filings under Parts 33, 34, 35, 36, 292 and 300 of the Commission's regulations.¹ The revised requirements provide that an electronic version, in addition to the paper copy, of the draft notice of filing (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) be submitted on a 3½" diskette. This diskette is to be a part of the filing. In addition, all entities submitting filings for which there is not a requirement of a draft notice (but for which the entity expects the Commission to issue a notice) are encouraged to provide a draft notice in the same fashion as set out in these revised regulations. Finally, a reference to filing fees under Part 33 of the regulations, in the caption and text of 18 CFR 33.2, will be deleted. The Commission no longer charges filing fees for applications under Part 33.

II. Public Reporting Burden

The final rule, if adopted, would amend reporting requirements, but would result in insignificant changes to the reporting burden. In the long term, the Commission's switch to electronic filing should result in further reductions in reporting burden and savings to the entities that make such filings. These reporting requirements are associated with the following data collections:

Data collection	CFR	Respondents	Frequency	Responses	Hrs. per filing	Total
FERC-516	Part 35	328	2.97	975	901	878,500

¹ 18 CFR Parts 33, 34, 35, 36, 292, and 300.

Data collection	CFR	Respondents	Frequency	Responses	Hrs. per filing	Total
FERC-519	Part 33	30	1	30	80	2,400
FERC-523	Part 34	60	1	60	110	6,600
FERC-556	Part 292	332	1	332	16	2,047
FERC-716A	Part 36	20	1	20	5	100

¹ Rounded off.

To send comments regarding the burden estimates or other aspects of these collections of information, including suggestions for reducing burdens, please direct them to the contacts listed under "Information Collection Statement."

Data Collection/Requirement Costs: The Commission believes that there will be minimal cost to implement these requirements. The Commission believes that the vast majority of filing entities are currently preparing these draft notices in electronic form as a preliminary to preparing paper copies of the draft notices, and many filing entities are already voluntarily providing draft notices in electronic form. The Commission is merely formalizing an existing business practice.

Internal Review: The Commission has reviewed in general the requirements and determined that they are necessary to expedite the process of preparing and publishing notices of filings. The requirements conform to the Commission's plan for efficient information collection, communication and respond to the requirements of the Paperwork Reduction Act of 1995 (P.L. 104-13) and the Office of Management and Budget's implementing regulations in 5 CFR 1320 to minimize the burden on those who are to respond through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements established in this final rule.

III. Background

Under various provisions of Parts 33, 34, 35, 36, 292, and 300 of the Commission's regulations, an applicant must file a draft notice of filing for publication in the Federal Register. In this final rule, the Commission is revising the applicable specific sections of its regulations to require that the filing entity submit its draft notice on paper and in electronic form, on a separate 3½" diskette, either in ASCII text, WordPerfect 5.1 for DOS or

WordPerfect 5.2 for Windows format, marked with the name of the applicant and the words "Notice of Filing." This revision of the notice requirements in specific provisions of Parts 33, 34, 35, 36, 292, and 300 will enable the Commission to accelerate the process by which notice of filings is provided through publication in the Federal Register and, especially, through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that requires that text be in ASCII text format in order for it to provide electronic access to the text information.

In this final rule, the Commission is also deleting a reference to filing fees in Part 33 of its regulations. The Commission no longer requires filing fees for applications under Part 33, and so the reference no longer is necessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)² generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Most, if not all, of the applicants required to comply with this final rule are entities which do not fall within the RFA's definition of small entity. Further, most, if not all, of these entities already have this material in electronic form and therefore, forwarding a diskette to the Commission would not be an additional burden.

The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations (5 CFR 1320.12) require that OMB approve certain information and recordkeeping requirements. Since this order does not increase the reporting burden and formally adopts current business practices, OMB approval will not be requested for these collections of

information. When the rule is issued, the Commission will submit a copy to OMB for informational purposes only.

Title:

- FERC-516, Electric Rate Schedule Filings
- FERC-519, Corporate Applications, Dispositions of Facilities, Mergers and Acquisitions of Securities
- FERC-523, Applications for Authorization of Issuance of Securities
- FERC-556, Cogeneration and Small Power Production
- FERC-716A, Application for Transmission Services Under Section 211 of the Federal Power Act

OMB Control No: The following OMB control numbers correspond to the collections of information listed above: 1902-0096; 1902-0082; 1902-0043; 1902-0075; and 1902-0168.

Failure to comply with this collection of information will not result in a penalty, if you were unaware that a valid control number assigned by the Office of Management and Budget must be displayed on this collection of information.

Action: Proposed Data Collection Requirements

Respondents: Public utilities, small power production and cogeneration facilities, and Federal Power Marketing Administrations.

Frequency of Responses: On Occasion

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller (202) 208-1415, fax: (202) 273-0873] and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395-3087].

VI. National Environmental Policy Act Analysis

The Commission concludes that promulgating this rule does not represent a major Federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National

² 5 U.S.C. 601-612.

Environmental Policy Act.³ This rule is procedural in nature and does not substantially change the effect of the regulation being amended. Therefore, this rule falls within the categorical exemptions provided in the Commission's regulations.⁴ Consequently, neither an environmental impact statement nor an environmental assessment is required.

VII. Administrative Findings and Effective Date

This final rule is a matter of agency organization, procedure, or practice. Since this rule does not itself alter the substantive rights or interests of any interested persons, prior notice and comment are unnecessary under Section 4 of the Administrative Procedure Act.⁵

This final rule is effective February 10, 1997.

VIII. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.⁶ That reporting requirement does not apply to this final rule because it falls within a statutory exception for rules relating to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.⁷

List of Subjects in 18 CFR Parts 33, 34, 35, 36, 292 and 300

Electricity, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,
Secretary.

In consideration of the foregoing, the Commission amends Parts 33, 34, 35, 36, 292, and 300, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 33—APPLICATION FOR SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

1. The authority citation for Part 33 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

³42 U.S.C. 4332.

⁴18 CFR 380.4(a)(2)(ii).

⁵5 U.S.C. 553(b).

⁶Pub. L. No. 104-121, 110 Stat. 847 (1996).

⁷Pub. L. No. 104-121, 110 Stat. 847, 804(3)(C) (1996).

2. In §33.2, the section heading, introductory text and paragraph (l) are revised to read as follows:

§ 33.2 Contents of application.

Each such applicant shall set forth in its application to the Commission, in the manner and form and in the order indicated, the following information which should insofar as possible be furnished as to said applicant and each company whose facilities or securities are involved:

* * * * *

(l) A form of notice suitable for publication in the Federal Register, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose.

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

1. The authority citation for Part 34 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. In §34.3, paragraph (k) is revised to read as follows:

§ 34.3 Contents of application for issuance of securities.

* * * * *

(k) A form of notice suitable for publication in the Federal Register, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," setting forth:

- (1) The legal name of the applicant;
- (2) The securities offered for issuance including the proposed issue date; and
- (3) The comment procedure.

* * * * *

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. In §35.8, the introductory text to paragraph (a) is revised to read as follows:

§ 35.8 Comments by interested parties.

(a) *Form of notice for Federal Register.* The public utility shall file a form of notice suitable for publication in the Federal Register, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," which shall be in the following form:

* * * * *

PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

1. The authority citation for Part 36 is revised to read as follows:

Authority: 5 U.S.C. 551-557; 16 U.S.C. 791a-825r; 31 U.S.C. 9701; 42 U.S.C. 7107-7352.

2. In §36.1, the first sentence of paragraph (b)(1) is revised to read as follows:

§ 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

* * * * *

(b) * * *

(1) A form of notice suitable for publication in the Federal Register, as well as a copy of the same statement in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing."

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for Part 292 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. In §292.207, the first sentence of paragraph (b)(4)(i) is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(4) *Notice.* (i) Applications for certification filed under paragraph (b) of this section must include a form of notice of the request for certification suitable for publication in the Federal Register, as well as a copy of the same

notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing."

* * * * *

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

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

Authority: 16 U.S.C. 825s, 832–832i, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

2. In § 300.10, paragraph (a)(1) is revised to read as follows:

§ 300.10 Application for confirmation and approval.

(a) *General provisions*—(1) *Contents of filing*. Any application under this subpart for confirmation and approval of rate schedules must include, as described in this section a letter of request for rate approval, a form of notice suitable for publication in the Federal Register, as well as a copy of the same notice in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing," the rate schedule, a statement of revenue and related costs, the order, if any, placing the rates into effect on an interim basis, the Administrator's Record of Decision or explanation of the rate development process, supporting documents, a certification, and technical supporting information and analysis.

* * * * *

[FR Doc. 97–380 Filed 1–8–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300447; FRL–5579–7]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerances for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of the fungicide myclobutanil in or on the crop group cucurbit vegetables in

connection with EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of myclobutanil on cucurbit vegetables in California. This regulation establishes a maximum permissible level for residues of myclobutanil in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997.

DATES: This regulation becomes effective January 9, 1997. This regulation expires and is revoked automatically without further action by EPA on November 30, 1997. Objections and requests for hearings must be received by EPA on March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300447], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP–300447], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300447]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8337, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound), hereafter referred to as myclobutanil, in or on cucurbit vegetables at 0.3 part per million (ppm). This tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and

children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemption for Myclobutanil on Cucurbits and FFDCA Tolerances

On July 29, 1996, the State of California availed itself of the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of myclobutanil on watermelons to control powdery mildew (*Sphaerotheca fuliginea*). This crisis exemption was amended August 7, 1996 to cover all cucurbit vegetables. California stated that emergency conditions developed due to the outbreak of this particular strain of powdery mildew which is resistant to the registered product Bayleton. Though considered a minor pest in the past, environmental conditions in the last 2 years have contributed to this disease outbreak. Without the use of myclobutanil, it is claimed that watermelon growers specifically, and growers of cucurbits in general, will suffer severe economic losses.

As part of its assessment of this crisis declaration, EPA assessed the potential risks presented by residues of myclobutanil in or on cucurbits. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemption only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. This tolerance for myclobutanil will permit the marketing of cucurbits treated in accordance with the provisions of the section 18 emergency exemption. Consistent with the need to move quickly on the emergency exemption and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be revoked automatically without further action by EPA on November 30, 1997, under FFDCA section 408(l)(5), residues of myclobutanil not in excess of the amounts specified in the tolerance remaining in or on cucurbits after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemption. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether myclobutanil meets the

requirements for registration under FIFRA section 3 for use on cucurbits, or whether a permanent tolerance for myclobutanil for cucurbit vegetables would be appropriate. This action by EPA does not serve as a basis for registration of myclobutanil by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than California to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for myclobutanil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of every crop considered in the analysis is treated with the pesticide being evaluated. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances and that the market for pest control on any given crop seldom belongs to a single pesticide.

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Myclobutanil is already registered by EPA for numerous food and feed uses, as well as residential use on annuals and perennials, turf, shrubs and trees,

and African violets (indoor). EPA has received a petition requesting establishment of a tolerance for myclobutanil on cucurbits. The time-limited tolerance associated with the current emergency exemption does not constitute a decision regarding the pending petition for tolerance on cucurbit vegetables. For the purposes of this emergency exemption, EPA has sufficient data to assess the hazards of myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of myclobutanil on cucurbit vegetables at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing this tolerance follows.

IV. Aggregate Risk Assessment and Determination of Safety

A. Toxicological Profile

1. *Chronic toxicity.* The RfD of 0.025 milligram(mg)/kilogram(kg)/day was established by the Agency based on the chronic feeding study in rats with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. There was testicular atrophy at the lowest effect level (LEL) of 9.9 mg/kg/day.

2. *Acute toxicity.* OPP has determined that data do not indicate the potential for adverse effects after a single dietary exposure.

3. *Short-term toxicity.* OPP has determined that short- and intermediate-term risk assessments are appropriate for occupational and residential routes of exposure. OPP recommends that the NOEL of 100 mg/kg/day, taken from the 21-day dermal toxicity study in rats, be used for the short term dermal MOE calculations. This dose level was the highest tested in the study. For intermediate term MOE calculations, OPP recommended using the NOEL of 10 mg/kg/day from the 2-generation rat study. Effects seen at the LEL in this study (50 mg/kg/day) were decreases in pup body weight, an increased incidence in number of stillborns, and atrophy of the prostate and testes. Though these endpoints have been identified, no acceptable reliable exposure data to assess these potential risks are available at this time.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified myclobutanil as Group E chemical—"no evidence of carcinogenicity for humans"—based on the results of carcinogenicity studies in two species. The doses tested are adequate for identifying a cancer risk.

B. Aggregate Exposure

Established U.S. tolerances for myclobutanil and its alcohol metabolites (free and bound) are found in 40 CFR 180.443, and range from 0.05 ppm for milk to 5 ppm for cherries (sweet and sour). The proposed time-limited tolerance of 0.3 ppm is based on residue field trial data on cantaloupes submitted in support of PP 9G3765 and PP 2F4155. There are no livestock feed items associated with the proposed use on cucurbits, so no additional livestock dietary burden will result from this Section 18 registration. Therefore, existing meat, milk, and poultry tolerances are adequate.

For the purpose of assessing potential chronic dietary exposure from myclobutanil, EPA assumed tolerance level residues and percent of crop treated refinements to estimate the Anticipated Residue Contribution (ARC) from the proposed and existing food uses of metolachlor. The use of percent of crop treated data for most of the existing food uses in this analysis results in a more refined estimate of exposure than the TMRC. In conducting this exposure assessment, EPA has made conservative assumptions—all foods considered in the analysis were assumed to have myclobutanil residues present at the level of the tolerance. Percent crop treated data were used for many commodities with existing myclobutanil tolerances (stone fruits, pome fruits, grapes, and cottonseed) in the chronic exposure assessment, but were not considered when calculating the dietary burden from which secondary residue tolerances in meat, milk and poultry were derived or for the proposed use on cucurbit vegetables. Thus, in making a safety determination for the subject Section 18 tolerances, EPA is taking into account this conservative exposure assessment.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of myclobutanil in drinking water. Review of terrestrial field dissipation data by the Agency indicates that myclobutanil did not leach into groundwater in either sandy loam or coastal soil. There is no established Maximum Concentration Level for residues of myclobutanil in drinking water. No drinking water health advisories have been issued for myclobutanil. The "Pesticides in Groundwater Database (EPA 734-12-92-001, September 1992) has no

information concerning myclobutanil. Based on the available data, the Agency does not anticipate that there will be significant exposure to the general population from myclobutanil residues in drinking water.

There are residential uses of myclobutanil and EPA acknowledges that there may be short-, intermediate- and long-term non-occupational exposure scenarios. OPP has identified toxicity endpoints for short- and intermediate-term residential risk assessment. However, no acceptable reliable exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that myclobutanil and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment. For purposes of this tolerance only, the Agency is considering only the potential risks of myclobutanil in its aggregate exposure.

C. Determination of Safety for U.S. Population

EPA has calculated that chronic dietary exposure to myclobutanil will utilize 13.5 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of myclobutanil, EPA considered data from developmental toxicity studies in the rat

and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

From the rat developmental study, the maternal (systemic) NOEL was 93.8 mg/kg/day, based on rough hair coat, and salivation at the LOEL of 312.6 mg/kg/day. The developmental (pup) NOEL was 93.8 mg/kg/day, based on increased incidences of 14th rudimentary and 7th cervical ribs at the LOEL of 312.6 mg/kg/day. From the rabbit developmental study, the maternal (systemic) NOEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the LOEL of 200 mg/kg/day. The developmental (pup) NOEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LEL of 200 mg/kg/day.

From the rat reproduction study, the maternal (systemic) NOEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOEL of 10 mg/kg/day. The developmental (pup) NOEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the LEL of 50 mg/kg/day. The reproductive (parental) NOEL was 10 mg/kg/day, based on increased incidence of stillborns, and atrophy of the testes, epididymides, and prostate at the LEL of 50 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for myclobutanil relative to pre- and post-natal toxicity is complete. The Agency notes that there is approximately a 25-fold difference between the developmental NOEL of 60 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 2.5 mg/kg/day from the chronic rat feeding study which was the basis of the RfD. It is further noted that in both the rabbit and rat developmental toxicity studies, the developmental NOEL and maternal NOEL are the same (60 mg/kg/day for the rabbit and 93.8 mg/kg/day for the rat). In the rat reproduction study, the maternal NOEL (2.5 mg/kg/day) was four times lower than the developmental (pup) and reproductive NOELs (10 mg/kg/day).

These studies indicate that there does not appear to be additional sensitivity for infants and children in the absence of maternal toxicity.

EPA has calculated that the percent of the RfD that will be utilized by chronic dietary exposure to residues of myclobutanil ranges from 21.8 percent for children 7 to 12 years old, up to 73.1 percent for non-nursing infants. Given the conservative assumptions used in the calculation of dietary risk, it is felt that even a conservative assumption of transfer of residues to drinking water would result in an aggregate exposure below the Agency's level of concern. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to myclobutanil residues.

V. Other Considerations

The metabolism of myclobutanil in plants and animals is adequately understood for the purposes of this tolerance. There is no Codex maximum residue level established for residues of myclobutanil on cucurbits. There is a practical analytical method for detecting and measuring levels of myclobutanil in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5805.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemption is established for residues of myclobutanil in cucurbits at 0.3 ppm. This tolerance will expire and be automatically revoked without further action by EPA on November 30, 1997.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new sections 408 (e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing

requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP-300447] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available

for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required

information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: January 2, 1997.

Daniel M. Barolo, Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.443, by adding a new paragraph (d) to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

* * * * *

(d) A time-limited tolerance is established for residues of the fungicide myclobutanil, in connection with use of the pesticide under section 18 emergency exemption granted by EPA. The tolerance is specified in the following table. This tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/revocation date
Cucurbit vegetables.	0.3	Nov. 30, 1997.

[FR Doc. 97-514 Filed 1-8-97; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300448; FRL-5581-9]

RIN 2070-AB78

Zinc Phosphide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on the

raw agricultural commodities sugarbeets and potatoes in connection with crisis exemptions declared by the state of Idaho under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of zinc phosphide on sugarbeets and potatoes. This regulation establishes maximum permissible levels for residues of phosphine in these foods pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997.

DATES: This regulation becomes effective January 9, 1997. This regulation expires and is revoked automatically without further action by EPA on October 15, 1997. Objections and requests for hearings must be received by EPA on or before March 10, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP-300448], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP-300448], must also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300448]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and

hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-8326, e-mail:

pemberton.libby@epamail.epa.gov.
SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in or on potatoes and sugar beet roots at 0.05 part per million (ppm) and in or on sugar beet tops at 0.1 ppm. These tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, 11/13/96).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable

certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Zinc Phosphide on Potatoes and Sugar beets and FFDCA Tolerances

On August 5, 1996, the Idaho Department of Agriculture availed itself of the authority to declare the existence

of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of zinc phosphide on potatoes and sugar beets for control of meadow voles and field mice. Potato and sugarbeet growers in Idaho have experienced substantial losses in recent years due to vole and mouse damage. The only registered option available to sugarbeet and potato growers in Idaho is to use zinc phosphide on non-crop land surrounding their fields. Where fields are surrounded by other crops or bare ground, there are no registered controls or other effective non-chemical methods.

As part of its assessment of this crisis exemption, EPA assessed the potential risks presented by residues of phosphine on potatoes and sugar beets. In doing so, EPA considered the new safety standard in FFDC section 408(b)(2), and EPA decided that the necessary tolerance under FFDC section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for residues of phosphine will permit the marketing of potatoes and sugar beets treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on October 15, 1997, under FFDC section 408(l)(5), residues of phosphine not in excess of the amount specified in these tolerances remaining in or on potatoes and sugar beet roots and tops after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether zinc phosphide meets the requirements for registration under FIFRA section 3 for use on potatoes or sugar beets or whether permanent tolerances for zinc phosphide for potatoes, or sugar beet roots or tops would be appropriate. This action by EPA does not serve as a basis for registration of zinc phosphide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than

Idaho to use this product on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for zinc phosphide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide

has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or Margin of Exposure (MOE) calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDC section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Zinc phosphide is already registered by EPA for outdoor residential lawn, nursery, right-of-way, recreational area and other non-food uses, as well as several food use registrations. EPA has also assessed the toxicology data base for zinc phosphide in its evaluation of an application for a regional registration on sugarbeets. Phosphine is a highly reactive gas that reacts with raw agricultural commodities to form bound phosphate residues. The Agency stated in a Registration Standard for Zinc

Phosphide (June 23, 1982) that a tolerance of 0.1 ppm for phosphine resulting from the use of zinc phosphide would be allowable for raw agricultural commodities, provided the bound phosphate residues can be fully characterized. At the time the registration standard was issued, the Agency identified 70 percent of the bound phosphate residues in treated commodities as consisting of oxy-acids of phosphorus, which are considered toxicologically insignificant at the levels found in treated commodities. Data have since been submitted which demonstrate that the remaining 30 percent of residues consists of oxidation products of phosphine (oxyphosphorus acids and/or their salts), which are also considered toxicologically insignificant at the levels found in treated commodities. EPA believes it has sufficient data to assess the hazards of zinc phosphide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of phosphine resulting from the use of zinc phosphide in or on potatoes and sugar beet roots at 0.05 ppm and in or on sugar beet tops at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has established the RfD for zinc phosphide at 0.0003 milligrams(mg)/kilogram(kg)/day. The RfD was established based on an lowest effect level (LEL) of 3.48 mg/kg/day from an open literature 90-day rat feeding study. Effects observed at the LEL were decreased food consumption and body weight. An uncertainty factor of 10,000 was used due to data gaps and the absence of a NOEL in the study.

2. *Acute toxicity.* No toxicology studies were identified by OPP which demonstrated the need for an acute dietary risk assessment.

3. *Short-term non-dietary inhalation and dermal toxicity.* Since 10 percent zinc phosphide tracking powder has been classified in Toxicity Category IV (LC50 >19.6 mg/L), inhalation exposure resulting from this section 18 action is not considered toxicologically significant. For short-term and intermediate dermal MOE calculations, the Health Effects Division (HED), of OPP recommended use of the adjusted acute dermal LD₅₀ NOEL of 1,000 mg/kg from the acute dermal toxicity study in rabbits. In the absence of other dermal toxicity data, the acute NOEL dose of 1,000 mg/kg was divided by a

100-fold uncertainty factor to approximate a 3-month dermal NOEL for worker dermal exposure. The 3 month dermal NOEL is 10 mg/kg/day. At the LEL of 2,000 mg/kg in the rabbit dermal LD₅₀ study, the animals lost weight, but no mortalities were observed up to 5,000 mg/kg highest dose tested (HDT). Actual risk from dermal exposure is likely to be significantly less, since zinc phosphide reacts with water and stomach acid to produce the toxic gas phosphine from oral, but not dermal, exposure.

4. *Carcinogenicity.* Zinc phosphide has not been reviewed for carcinogenicity, as there are no adequate carcinogenicity studies in rodents available in the toxicology data base. OPP has waived carcinogenicity data requirements for zinc phosphide on the basis that exposures to zinc phosphide are controlled to prevent exposures to humans. Applications to crop areas are such that the zinc phosphide will dissipate.

B. Aggregate Exposure

Tolerances are established for residues of the phosphine resulting from the use of zinc phosphide on several raw agricultural commodities (40 CFR 180.284(a) and (b)). There is no reasonable expectation of secondary residues in meat, milk, poultry, or eggs (paragraph (a)(3) of 40 CFR 180.6). Any residues of zinc phosphide ingested by livestock would be metabolized to naturally occurring phosphorous compounds.

For the purpose of assessing chronic dietary exposure from zinc phosphide, EPA assumed tolerance level residues and 100 percent of crop treated for the proposed and existing food uses of zinc phosphide. These conservative assumptions result in overestimation of human dietary exposures.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. There is no information on zinc phosphide (phosphine) residues in ground water and runoff in the EFED One-Liner Data Base. There is no established Maximum Concentration Level (M.C.L.) for residues of zinc phosphide (phosphine) in drinking water. No drinking water health advisory levels have been established for zinc phosphide (phosphine). There is no entry for zinc phosphide (phosphine) in the "Pesticides in Groundwater Database" (EPA 734-12-92-001, September 1992). Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues

of zinc phosphide (phosphine) in drinking water.

There are residential uses of zinc phosphide and EPA acknowledges that there may be short-, intermediate-, and long-term non-occupational, non-dietary exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable dermal exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that zinc phosphide and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of zinc phosphide in its aggregate exposure.

C. Safety Determinations For U.S. Population

Taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure to zinc phosphide will utilize 27.5 percent of the RfD for the U.S. population. EPA does not anticipate chronic exposure to residues of zinc phosphide (phosphine) in drinking water. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zinc phosphide residues.

D. Determination of Safety for Infants and Children

There were no developmental findings in rats up to a maternally toxic dose of 4.0 mg/kg/day zinc phosphide nor in mice at 4.0 mg/kg/day (HDT). A comparison of the NOEL of 0.1 mg/kg/day in the recent 90-day rat gavage study and the NOELs for developmental toxicity in rats and mice (4.0 mg/kg/day) provides a 40-fold difference, which demonstrates that there are no special pre-natal sensitivities for infants and children. Since there are no

reproduction studies with zinc phosphide, the post-natal potential for effects from zinc phosphide in infants and children cannot be fully evaluated. However, the above information, together with the uncertainty factor of 10,000 utilized to calculate the RfD for zinc phosphide, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to zinc phosphide residues.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of zinc phosphide ranges from 6.8 percent for nursing infants (<1 year old) up to 59.9 percent for children 1 to 6 years old. However, this calculation assumes tolerance level residues for all commodities and is therefore an overestimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before, EPA does not expect chronic exposure from drinking water. EPA therefore concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zinc phosphide.

V. Other Considerations

The metabolism of zinc phosphide in plants and animals is adequately understood for the purposes of these tolerances. The residue of concern is unreacted zinc phosphide, measured as phosphine, that may be present. Adequate methods for purposes of data collection and enforcement of tolerances for zinc phosphide residues as phosphine gas are available. Methods for determining zinc phosphide residues of phosphine gas are described in PAM, Vol. II, as Method A.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of phosphine resulting from the use of zinc phosphide in potatoes and sugar beet roots at 0.05 ppm and sugar beet tops at 0.1 ppm. These tolerances will expire and be automatically revoked without further action by EPA on October 15, 1997.

VII. Objections and Hearing Requests

The new FFDC section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural

regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 10, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP-300448] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic

comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDC section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110

Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: January 2, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. In § 180.284, by adding a new paragraph (c) to read as follows:

§ 180.284 Zinc phosphide; tolerances for residues.

* * * * *

(c) Time-limited tolerances are established for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire and are automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Potatoes	0.05	October 15, 1997
Sugar beet (roots)	0.05	October 15, 1997
Sugar beet (tops) ..	0.1	October 15, 1997

[FR Doc. 97-512 Filed 1-8-97; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382, 383, and 390

[FHWA Docket No. MC-93-17]

RIN 2125-AE13

Federal Motor Carrier Safety Regulations; Intermodal Transportation; Withdrawal of Final Rule

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; withdrawal.

SUMMARY: On December 29, 1994, the FHWA published a final rule [59 FR 67544] which implemented the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act). On October 11, 1996, the President signed the Intermodal Safe Container Transportation Amendments Act of 1996 (the 1996 Act) which substantially amended the 1992 Act and removed the requirement that the Secretary of Transportation promulgate implementing regulations. The FHWA, therefore, is withdrawing its December 29 final rule. The FHWA has determined that regulations are not necessary to implement the 1992 Act as amended by the 1996 Act. The 1996 Act will become effective on April 9, 1997. The FHA is also amending the applicability provisions of the regulations on controlled substances and alcohol use and testing.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366-5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background and Summary of the 1992 Act

Almost every intermodal container and trailer travels over the highway at least once during shipment. Motor carriers are usually at the beginning or end of the intermodal transportation chain. It is difficult for motor carriers to comply with highway weight limitations without knowledge of the weight and transportation characteristics of the contents of a container or trailer. The purpose of highway weight laws is to minimize

highway and bridge wear and protect the motoring public.

In the 1980s, motor carriers complained that they had little or no control over the loading of the containers or trailers, were forced to accept containers and trailers with an unknown cargo and weight by threat of economic retaliation, and yet were held responsible for compliance with weight laws. A motor carrier might suspect that a loaded container or trailer was too heavy for the equipment or illegal under State law, but would have no reasonable grounds for refusing to transport it without knowledge of the cargo weight.

On October 28, 1992, the President signed the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act) [Pub. L. 102-548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901-5907 (formerly 49 U.S.C. 501 and 508)]. The 1992 Act requires the person who loads an intermodal container or trailer to prepare a written certification that includes a reasonable description and the actual gross weight of the cargo, and to give the certification to the initial carrier. Each carrier is required to forward the certification to the next carrier transporting the container or trailer. The information will enable motor carriers, which are already familiar with the tare weights of containers, trailers, and chassis, to better estimate the axle weights and gross weight of a given combination. If the certified cargo weight is incorrect and the motor carrier is fined for operating an overweight vehicle as a result of that error, the motor carrier has a lien on the cargo until the shipper or owner of the cargo reimburses it for the fine and all costs associated with the incident. Coercing a person to transport a loaded container or trailer without a certification or with a weight that would make the vehicle combination illegally overweight under applicable State law was prohibited by the 1992 Act.

Summary of Events Between the Enactment of the 1992 Act and the 1996 Act

The FHWA published a notice of proposed rulemaking (NPRM) on July 14, 1993 (58 FR 37895). The NPRM proposed to amend part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart C, Intermodal Transportation. Most of the proposed regulations simply codified the statutory requirements. The comment period for the NPRM originally closed on September 13, 1993. In response to several requests, the FHWA reopened the comment period and extended it until October 28, 1993.

On December 29, 1994, the FHWA published a final rule implementing the 1992 Act with an effective date of the rule was June 27, 1995. On April 7, 1995, the American Trucking Associations, Inc. (ATA) filed a petition to exempt three types of motor carrier operations from the final rule. During April and May, the FHWA received letters from several companies and industry groups petitioning for an extension of the effective date of the final rule. These petitioners explained that the intermodal transportation industry relies heavily on electronic data interchange (EDI) and that the time necessary to develop EDI standards and complete computer programming and training for electronic forwarding of certifications made it impossible to achieve compliance through the use of EDI by June 27, 1995. On May 16 [60 FR 26001], the FHWA administratively extended the June 27 effective date until September 27, 1995, to allow the agency sufficient time to consider public comment on whether a further extension was warranted. On May 25 (60 FR 27700), the FHWA requested comments on whether an extension of the effective date of the final rule beyond September 27 was necessary. As a part of the May 25 publication, the FHWA requested comments on the April 7 petition filed by the ATA. In their comments to the May 25 publication, the ATA and National Industrial Transportation League (NITL) informed the FHWA that the organizations would file a joint petition for amendments to the final rule. The FHWA, therefore, deferred discussion of the April 7 petition until after the agency had an opportunity to consider the forthcoming petition. The FHWA determined that a further extension was warranted and, therefore, on August 10 (60 FR 40761) extended the effective date of the final rule until September 1, 1996, to allow the intermodal transportation industry sufficient time to comply by means of EDI.

On August 31, 1995, the NITL, ATA, and Interstate Truckload Carriers Conference filed a joint petition for amendments to the final rule. Between November 1995 and February 1996, the FHWA and the petitioners exchanged letters about the petitions. On March 29, the NITL, the Intermodal Conference of the ATA, and the Intermodal Safe Container Coalition asked the FHWA to delay its decision on both petitions until after April 30. The organizations explained that they were engaged in negotiations to reach agreement on amendments to the final rule which they believed were needed. On May 21,

the three organizations notified the FHWA that they had reached consensus and would seek amendments to the 1992 Act. The organizations asked the FHWA to delay its decision on both petitions until July 1, 1996. The petitions and letters discussed above are available for review in the public docket.

On July 16, 1996, a bill to amend the 1992 Act, S. 1957, was introduced by the Chairman of the Senate Committee on Commerce, Science, and Transportation with co-sponsorship of the Chairman and ranking minority member of the Subcommittee on Surface Transportation and Merchant Marine. On July 23, 1996, the sponsors of the bill wrote to the Secretary of Transportation requesting that the September 1, 1996, effective date of the FHWA's rule be extended. The Senators expressed concern that implementation as currently planned could have devastating consequences for intermodal transportation, including delays and severe congestion at the nation's ports. On August 19 (61 FR 42822), the FHWA administratively extended the September 1, 1996, effective date until January 2, 1997, because (1) the two petitions before the agency had not been resolved, (2) a significant number of foreign entities were not familiar with their responsibilities, and (3) implementation of the final rule prior to possible enactment of S. 1957 could disrupt both interstate and foreign commerce. A revised version of S. 1957 was approved by both chambers of Congress as title II of H.R. 3159 which was signed by the President on October 11, 1996 [Pub. L. 104-291, 110 Stat. 3452].

Highlights of the 1996 Act

The 1996 Act amends the 1992 Act in several significant ways. Among other things, the 1996 Act:

1. Raises the jurisdictional weight threshold from 4,536 kilograms (10,000 pounds) to 13,154 kilograms (29,000 pounds);
2. Creates a presumption that the cargo weight of an intermodal container or trailer is less than 13,154 kilograms (29,000 pounds) if no certification is provided to the motor carrier;
3. Exempts highway/railroad intermodal movements where one motor carrier performs all of the highway transportation itself or assumes responsibility for overweight fines incurred by any other motor carrier that handles part of the highway transportation;
4. Makes explicit the applicability of the 1992 Act to foreign persons who tender a loaded container or trailer for

intermodal transportation within the United States;

5. Treats a bill of lading or other shipping document prepared by the person who tenders a loaded container or trailer as a certification if it includes certain information specified by the 1996 Act;

6. Prohibits the use of the term "Freight All Kinds" as a reasonable commodity description after December 31, 2000, if the weight of any single commodity is 20 percent or more of the total cargo weight;

7. Makes any person—in most cases an intermediate carrier—who inaccurately converts a paper certification into an electronic format or fails to forward a certification, indirectly liable for any fine or other costs incurred by a motor carrier as a result of that incorrect information or missing certification;

8. Provides that a copy of the certification is not required to accompany the loaded container or trailer during intermodal transportation;

9. Removes language prohibiting a motor carrier from transporting an intermodal container or trailer for which a certification is required, before receiving a certification;

10. Requires motor carriers to give leased operators written notice of the gross cargo weight of an intermodal container or trailer if they know that it would cause a vehicle combination to violate gross vehicle weight limits. If no such notice is given and the leased operator is fined for violating a gross vehicle weight law or regulation, the operator is entitled to reimbursement from the motor carrier; and

11. Removes the requirement that the Secretary of Transportation promulgate implementing regulations.

Overview of the 1996 Act

General Applicability

The certification requirements of the 1992 Act, as amended by the 1996 Act, apply to any domestic or foreign person who first tenders a container or trailer for intermodal transportation in the United States. The notification and certification requirements do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if such motor carrier performs all highway portions of the intermodal transportation or assumes responsibility for any weight-related fine incurred by any other motor carrier that transports the loaded container or trailer.

Notification and Certification

Any person within the United States who tenders a loaded container or

trailer having a projected gross cargo weight more than 29,000 pounds to a first carrier that is a motor carrier must provide written notification of the projected gross cargo weight and a reasonable description of the contents of the container or trailer to the first carrier before tendering. The notification may be communicated by electronic transmission, telephone, or paper copy. A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation, must provide a certification of its contents in writing or electronically, before or when the container or trailer is so tendered. A copy of the certification is not required to accompany the loaded container or trailer at any time during intermodal transportation.

The elements of a certification are the following:

- (1) The actual gross cargo weight (including packing materials, pallets, and dunnage);
- (2) A reasonable description of the contents of the container or trailer;
- (3) The identity of the certifying party;
- (4) The container or trailer number; and
- (5) The date of certification, or transfer of data to another document for forwarding to the next carrier.

Any shipping document which includes this information (though it need not be in the above order or even in a consecutive format) and is prepared by the person who tenders the container or trailer qualifies as a certification. If a separate document is used as a certification, it must be conspicuously marked "INTERMODAL CERTIFICATION." The use of the term "Freight All Kinds" or "FAK," as a reasonable description of the contents of the container or trailer, is prohibited after December 31, 2000, if the weight of any one commodity is 20 percent or more of the total cargo weight.

Forwarding and Transfer of Certifications

Carriers and intermediaries that receive a certification must forward it to the next carrier in the intermodal chain. A carrier or intermediary that receives a certification may transfer the information into a different document or convert a paper certification into an electronic format, for forwarding to a subsequent carrier. The party transferring or converting the information must identify itself on the forwarded document and give the date on which the information was converted or transferred.

Liens

A motor carrier which is fined or required to post a bond for transporting an overweight container or trailer subject to the amended 1992 Act has a lien against its contents equal to the fine (including costs) or bond if the penalty results from (1) failure to provide the initial certification, (2) erroneous information in the initial certification, (3) failure to forward the certification or (4) an error in the conversion of a paper certification to an electronic format or in the transfer of certification elements from one document to another. The lien remains in effect until the motor carrier is reimbursed by the party responsible for the error or failure that caused the overweight fine, or by the owner or beneficial owner of the cargo. If reimbursement is not made within a reasonable time, the motor carrier may sell the cargo to recover the amount of the fine or bond. Liens cannot be exercised against perishable agricultural commodities.

The lien provisions of the amended 1992 Act are especially complicated when an intermediate carrier or party makes an inaccurate conversion or transfer, or fails to forward the certification to a subsequent carrier. If a motor carrier incurs a fine and costs for an overweight violation resulting from such error or failure, the amended 1992 Act provides that the intermediate party is liable to the motor carrier for the fine and costs. The motor carrier, however, is expected to recover its costs by exercising its right to a lien by seizing the cargo. In this case, the owner of the cargo (usually the shipper or consignee) is not responsible for the error or failure that resulted in the fine. The amended 1992 Act, therefore, gives any person who reimburses the motor carrier for its fine and costs (usually the shipper or consignee who wants to get the cargo to its destination) a cause of action for that amount against the intermediate carrier or party whose error or failure caused the problem. The reimbursing party will then have to file suit against the intermediate carrier or party in the appropriate court to recover the amount it paid the motor carrier. The statutory scheme is complex and should be reviewed carefully by all intermodal shippers and carriers. This description is not intended to be an exhaustive analysis.

Notice to Leased Operators

If a motor carrier knows, because of the certification it has received, that a loaded container or trailer would cause a vehicle combination to be in violation of gross vehicle weight laws, it must

give written notice of the gross cargo weight to an owner-operator leased to the motor carrier. This amounts to a motor carrier certification within the broader shipper certification scheme of the statute. If no such notice is given and the owner-operator is fined for a violation of a gross vehicle weight law or regulation, the owner-operator is entitled to reimbursement from the motor carrier in the amount of the fine and court costs. The motor carrier bears the burden of proof to establish that it gave the required notice to its leased owner-operator.

Unlawful Coercion and State Enforcement

The 1996 Act did not substantially amend 49 U.S.C. 5903(c) which contains prohibitions regarding coercion. Coercing a person to transport a loaded container or trailer subject to the amended 1992 Act without a certification (or a shipping document that qualifies as such) or with a weight that would make the combination vehicle illegally overweight under applicable State law, remains prohibited. However, if no certification is provided to a motor carrier when a loaded container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight is less than 29,000 pounds. This should significantly reduce instances of alleged coercion.

The 1996 Act did not amend 49 U.S.C. 5904 which addresses State enforcement. States retain the authority to fine the motor carrier for all overweight violations, but they may also impound the intermodal container or trailer and levy the fine on the shipper when the violation was caused by inaccurate information in the certification. The absence of certifications from commercial motor vehicles, however, will hinder the ability of State enforcement officials to determine at roadside whether an overweight violation was caused by incorrect information in a certification. This may influence their choice of enforcement options.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action only withdraws a previously

issued rule, it is anticipated that the economic impact of this action will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities and has determined that, since this action withdraws regulations previously issued, it will not place a significant economic burden on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This withdrawal of a recently published final rule will not preempt any State law or State regulation and no additional costs or burdens will be imposed on the States. This action will not affect the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The information collection requirements contained in the final rule previously issued on December 29, 1994, were approved by the OMB in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 and assigned the control number of 2125-0557 which expires on June 30, 1997. This action reduces paperwork burdens previously established and results in the FHWA no longer conducting or sponsoring a collection of information to implement 49 U.S.C. chapter 59. The FHWA, therefore, will not seek extension of the OMB's approval of the information collection assigned control number 2125-0557.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not

have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Recordkeeping requirements.

In consideration of the foregoing and under the authority of 49 U.S.C. 31132, 31133, 31502, and 31504, the FHWA hereby amends title 49, Code of Federal Regulations, parts 382, 383, and 390 as set forth below.

Issued on: December 31, 1996.
Rodney E. Slater,
Federal Highway Administrator.

PART 382—[AMENDED]

1. The authority citation for Part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

§382.103 [Amended]

2. Section 382.103 is amended by revising paragraph (c) to read as follows:

§382.103 Applicability

* * * * *

(c) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

* * * * *

PART 383—[AMENDED]

3. The authority citation for Part 383 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

§383.3 [Amended]

4. Section 383.3 is amended by revising paragraph (b) to read as follows:

§383.3 Applicability

* * * * *

(b) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part,

unless otherwise provided in this section.

* * * * *

PART 390—[AMENDED]

5. The authority citation for Part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504, and Sec. 204, Pub.L. 104-88, 109 Stat. 803, 941; 49 U.S.C. 701 note, and 49 CFR 1.48.

§390.3 [Amended]

6. Section 390.3 is amended by removing paragraph (b), and redesignating paragraphs (c) through (g) as (b) through (f), respectively.

Subpart C [Removed]

7. Subpart C of part 390, (§§ 390.50-390.60) Intermodal Transportation, is removed and reserved.

Appendix H to Subchapter B [Removed]

8. Subchapter B is amended by removing appendix H.

[FR Doc. 97-384 Filed 1-8-97; 8:45 am]
BILLING CODE 4910-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket Number 950407093-6298-03; I.D. 012595A]

Endangered and Threatened Species; Threatened Status for Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU); Correction

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

ACTION: Correction to final rule.

SUMMARY: NMFS is making a technical correction to the final rule (61 FR 56138, October 31, 1996) determining that the Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU) is a threatened species. The correction specifies that the ESU consists of all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Wingert, NMFS, Southwest Region, (310) 980-4021; or Marta

Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Need for Correction

On October 31, 1996, NMFS published a final rule listing the Central California Coho Salmon ESU as a threatened species (61 FR 56138). In the last paragraph of the "Listing Determination" section of the preamble to the rule (see page 56146, bottom of second column and top of third column), NMFS clearly defined the Central California Coho Salmon ESU as consisting of "all coho salmon naturally reproduced in streams between Punta Gorda, Humboldt County, CA, and the San Lorenzo River, Santa Cruz County,

CA." However, the definition of the listed ESU in the regulatory text codified at section 227.4(h) was ambiguous as to the geographic extent of the listed ESU and whether the listed ESU specifically included hatchery populations or only naturally reproduced populations.

Correction of Publication

Accordingly, the publication on October 31, 1996, of the final rule (I.D. 012595A), which was the subject of FR Doc. 96-56138, is corrected as follows:

§ 227.4—[Corrected]

On page 56149, in the third column, in § 227.4, paragraph (h) is corrected to read as follows:

* * * * *

(h) Central California Coast Coho Salmon. Includes all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

* * * * *

Dated: January 3, 1997.

P. Michael Payne,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 97-477 Filed 1-6-97; 1:43 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 62, No. 6

Thursday, January 9, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-ANE-32]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -17, and -17R series turbofan engines. This proposal would require initial and repetitive fluorescent penetrant and eddy current inspections of 4th stage low pressure turbine (LPT) hubs for cracks, and, if necessary, replacement with serviceable parts. This proposal is prompted by a report of an uncontained 4th stage LPT blade release. The actions specified by the proposed AD are intended to prevent a 4th stage LPT blade release due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-32, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132-30, 400 Main St., East Hartford, CT 06108;

telephone (860) 565-7700, fax (860) 565-4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7134, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-ANE-32." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-32, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of an uncontained engine failure on a Pratt & Whitney (PW) JT8D-15 turbofan engine. On January 30, 1996, this engine, installed on a Boeing Model 727-200 aircraft, experienced an uncontained 4th stage low pressure turbine (LPT) blade release during takeoff roll. The aircraft sustained damage to the vertical stabilizer and the engine cowling. Inspection of the engine revealed that the LPT blade release resulted from a radial fracture of the 4th stage LPT hub. The investigation determined that the failure was due to a crack which initiated in and propagated in low cycle fatigue from an inclusion located in the hub bore. This condition, if not corrected, could result in a 4th stage LPT blade release due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft.

Further investigation revealed that a certain population of PW JT8D 4th stage LPT hubs may contain inclusions of aluminum/titanium carbonitrides rich in cerium and lanthanum in the hub bore that may initiate a crack in the bore, and if undetected, may propagate, resulting in a hub fracture and LPT blade release. The cause of the inclusion occurred during the material melting process where a small amount of slag created during the desulfurization/deoxidation process of the vacuum induction melt survived a subsequent melt and was not detected by the required nondestructive test inspections for this material/part. The FAA has determined that material produced prior to April 31, 1983, has more susceptibility to inclusions, whereas subsequent to that date process improvements have been implemented to produce material that is less susceptible to inclusions. Due to these process improvements, the FAA has identified certain 4th stage LPT hubs produced prior to April 1983 that have a greater potential for contamination. Prior to the uncontained engine failure on January 30, 1996, the FAA received reports of two previous incidents of cracks in the 4th stage LPT hub due to inclusions that were discovered during routine shop visits.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6274,

Revision 1, dated December 9, 1996, that identifies by serial number (S/N) affected 4th stage LPT hubs, and describes procedures for fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of 4th stage LPT hubs for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial and repetitive FPI and ECI of affected 4th stage LPT hubs for cracks, and, if necessary, replacement with serviceable parts. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that 381 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$137,160.

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

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

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 96-ANE-32.

Applicability: Pratt & Whitney (PW) Models JT8D-1, -1A, -1B, -7, -7A, -7B, 9, -9A, -11, -15, -17, and -17R turbofan engines, with 4th stage low pressure turbine (LPT) hubs identified by serial number (S/N) in Table A of PW Alert Service Bulletin (ASB) No. A6274, Revision 1, dated December 97, 1996. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC-9 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent 4th stage LPT blade failure due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Perform fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of affected 4th stage LPT hubs for cracks, in accordance with Paragraph 2A of PW ASB No. A6274, Revision 1, dated December 9, 1996, as follows:

(1) Inspect at the next time after the effective date of this AD that the hub is removed from the module and has been debladed.

(2) Thereafter, inspect each time the hub is removed from the module and has been debladed.

(3) Remove from service any cracked 4th stage LPT hub and replace with a serviceable part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may

add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on January 2, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-469 Filed 1-8-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-ANE-35]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT8D-200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D-200 series turbofan engines, that currently requires installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. This action would require the installation and periodic inspection of temperature indicators to all PW JT8D-200 series engines, including those incorporating the containment hardware specified in with AD 93-23-10. This proposal is prompted by report of an uncontained turbine failure due to a high pressure turbine (HPT) shaft fracture on an engine that had the containment hardware installed. The actions specified by the proposed AD are intended to prevent fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

DATE: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-35, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132-30, 400 Main St., East Hartford, CT 06108; telephone (860) 565-7700, fax (860) 565-4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7134, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-ANE-35." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-35, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On November 3, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive AD 94-23-03, Amendment 39-9065 (59 FR 61789, December 2, 1994), applicable to Pratt & Whitney (PW) JT8D-200 series turbofan engines, to require installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. That action was prompted by reports of high pressure turbine (HPT) shaft fractures caused by oil fires that resulted from internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment. That condition, if not corrected, could result in fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

Airworthiness directive 94-23-03 excluded from the applicability engines that had installed HPT containment hardware in accordance with AD 93-23-10. Since the issuance of AD 94-23-03, the FAA has received a report of an uncontained turbine failure due to an HPT shaft fracture on a PW Model JT8D-219 engine that had the containment hardware installed.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 17, 1994, and Revision 2, dated June 8, 1992, that describe procedures for installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94-23-03 to require installation and periodic inspection of temperature indicators to all PW JT8D-200 series engines, including those incorporating the containment hardware specified in AD 93-23-10. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 2,432 engines of the affected design in the worldwide fleet. The FAA estimates that 1,044 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the

proposed AD on U.S. operators is estimated to be \$93,960.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-9065 (59 FR 61789, December 2, 1994) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 96-ANE-35. Supersedes AD 94-23-03, Amendment 39-9065.

Applicability: Pratt & Whitney (PW) JT8D-209, -217, -217A, -217C, and -219 turbofan engines, installed on but not limited to McDonnell Douglas MD-80 series and Boeing 727 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure turbine (HPT) shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage, accomplish the following:

(a) Install and inspect one or two temperature indicators, part number (P/N) 810486, or a single or double set of P/N 809129 and P/N 809130 temperature indicators, on the No. 4 and 5 bearing compartment scavenge oil tube, as follows:

(1) Install temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, within 90 days after the effective date of this airworthiness directive (AD).

(2) Visually inspect temperature indicators within 65 hours TIS of installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(3) If upon inspection, the color of any temperature indicator window(s) has turned completely black, perform troubleshooting and diagnostic testing and corrective action as required, in accordance with Section 2.A.(2) (c) and (d) or (f) and (g), as applicable, of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992. Prior to returning the engine to service, replace any temperature indicator that has turned black and inspect in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(b) For aircraft installations utilizing one P/N 810486 indicator or one set of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator, inspect the remaining temperature indicator, if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (a)(3) of this AD. If the indicator window has not turned completely black or if there are no additional indicators installed, then install a new indicator in accordance with Section 2.A.(1) of the Accomplishment Instruction of PW ASB No. 5944, Revision No. 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, prior to return to service, and visually inspect the temperature indicator within 65 hours TIS since installation.

Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(c) For aircraft installations utilizing two P/N 810486 indicators or two sets of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator(s), inspect the remaining temperature indicator(s), if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (a)(3) of this AD. If the indicator window has not turned completely black, install a new indicator(s) in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, prior to return to service, and visually inspect the temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(d) Report the data elements identified in Appendix E of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, whenever an overtemperature condition is observed on any color temperature indicator which is the result of an internal engine problem only and not resulting from an external cause corrected by the published troubleshooting procedures. Data elements should be reported within 30 days of determining that the overtemperature condition is the result of an internal engine problem, to Diane Cook, Aerospace Engineer, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803-05299; telephone (617) 238-7134, fax (617) 238-7199; Internet: Diane.Cook@faa.dot.gov. The reporting requirements of this AD terminate six months from the effective date of the AD.

(e) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to

a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 2, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-468 Filed 1-8-97; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-7377, 34-38118, 35-26641, 39-2345, IC-22439, IA-1603; File No. S7-2-97]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Public comments are due by January 31, 1997.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 6184, Stop 6-9, Washington, D.C. 20549. All submissions should refer to File No. S7-2-97, and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, Office of the General Counsel, Securities and Exchange Commission, 202-942-0954.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA") (Pub. L. No. 96-354, 94 Stat. 1165) (September 19, 1980) requires that each agency review every ten years each of its rules that has a significant economic impact upon a substantial number of small entities. The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of small entities" (5 U.S.C. 610(a)).

The RFA stipulates the following specific considerations that must be

addressed in the review of each rule: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule (5 U.S.C. 610(c)).

Pursuant to the RFA, the rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The rules are grouped according to which Division or Office of the Commission has responsibility for, and will review, each rule.

Rules To Be Reviewed by the Office of the Chief Accountant

Title: Article 5 of Regulation S-X (Commercial and Industrial Companies).

Citation: 17 CFR 210.5-01 through 210.5-04.

Authority: 15 U.S.C. 77f, 77g, 77s(a), 77aa (25) to (26), 78l, 78m, 78o(d), 78w(a), 79e(b), 79n, 79t(a), 80a-8, and 80a-29.

Rules and Forms To Be Reviewed by the Division of Corporation Finance

Title: Guide 3 (Statistical disclosure by bank holding companies).

Citation: 17 CFR 299.801(c) and 229.802(c).

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*

Rules To Be Reviewed by the Division of Market Regulation

Title: Rule 10b-6 (Prohibition against trading by persons interested in a distribution).

Citation: 17 CFR 240.10b-6.

Authority: 15 U.S.C. 78b, 78c, 78i(a)(6), 78(b), 78m(e), 78o(c), and 78w(a).

Title: Rule 11Aa2-1 (Designation of national market system securities).

Citation: 17 CFR 240.11Aa2-1.

Authority: 15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w.

Title: Rule 11Aa3-1 (Dissemination of transaction reports and last sale data with respect to transactions in reported securities).

Citation: 17 CFR 11Aa3-1.

Authority: 15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w.

Title: Rule 15b2-2 (Inspection of newly registered brokers and dealers).

Citation: 17 CFR 240.15b2-2.

Authority: 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w.

Title: Rule 15C Cal-1 (Notice of government securities broker-dealer activities).

Citation: 17 CFR 240.15Cal-1.

Authority: 15 U.S.C. 78c, 78o, 78o-5(a), and 78w.

Title: Rule 15Cal-1 (Application for registration as a government securities broker or government securities dealer).

Citation: 17 CFR 240.15Ca2-1.

Authority: 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w.

Title: Rule 15Ca2-3 (Registration of successor to registered government securities broker or government securities dealer).

Citation: 17 CFR 240.15Ca2-3.

Authority: 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w.

Title: Rule 15Ca2-4 (Registration of fiduciaries).

Citation: 17 CFR 240.15Ca2-4.

Authority: 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w.

Title: Rule 15Ca2-5 (Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers).

Citation: 17 CFR 240.15Ca2-5.

Authority: 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w.

Title: Rule 15Cc1-1 (Withdrawal from registration of government securities brokers or government securities dealers).

Citation: 17 CFR 240.15Cc1-1.

Authority: 15 U.S.C. 78c, 78o(b), 78o-5(a), and 78w.

Rules and Forms To Be Reviewed by the Division of Investment Management

Title: Public Utility Holding Company Act ("PUHCA"), Rule 29 (Filing of reports to State Commissions).

Citation: 17 CFR 250.29.

Authority: 15 U.S.C. 79t.

Title: PUHCA Rule 40 (Exemption of certain acquisitions from nonaffiliates).

Citation: 17 CFR 250.40.

Authority: 15 U.S.C. 79g, 79h, 79i, 79j, and 79s.

Title: PUHCA Rule 42 (Acquisition, retirement and redemption of securities by the issuer thereof).

Citation: 17 CFR 250.42.

Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79l, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 43 (Sales to affiliates).

Citation: 17 CFR 250.43.

Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79l, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 44 (Sales of securities and assets).

Citation: 17 CFR 250.44.

Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79l, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 46 (Dividend declarations and payments on certain indebtedness).

Citation: 17 CFR 250.46.

Authority: 15 U.S.C. 79b(a)(7).

Title: PUHCA Rule 65 (Expenditures in connection with solicitation of proxies).

Citation: 17 CFR 150.65.

Authority: 15 U.S.C. 79l.

Title: PUHCA Rule 71 (Statements to be filed pursuant to section 12(i)).

Citation: 17 CFR 250.71.

Authority: 14 U.S.C. 79l.

Title: PUHCA Rule 83 (Exemption in the case of transactions with foreign associates).

Citation: 17 CFR 250.83.

Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79l, 79m, 79n, 79q, 79t, and 79t(a).

Title: PUHCA Rule 87 (Subsidiaries authorized to perform services or construction or to sell goods).

Citation: 17 CFR 250.87.

Authority: 15 U.S.C. 79e, 79e(b), 79f, 79g, 79j, 79j(a), 79l, 79m, 79n, 79q, 79t, and 79t(a).

Title: Rule 17f-5 (Custody of investment company assets outside the United States).

Citation: 17 CFR 270.17f-5.

Authority: 15 U.S.C. 80a-6(c) and 80a-37(a).

Title: Investment Company Act Rule 32a-2 (Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts).

Citation: 17 CFR 270.32a-2.

Authority: 15 U.S.C. 80a-6.

Title: Rule 17f-1 (Custody of securities with members of national securities exchanges).

Citation: 17 CFR 270.17f-1.

Authority: 15 U.S.C. 80a-37 and 80a-39.

Title: Form N-6EI-1 (Notification of claim of exemption pursuant to Rule 6e-2 or Rule 6e-3(T) under the Investment Company Act).

Citation: 17 CFR 274.301.

Authority: 15 U.S.C. 80a-6(e) and 80a-37(a).

Title: Form N-27I-1 (Notice of right of withdrawal and refund for variable life insurance contractholders).

Citation: 17 CFR 274.302.

Authority: 15 U.S.C. 80a-6(c), 80a-6(e), and 80a-37(a).

Title: Investment Advisers Act Rule 202(a)(1)-1 (Certain transactions not deemed assignments).

Citation: 17 CFR 275.202(a)(1)-1.

Authority: 15 U.S.C. 80b-3, 80b-4, 80b-6A, and 80b-11.

Title: Investment Advisers Act Rule 206(4)-4 (Financial and disciplinary information that investment advisers must disclose to clients).

Citation: 17 CFR 275.206(4)-4.

Authority: 15 U.S.C. 80b-3, 80b-4, 80b-6A, and 80b-11.

Title: Form ADV-W (Notice of withdrawal from registration as investment adviser).

Citation: 17 CFR 279.2.

Authority: 15 U.S.C. 80b-3, 80b-4, 80b-6A, and 80b-11.

The Commission invites public comment on both the list and the rules to be reviewed.

Dated: January 3, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-488 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-A145

Survivors and Dependents Education: Extension of Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It restores provisions that govern the extension of the period eligible spouses and surviving spouses have to use Survivors' and Dependents' Educational Assistance (DEA). These provisions previously were removed by error. Also, this document requests Paperwork Reduction Act comments concerning the requirement that a spouse or surviving spouse must apply for the extension.

DATES: Comments must be received on or before March 10, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A145". All

written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on May 24, 1996 (61 FR 26107), VA published a final rule removing many regulatory provisions. As explained in that document, many of the provisions were removed because they contained "sunsetting" provisions authorized by the Vietnam Era GI Bill. No benefits can be paid under the Vietnam Era GI Bill for training that occurred after December 31, 1989.

Among those provisions that were removed was § 21.1043. This section provided that if a veteran training under the Vietnam Era GI Bill could not complete a program of education within the ten-year period due to a physical or mental disability that is not the result of willful misconduct, that period (the delimiting period) could be extended.

A similar extension is authorized by statute for eligible spouses and surviving spouses under DEA. Unfortunately, by removing § 21.1043, VA inadvertently removed the provisions that governed whether such a spouse or surviving spouse could receive an extension of the delimiting period, since § 21.3046(e) states that the provisions of § 21.1043 are to be used to determine whether the extension should be granted.

To correct this error, VA would restate the provisions of the former § 21.1043 in the appropriate places in part 21, subpart C, since that subpart governs DEA claims. The definition formerly contained in § 21.1043 would be restated in § 21.3021. The remainder of § 21.1043 would be restated in a new section, § 21.3047. References would be updated and some minor changes would be made for clarification. There would be no substantive changes.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the provisions of the proposed 38 CFR 21.3047 would include a collection of information. Accordingly, as required by the Act at section 3507(d), VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A145".

Title: Application for an Extension of Eligibility Period under Survivors' and Dependents' Educational Assistance.

Summary of collection of information: The collection of information in the proposed § 21.3047 implements a statutory provision that requires that an individual who wishes to receive a benefit must apply for it.

Description of need for information and proposed use of information: A spouse or surviving spouse under DEA may qualify for an extension of her or his eligibility period if training during that period was medically infeasible. VA needs an application for this extension in order to learn who wants the extension. VA may need medical evidence in order to determine if training was medically infeasible and to determine the time when training became medically feasible.

Description of likely respondents: Eligible spouses and surviving spouses who would like an extension of the delimiting period under DEA.

Estimated number of respondents: 100.

Estimated frequency of responses: Once.

Estimated total annual reporting and recordkeeping burden: 100 hours of reporting burden. VA does not believe that there will be an additional recordkeeping burden.

Estimated average burden per collection: 60 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of

the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule affects only individuals. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 64.117.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 9, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts C and F) is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566.

2. In §21.3021, paragraph (l) is redesignated as paragraph (m); and new paragraph (l) is added, to read as follows:

§ 21.3021 Definitions.

* * * * *

(l) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

- (i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and
- (ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

* * * * *

§ 21.3046 [Amended]

3. In §21.3046, paragraph (e) is removed.

4. Section 21.3047 is added, to read as follows:

§ 21.3047 Extended period of eligibility due to physical or mental disability.

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by §21.3046 provided the eligible spouse or surviving spouse:

- (i) Applies for the extension within the appropriate time limit;
- (ii) Was prevented from initiating or completing the chosen program of

education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by §21.3046(c); and

(2) Must be on or before the 90th day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the 90th day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or

surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046(c); or

(iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the eligible spouse's or surviving spouse's training became medically feasible; or

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046.

(Authority: 38 U.S.C. 3512(b))

Subpart F—Education Loans

5. The authority citation for subpart F continues to read as follows:

Authority: 38 U.S.C. 501, 3537, 3698, 3699.

§ 21.4501 [Amended]

6. In § 21.4501, paragraphs (b)(1), (b)(2)(iv), (b)(2)(v)(A), (b)(2)(v)(B), (c)(1), and (c)(3) are each amended by removing "(d)" and adding, in its place, "(d), or § 21.3047".

[FR Doc. 97-437 Filed 1-8-97; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50610C; FRL-5578-6]

Certain Acrylate Esters; Withdrawal of Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a proposed significant new use rule (SNUR) for certain acrylate substances based on receipt of new toxicity data. The data, which were generated through a voluntary industry testing program, resulted in a significant lowering of hazard concerns for acrylate substances such that EPA can no longer support a finding that activities designated by the proposed SNUR are significant new uses under section 5(a) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460; telephone: (202) 554-1404; TDD: (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 22, 1993 (58 FR 61649) (FRL-4186-2), EPA proposed a SNUR to be codified at 40 CFR 721.340 establishing significant new uses for certain acrylate esters. EPA is withdrawing this proposal in light of additional toxicity data received for acrylate substances

I. Rulemaking Record

The rulemaking record for the proposed rule which is being withdrawn by today's rule was designated as OPPTS-50610. That record includes information considered by the Agency in developing the proposed rule and includes the test data to which the Agency has responded with this notice of withdrawal.

II. Background

EPA is withdrawing the significant new use and recordkeeping requirements proposed for certain acrylate esters under 40 CFR part 721, subpart E. Further background information for the substances is contained in the rulemaking record referenced in Unit I of this preamble.

EPA proposed a SNUR which was to be codified at 40 CFR 721.340, establishing certain significant new uses for all acrylate substances falling within

the "acrylate category" description, based on EPA's systematic regulation of this category of chemicals. The proposed SNUR was intended to serve as a chemical category-wide substitute for the Agency's current practice of regulating individual acrylate substances one-at-a-time as those substances underwent premanufacture notice review pursuant to section 5(e) of TSCA. The proposed SNUR would have saved time and resources for both EPA and PMN submitters. The Agency believed that available data were sufficient to warrant regulation, including the promulgation of a category SNUR, based on the potential unreasonable risk of cancer from uncontrolled exposure to acrylates.

While the final rule was being developed, a voluntary testing program was being developed jointly by EPA and industry and was subsequently conducted by a group of acrylate manufacturers affected by acrylate regulation, the Specialty Acrylates Manufacturers (SAM). EPA and SAM negotiated this voluntary testing program for this category of chemicals based on SAM's commitment to conduct toxicity testing for acrylate and methacrylate substances. The purpose of the testing program was to cooperatively supply test data to address EPA's health concerns for the acrylate category. SAM conducted several short term studies on a series of acrylates and two long-term dermal bioassays on Triethylene Glycol Diacrylate (TREGDA) and Triethylene Glycol Dimethacrylate (TREGDMA). This testing was intended to correlate activity in certain short term assays with longer-term carcinogenic potential, as well as to better characterize the toxicity of the acrylate chemical category generally.

After reviewing the test data generated by the voluntary testing program, including the long term bioassays, EPA found that neither TREGDA nor TREGDMA were carcinogenic under the conditions of the studies. Based on the TREGDMA bioassay and data for other methacrylates, EPA no longer supports the carcinogenicity concern for methacrylates. However, in the case of TREGDA, the maximum tolerated dose (MTD) may not have been attained because skin irritation noted in the range finding studies was not present over the entire term of the bioassay. Therefore, because the MTD may not have been attained in the TREGDA study, and based on available data for other acrylates, EPA still has concerns that some acrylates may be carcinogenic after repeated application at higher doses.

Based on these findings EPA's regulation of the acrylates category under TSCA section 5(e) has changed. EPA no longer regulates these chemicals as a category for health concerns. However, if an acrylate or methacrylate substance is structurally similar to a substance for which EPA has positive toxicity data, EPA may regulate that substance under section 5(e) of TSCA based on its potential unreasonable risk. Henceforth this will be done on a case-by-case basis and is expected to effectively eliminate regulation of most acrylates and methacrylates for health concerns, especially higher molecular weight and polymeric substances. EPA will continue to evaluate the acrylate category for ecotoxicity; although these substances typically have low environmental releases during their manufacture, processing, and use which will continue to limit unreasonable risk findings under section 5(e) of TSCA for the environmental toxicity of this class of chemicals.

Despite the fact that EPA no longer expects to make a potential unreasonable risk finding under TSCA section 5(e) for most new acrylates and methacrylates, EPA still recommends the use of personal protective equipment for workers exposed to new or existing chemical acrylates and methacrylates. In the case of dermal exposure, impervious gloves and protective clothing are recommended, and in the case of inhalation exposure, an appropriate National Institute of Occupational Safety and Health (NIOSH)-approved respirator or engineering controls to reduce or eliminate workplace exposures.

III. Objectives and Rationale of Withdrawing the Proposed Rule

Based on the review of acrylate esters that are the subject of this withdrawal of a proposed SNUR, EPA concluded that for these substances, regulation was warranted under section 5(a) of TSCA pending the development of information sufficient to make reasoned evaluations of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is referenced in Unit II of this preamble. Based on these findings, a SNUR was proposed pending certain toxicity testing.

EPA reviewed the toxicity testing conducted for certain acrylate substances, that were the result of a voluntary acrylates testing program and determined that it could no longer support a finding that activities designated by the proposed SNUR are

significant new uses under section 5(a) of TSCA.

In light of the above, EPA is withdrawing the proposed SNUR provisions for acrylate esters.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

For the reasons set forth in the preamble, the proposed rule published at 58 FR 61649, November 22, 1993, is withdrawn.

Dated: December 26, 1996.

Paul J. Campanella,

*Acting Director, Chemical Control Division,
Office of Pollution Prevention and Toxics.*

[FR Doc. 97-513 Filed 1-8-97; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300-6369-02; I.D. 120996A]

RIN 0648-AJ30

Magnuson Act Provisions; Essential Fish Habitat (EFH)

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

ACTION: Advance notice of proposed rulemaking; notice of availability; request for comments.

SUMMARY: NMFS has developed a framework for guidelines to implement the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as mandated by the Sustainable Fisheries Act. This framework will be expanded into guidelines, by regulation, that will assist Fishery Management Councils (Councils) in the description and identification of essential fish habitat (EFH), including adverse

impacts on EFH, in fishery management plans (FMPs) and in the consideration of actions to conserve and enhance EFH. An advance notice of proposed rulemaking was published on November 8, 1996, soliciting comments to assist NMFS in developing this framework and eventually the guidelines by regulation. NMFS now announces the availability of this framework and invites interested persons to submit written comments, information, and suggestions.

DATES: Written comments must be received on or before February 12, 1997.

ADDRESSES: Comments should be sent to the Director, Office of Habitat Conservation, Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282. A copy of the framework is available (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713-2325.

SUPPLEMENTARY INFORMATION:

A copy of the framework is available via the Internet at: <http://kingfish.ssp.nmfs.gov/rschreib/html/anpr2.htm>, or by contacting one of the following NMFS Offices:

Office of Habitat Conservation, Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282; 301/713-2325.

Northeast Regional Office, Attention: Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930; 508/281-9328.

Southeast Regional Office, Attention: Habitat Conservation Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702; 813/570-5317.

Southwest Regional Office, Attention: Habitat Conservation Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802; 310/980-4041.

Northwest Regional Office, Attention: Habitat Conservation Branch, 911 NE. 11th Avenue, Room 620, Portland, OR 97232; 503/230-7235.

Alaska Regional Office, Attention: Protected Resources Management Division, 9109 Mendenhall Road, P.O. Box 21668, Juneau, AK 99801; 907/586-7235.

NMFS invites comments and information to support efforts to implement the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) mandate to develop guidelines by regulation to describe and identify EFH, including adverse impacts and conservation and enhancement actions, for fisheries managed by any Council or NMFS.

Specifically, NMFS is interested in receiving comments and information on: (1) The proposed tiered approach to the description and identification of EFH; (2) the proposed approach to the identification of adverse impacts to EFH; (3) the use of geographic information systems to display EFH; (4) potential impacts of fishing on EFH and conservation and management measures to minimize or mitigate those impacts; (5) the proposed process for NMFS to provide EFH recommendations to the Councils; (6) the proposed process for Federal and state agencies to consult

with NMFS on activities that may adversely impact EFH; (7) the proposed procedures for NMFS to provide EFH conservation recommendations to Federal and state agencies; (8) the proposed process for Councils to comment on Federal and state activities that may adversely affect EFH; and (9) the proposed process for NMFS and the Councils to coordinate consultations and recommendations. NMFS also invites comments on which portions of the framework should be adopted by regulation.

Background and rationale were provided in the previous advance notice of proposed rulemaking (61 FR 57843, November 8, 1996) and are not repeated here.

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

Dated: January 3, 1997.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97-515 Filed 1-8-96; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 62, No. 6

Thursday, January 9, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96-091-1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the exportation of animals and animal products.

DATES: Comments on this notice must be received by March 10, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 96-091-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please send an original and three copies, and state that your comments refer to Docket 96-091-1. 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: For information regarding the import health requirements of other countries for

animals and animal products exported from the United States, contact Dr. Andrea Morgan, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737-1231, (301) 734-8068; or e-mail: amorgan@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Support Services Specialist, at (301) 734-5086.

SUPPLEMENTARY INFORMATION:

Title: United States Origin Health Certificate.

OMB Number: 0579-0020.

Expiration Date of Approval: 6/30/97.

Type of Request: Extension of a currently approved information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission to facilitate the export of U.S. animals and products, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service, Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Most countries require a certification that our animals are disease free. This certification generally must carry the USDA seal and be endorsed by an authorized veterinarian. VS Form 17-140, United States Origin Health Certificate, is generally used to meet these requirements. The requirements concerning origin health certificates for animals intended for export from the United States are contained in 9 CFR part 91. These regulations are authorized by 21 U.S.C. 112.

We are seeking approval from the Office of Management and Budget (OMB) to continue the use of this form. The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5002 hours per response.

Respondents: State and Federal veterinarians, accredited veterinarians.

Estimated Number of Respondents: 2,800.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 21,009 hours.

All responses to this notice will be summarized and included in the request for OMB approval of the information collection.

Done in Washington, DC, this 2nd day of January 1997.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-426 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-34-P

Food and Consumer Service

Summer Food Service Program for Children; Program Reimbursement for 1997

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program. In addition, this year's operating rates are lower as a result of amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305-2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (NSLA) (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1997 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index (CPI) for All Urban Consumers for the period November 1995 through November 1996.

The operating rates being adjusted in this notice are lower than those which were in effect during the 1996 Program. This is due to the enactment of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, on August 22, 1996. Section 706(b) of this statute amended section 13(b) of the NSLA to set new maximum SFSP operating rates and to require the rates to be adjusted down to the nearest whole cent. This resulted in the lowering of the rates from \$2.1675 to \$1.97 for lunches and suppers, from \$1.2075 to \$1.13 for breakfasts, and from \$.5700 to \$.4600 for supplements. Finally, after adjusting

these rates by 3 percent (to reflect an increase in the CPI for food away from home, from 150.2 in November 1995 to 154.7 in November 1996), the resulting operating rates were rounded down to the nearest whole cent, as opposed to the nearest quarter cent, as was previously the case.

The new 1997 reimbursement rates in dollars are as follows:

MAXIMUM PER MEAL REIMBURSEMENT RATES

Operating Costs	
Breakfast	\$1.16
Lunch or Supper	2.02
Supplement47
Administrative Costs	
a. For meals served at rural or self-preparation sites:	
Breakfast115
Lunch or Supper2125
Supplement0575
b. For meals served at other types of sites:	
Breakfast09
Lunch or Supper175
Supplement045

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served.

The Department points out that Public Law 104-193 established new maximum operating rates for all SFSP sponsors but did not change the base administrative rates or the rounding method for those rates. The administrative rates being adjusted in this notice are the rates which were in effect during 1996. In addition, the SFSP administrative reimbursement rates continue to be adjusted to the nearest quarter-cent as has previously been the case.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: December 30, 1996.

George A. Braley,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97-485 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-30-P

Forest Service

Southwest Washington Provincial Advisory Committee Meeting; Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on January 22 and 23, 1997, in Woodland, Washington, at the Oak Tree Restaurant, near Exit No. 21 on Interstate 5. The purpose of the meeting is to update and finalize subcommittee tasks from previous meetings, provide information on previous meeting topics, and review and prioritize the 1997 Watershed Restoration Program. On January 22, the meeting will begin at 9 a.m. and continue until 4:30 p.m. On January 23, the meeting will begin at 8 a.m. and conclude at 3:30 p.m. Agenda items to be covered include: January 22: (1) Subcommittee recommendations on Advisory Committee work priorities and field trips, (2) Response and discussion of November's topic on "What the Forest Looks Like," (3) Presentations on Partnerships and Special Forest Products, (4) Executive Committee response to Advisory Committee vision and role statements, (5) Subcommittee update on socioeconomic health measures, and (6) Public Open Forum. January 23: (1) Review and prioritize watershed restoration projects for 1997 and (2) Public open forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (6) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 750-5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., P.O. Box 8944, Vancouver, WA 98668-8944.

Dated: January 2, 1997.

Tom Knappenberger,

Acting Forest Supervisor.

[FR Doc. 97-465 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service; Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for a revision to a currently approved information collection, the Aquaculture Survey.

DATES: Comments on this notice must be received by [insert date 65 days from publication] to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250-2000, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Aquaculture Surveys.

OMB Number: 0535-0150.

Expiration Date of Approval: June 30, 1997.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production.

The Aquaculture Surveys collect information on trout sales, catfish processed, inventory, acreage, and sales. Survey results are used by government agencies in planning farm programs. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 5,550.

Estimated Total Annual Burden on Respondents: 1,480 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720-5778.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4162 South Building, Washington, D.C. 20250-2000. 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.

Signed at Washington, D.C., January 2, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97-493 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-20-M

National Agricultural Statistics Service; Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the List Sampling Frame.

DATES: Comments on this notice must be received by March 17, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250-2000, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: List Sampling Frame.

OMB Number: 0535-0140.

Expiration Date of Approval: June 30, 1997.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production.

The Listing Sampling Frame is used to maintain as complete a list as possible of farm operations. The goal is to produce relatively complete, current, and unduplicated lists of names used for sampling purposes to conduct surveys of agricultural operations. Information from this survey is used by government agencies in planning, farm policy analysis, and program administration. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

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

Respondents: Farms.

Estimated Number of Respondents: 205,000.

Estimated Total Annual Burden on Respondents: 17,083 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720-5778.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room

4162 South Building, Washington, D.C. 20250-2000. 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.

Signed at Washington, D.C., January 2, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97-494 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-20-M

National Agricultural Statistics Service; Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Milk and Milk Products Surveys.

DATES: Comments on this notice must be received by [insert date 65 days from publication] to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250-2000, (202) 720-4333.

SUPPLEMENTARY INFORMATION:

Title: Milk and Milk Products Surveys.

OMB Number: 0535-0020.

Expiration Date of Approval: May 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Services is to prepare and issue State and national estimates of crop and livestock production. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the Nation. Data are gathered for milk production, dairy products, evaporated and condensed

milk, manufactured dry milk, and manufactured whey products. Milk production and manufactured dairy products statistics are used by the U.S. Department of Agriculture to help administer programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. Approval to add a monthly Manufacturer's Cheddar Cheese Report to the information collection is requested.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 159,000.

Estimated Total Annual Burden on Respondents: 18,500 hours.

Copies of this information collection and repeated instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720-5778.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4162 South Building, Washington, D.C. 20250-2000. 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.

Signed at Washington, D.C., January 2, 1997.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 97-495 Filed 1-8-97; 8:45 am]

BILLING CODE 3410-20-M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Releases, Corrections, and Reconsideration

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on December 16-17, 1996, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724-0088, fax (202) 724-0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On December 16-17, 1996, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124-10175-10009; 2; 0; n/a
124-10178-10054; 3; 0; n/a
124-10178-10385; 2; 0; n/a
124-10178-10395; 3; 0; n/a
124-10178-10405; 10; 0; n/a
124-10178-10432; 3; 0; n/a
124-10184-10329; 1; 0; n/a
124-10186-10053; 1; 0; n/a
124-10258-10499; 17; 0; n/a
124-10261-10409; 6; 0; n/a

CIA Documents: Open in Full

104-10001-10163; 24; 0; n/a
 104-10004-10275; 2; 0; n/a
 104-10005-10188; 3; 0; n/a
 104-10015-10432; 6; 0; n/a
 104-10015-10433; 6; 0; n/a
 104-10016-10016; 5; 0; n/a
 104-10055-10026; 4; 0; n/a
 104-10055-10103; 2; 0; n/a
 104-10055-10104; 4; 0; n/a
 104-10063-10246; 8; 0; n/a
 104-10068-10150; 6; 0; n/a

HSCA Documents: Open in Full

180-10072-10179; 1; 0; n/a
 180-10087-10108; 5; 0; n/a
 180-10092-10065; 2; 0; n/a
 180-10103-10473; 1; 0; n/a
 180-10117-10262; 1; 0; n/a

FBI Documents: Postponed in Part

124-10006-10292; 4; 1; 12/2006
 124-10126-10314; 48; 11; 07/2006
 124-10159-10358; 10; 1; 10/2017
 124-10171-10424; 0; 1; 10/2017
 124-10177-10234; 5; 13; 12/2006
 124-10178-10184; 2; 12; 12/2006
 124-10178-10188; 8; 3; 12/2006
 124-10178-10389; 1; 1; 12/2006
 124-10178-10416; 3; 5; 12/2006
 124-10233-10236; 39; 1; 12/2006
 124-10238-10287; 3; 1; 10/2017
 124-10258-10491; 60; 4; 12/2006

CIA Documents: Postponed in Part

104-10004-10213; 19; 9; 05/1997
 104-10015-10056; 4; 1; 12/2006
 104-10015-10057; 13; 1; 12/2006
 104-10051-10106; 4; 4; 05/1997
 104-10051-10161; 2; 2; 10/2017
 104-10052-10019; 8; 2; 05/2001
 104-10052-10045; 4; 1; 05/2001
 104-10052-10275; 74; 4; 12/2006
 104-10054-10007; 85; 4; 12/2006
 104-10055-10025; 6; 1; 12/2006
 104-10055-10036; 2; 2; 05/1997
 104-10055-10040; 12; 2; 12/2006
 104-10055-10072; 83; 4; 12/2006
 104-10055-10102; 6; 1; 12/2006
 104-10056-10432; 15; 6; 12/2006
 104-10057-10116; 1; 14; 12/2006
 104-10059-10223; 35; 8; 12/2006
 104-10059-10231; 24; 20; 05/1997
 104-10059-10236; 7; 8; 05/1997
 104-10059-10395; 3; 4; 05/1997
 104-10061-10117; 2; 1; 12/2006
 104-10061-10127; 10; 7; 05/1997
 104-10061-10260; 5; 7; 05/1997
 104-10061-10292; 9; 5; 05/1997
 104-10062-10073; 17; 2; 05/1997
 104-10062-10100; 4; 3; 12/2006
 104-10062-10162; 14; 1; 05/1997
 104-10063-10058; 1; 1; 10/2017
 104-10063-10293; 5; 7; 12/2006
 104-10063-10302; 5; 3; 12/2006
 104-10063-10303; 1; 1; 10/2017
 104-10063-10305; 13; 8; 12/2006
 104-10063-10308; 0; 1; 05/1997
 104-10063-10321; 12; 12; 12/2006

104-10063-10325; 4; 4; 12/2006
 104-10063-10329; 6; 5; 12/2006
 104-10063-10335; 5; 5; 12/2006
 104-10063-10337; 6; 3; 12/2006
 104-10063-10338; 9; 14; 12/2006
 104-10063-10350; 2; 4; 12/2006
 104-10063-10389; 0; 4; 10/2017
 104-10063-10390; 0; 1; 05/1997
 104-10063-10393; 3; 4; 12/2006
 104-10063-10421; 0; 1; 05/1997
 104-10065-10008; 2; 5; 05/1997
 104-10065-10061; 4; 4; 10/2017
 104-10065-10105; 5; 5; 05/1997
 104-10065-10113; 0; 5; 10/2017
 104-10065-10115; 4; 5; 05/1997
 104-10065-10121; 15; 3; 12/2006
 104-10065-10122; 7; 1; 12/2006
 104-10065-10132; 7; 7; 05/1997
 104-10065-10134; 3; 7; 05/1997
 104-10065-10136; 13; 11; 05/1997
 104-10065-10137; 7; 4; 05/1997
 104-10065-10138; 13; 3; 05/1997
 104-10065-10139; 8; 3; 05/1997
 104-10065-10140; 4; 4; 12/2006
 104-10065-10144; 5; 3; 05/1997
 104-10065-10146; 9; 8; 12/2006
 104-10065-10151; 2; 3; 05/2001
 104-10065-10152; 2; 2; 10/2017
 104-10065-10158; 8; 10; 12/2006
 104-10065-10160; 6; 3; 05/1997
 104-10065-10163; 2; 3; 05/1997
 104-10065-10195; 2; 4; 05/2001
 104-10065-10199; 11; 3; 05/1997
 104-10065-10238; 0; 8; 05/2001
 104-10065-10299; 0; 1; 05/1997
 104-10065-10319; 5; 5; 05/1997
 104-10065-10323; 6; 8; 05/1997
 104-10065-10348; 7; 4; 05/1997
 104-10065-10360; 5; 10; 12/2006
 104-10065-10364; 2; 6; 05/2001
 104-10065-10367; 1; 3; 05/2001
 104-10065-10369; 1; 3; 05/1997
 104-10065-10386; 2; 15; 05/1997
 104-10065-10394; 0; 1; 05/1997
 104-10066-10000; 2; 3; 10/2017
 104-10066-10032; 2; 3; 05/1997
 104-10066-10132; 14; 20; 12/2006
 104-10066-10169; 4; 1; 05/1997
 104-10066-10183; 2; 5; 05/1997
 104-10066-10184; 18; 1; 12/2006
 104-10066-10186; 6; 2; 05/1997
 104-10066-10225; 11; 4; 10/2017
 104-10066-10227; 2; 4; 05/1997
 104-10066-10228; 0; 3; 05/1997
 104-10066-10233; 12; 11; 12/2006
 104-10066-10236; 8; 4; 05/1997
 104-10066-10244; 4; 1; 05/1997
 104-10066-10245; 4; 6; 10/2017
 104-10066-10252; 1; 1; 10/2017
 104-10066-10253; 10; 8; 12/2006
 104-10067-10029; 0; 2; 05/1997
 104-10067-10056; 8; 4; 05/1997
 104-10067-10071; 13; 4; 05/1997
 104-10067-10080; 3; 6; 12/2006
 104-10067-10087; 8; 4; 05/1997
 104-10067-10103; 1; 2; 05/1997
 104-10067-10134; 0; 7; 10/2017
 104-10067-10138; 0; 1; 05/1997
 104-10067-10143; 0; 2; 05/1997

104-10067-10151; 0; 2; 05/1997
 104-10067-10156; 0; 2; 05/1997
 104-10067-10166; 3; 3; 05/1997
 104-10067-10197; 2; 1; 12/2006
 104-10067-10211; 0; 2; 05/1997
 104-10067-10212; 13; 4; 05/1997
 104-10067-10215; 6; 1; 05/1997
 104-10067-10240; 28; 3; 05/1997
 104-10067-10245; 2; 1; 10/2017
 104-10067-10369; 18; 3; 05/1997
 104-10067-10383; 0; 2; 10/2017
 104-10067-10388; 7; 1; 10/2017
 104-10067-10404; 2; 5; 12/2006
 104-10067-10413; 47; 1; 10/2017
 104-10068-10001; 6; 2; 05/1997
 104-10068-10010; 5; 2; 05/1997
 104-10068-10070; 11; 3; 05/1997
 104-10068-10114; 18; 6; 12/2006
 104-10068-10116; 75; 28; 12/2006
 104-10068-10121; 19; 8; 05/1997
 104-10068-10122; 20; 8; 12/2006
 104-10068-10124; 4; 4; 12/2006
 104-10068-10125; 4; 5; 05/2001
 104-10068-10127; 6; 1; 12/2006
 104-10068-10130; 4; 8; 12/2006
 104-10068-10131; 12; 1; 12/2006
 104-10068-10134; 6; 1; 05/1997
 104-10068-10138; 4; 1; 12/2006
 104-10068-10140; 7; 2; 05/1997
 104-10068-10141; 1; 2; 05/1997
 104-10068-10142; 7; 3; 10/2017
 104-10068-10145; 24; 2; 12/2006
 104-10068-10151; 5; 7; 12/2006
 104-10068-10152; 9; 9; 05/1997
 104-10068-10154; 13; 18; 12/2006
 104-10068-10155; 10; 7; 05/1997
 104-10068-10156; 63; 95; 12/2006
 104-10068-10160; 8; 11; 05/1997
 104-10068-10162; 5; 3; 10/2017
 104-10068-10163; 10; 2; 10/2017
 104-10068-10172; 3; 3; 12/2006
 104-10068-10177; 8; 1; 12/2006
 104-10068-10178; 5; 3; 12/2006
 104-10068-10179; 12; 2; 12/2006
 104-10068-10181; 6; 2; 12/2006
 104-10068-10184; 26; 1; 12/2006
 104-10068-10185; 7; 1; 12/2006
 104-10068-10186; 7; 1; 05/1997
 104-10068-10187; 18; 8; 12/2006
 104-10068-10188; 31; 8; 12/2006

HSCA Documents: Postponed in Part

180-10070-10404; 1; 6; 05/1997
 180-10078-10183; 0; 1; 10/2017
 180-10078-10184; 1; 1; 10/2017
 180-10078-10185; 0; 2; 10/2017
 180-10078-10186; 0; 2; 10/2017
 180-10078-10187; 0; 2; 10/2017
 180-10078-10188; 0; 2; 10/2017
 180-10078-10190; 0; 1; 10/2017
 180-10078-10191; 0; 2; 10/2017
 180-10078-10204; 0; 1; 10/2017
 180-10078-10271; 1; 16; 05/1997
 180-10078-10383; 0; 1; 10/2017
 180-10082-10078; 0; 1; 10/2017
 180-10102-10097; 0; 1; 10/2017
 180-10104-10394; 5; 5; 05/1997
 180-10107-10127; 0; 1; 10/2017
 180-10110-10006; 0; 19; 05/1997

180-10110-10026; 1; 7; 05/1997
 CIA Documents: Postponed in Full
 104-10009-10224; 0; 1; 07/1997
 104-10012-10080; 0; 1; 07/1997

Notice of Additional Releases

After consultation with appropriate Federal Agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full: 124-10003-10494; 124-10023-10300; 124-10132-10092; 124-10173-10088; 124-10181-10229; 124-10187-10165; 124-10246-10493; 124-10273-10215

After consultation with appropriate Federal Agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full:

180-10025-10228; 180-10025-10235; 180-10065-10377; 180-10067-10293; 180-10067-10397; 180-10067-10400; 180-10067-10429; 180-10067-10433; 180-10067-10473; 180-10067-10481; 180-10068-10380; 180-10068-10383; 180-10068-10449; 180-10068-10462; 180-10069-10452; 180-10070-10247; 180-10072-10323; 180-10074-10400; 180-10074-10439; 180-10075-10042; 180-10075-10057; 180-10075-10060; 180-10076-10016; 180-10076-10295; 180-10076-10427; 180-10076-10428; 180-10076-10429; 180-10076-10430; 180-10076-10483; 180-10076-10484; 180-10076-10495; 180-10078-10021; 180-10078-10022; 180-10078-10027; 180-10078-10029; 180-10078-10030; 180-10078-10031; 180-10078-10032; 180-10078-10033; 180-10078-10034; 180-10078-10035; 180-10078-10036; 180-10078-10037; 180-10078-10075; 180-10078-10077; 180-10080-10016; 180-10080-10170; 180-10080-10171; 180-10080-10404; 180-10080-10471; 180-10080-10476; 180-10081-10397; 180-10081-10398; 180-10081-10400; 180-10081-10401; 180-10081-10492; 180-10082-10241; 180-10082-10242; 180-10082-10243; 180-10082-10487; 180-10083-10103; 180-10085-10124; 180-10085-10326; 180-10085-10346; 180-10085-10379; 180-10086-10259; 180-10086-10260; 180-10086-10261; 180-10086-10262;

180-10086-10270; 180-10086-10271; 180-10086-10274; 180-10086-10275; 180-10086-10276; 180-10086-10277; 180-10087-10311; 180-10087-10411; 180-10087-10412; 180-10088-10103; 180-10088-10104; 180-10089-10025; 180-10089-10281; 180-10090-10127; 180-10090-10130; 180-10090-10132; 180-10091-10129; 180-10091-10214; 180-10092-10032; 180-10094-10361; 180-10095-10115; 180-10095-10147; 180-10095-10308; 180-10096-10254; 180-10096-10373; 180-10097-10290; 180-10099-10092; 180-10099-10304; 180-10099-10434; 180-10099-10492; 180-10101-10078; 180-10103-10079; 180-10103-10266; 180-10103-10460; 180-10103-10479; 180-10104-10273; 180-10104-10274; 180-10104-10306; 180-10104-10307; 180-10104-10308; 180-10104-10309; 180-10104-10310; 180-10104-10311; 180-10104-10312; 180-10104-10313; 180-10104-10314; 180-10104-10315; 180-10104-10402; 180-10104-10463; 180-10105-10079; 180-10105-10174; 180-10105-10185; 180-10105-10216; 180-10105-10297; 180-10106-10047; 180-10106-10186; 180-10106-10187; 180-10106-10188; 180-10106-10189; 180-10106-10244; 180-10106-10360; 180-10107-10160; 180-10107-10499; 180-10108-10078; 180-10108-10212; 180-10108-10316; 180-10109-10153; 180-10109-10160; 180-10109-10161; 180-10109-10162; 180-10109-10163; 180-10109-10164; 180-10109-10166; 180-10109-10167; 180-10109-10168; 180-10109-10169; 180-10109-10170; 180-10109-10171; 180-10109-10172; 180-10109-10173; 180-10109-10174; 180-10109-10175; 180-10109-10176; 180-10109-10177; 180-10109-10178; 180-10109-10179; 180-10109-10180; 180-10109-10181; 180-10109-10182; 180-10109-10183; 180-10109-10184; 180-10109-10185; 180-10109-10186; 180-10109-10187; 180-10109-10188; 180-10109-10189; 180-10109-10190; 180-10109-10191; 180-10109-10192; 180-10109-10193; 180-10109-10194; 180-10109-10195; 180-10109-10196; 180-10109-10197; 180-10109-10198; 180-10109-10199; 180-10109-10200; 180-10109-10201; 180-10109-10202; 180-10109-10203; 180-10109-10204; 180-10109-10205;

180-10109-10206; 180-10109-10207; 180-10109-10208; 180-10109-10209; 180-10109-10210; 180-10109-10211; 180-10109-10212; 180-10109-10213; 180-10109-10214; 180-10109-10215; 180-10109-10216; 180-10109-10217; 180-10109-10218; 180-10109-10219; 180-10109-10220; 180-10109-10221; 180-10109-10222; 180-10109-10223; 180-10109-10224; 180-10109-10225; 180-10109-10226; 180-10109-10227; 180-10109-10228; 180-10109-10229; 180-10109-10230; 180-10109-10231; 180-10109-10232; 180-10109-10233; 180-10109-10234; 180-10109-10235; 180-10109-10236; 180-10109-10237; 180-10109-10238; 180-10109-10239; 180-10109-10240; 180-10109-10241; 180-10109-10242; 180-10109-10243; 180-10109-10244; 180-10109-10245; 180-10109-10246; 180-10109-10247; 180-10109-10262; 180-10109-10263; 180-10110-10236; 180-10112-10045; 180-10112-10325; 180-10112-10353; 180-10112-10398; 180-10112-10423; 180-10112-10487; 180-10113-10098; 180-10113-10103; 180-10113-10118; 180-10113-10364; 180-10113-10404; 180-10113-10407; 180-10113-10408; 180-10113-10409; 180-10114-10064; 180-10114-10091; 180-10114-10129; 180-10114-10178; 180-10114-10250; 180-10115-10047; 180-10115-10065; 180-10115-10208; 180-10115-10215; 180-10115-10258; 180-10115-10318; 180-10115-10321; 180-10115-10347; 180-10115-10348; 180-10116-10414; 180-10117-10250; 180-10118-10063; 180-10118-10071; 180-10118-10072; 180-10118-10073; 180-10118-10091; 180-10118-10098; 180-10118-10099; 180-10120-10323; 180-10120-10444; 180-10131-10319; 180-10147-10272; 180-10147-10273; 180-10147-10277; 180-10147-10278; 180-10147-10280; 180-10147-10281; 180-10147-10282; 180-10147-10283; 180-10147-10284

Notice of Corrections

On September 27, 1996, the Review Board made formal determinations that were published in the October 18, 1996 Federal Register (FR Doc. 96-26742, 61 FR 54411). For that notice, make the following corrections:

Record number	Previously published	Correct data
154-10002-10415	5; 2; 10/2017	4; 3; 12/2006

Notice of Reconsideration

On December 16-17, 1996, the FBI provided additional evidence to the Review Board regarding one record that previously had been the subject of

Review Board determinations. Upon receiving and evaluating this additional evidence, the Review Board voted to sustain postponements as follows from

original Federal Register Notice 96-31046, 61 FR 64662:

Record number	Number of original releases	Number of original postponements	Number of revised releases	Number of revised postponements	Date of revised re-view
124-10126-10314	47	9	48	11	11/2006

On November 14, 1996, the Review Board made formal determinations that were published in the December 6, 1996 Federal Register (FR Doc. 96-31046, 61 FR 64662). At its December 16-17, 1996 meeting, the Review Board voted to withdraw its votes on the following NSA documents for reconsideration at a future meeting: 144-10001-10058, 144-10001-10119.

Dated: January 3, 1997.

David G. Marwell,
Executive Director.

[FR Doc. 97-492 Filed 1-8-97; 8:45 am]

BILLING CODE 6118-01-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 17, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

- I. Approval of Agenda
- II. Approval of Minutes of December 6, 1996 Meeting
- III. Announcements
- IV. Staff Director's Report
- V. Project Planning FY 1999
- VI. Future Agenda Items

CONTACT PERSON FOR FURTHER

INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97-609 Filed 1-7-97; 11:48 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)-2-94]

Foreign-Trade Zone 50—Long Beach, CA; Withdrawal of Request for Export Manufacturing Authority J.M. William & Company, Inc. (Poly/Cotton Bed Linens)

Notice is hereby given of the withdrawal of the request submitted by the Port of Long Beach, California,

grantee of FTZ 50, requesting authority on behalf of the J.M. William & Company, Inc., to manufacture textile bed linens under zone procedures for export within FTZ 50. The request was filed on May 20, 1994 (59 FR 29410, 6/7/94).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: December 30, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-501 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 860]

Grant of Authority for Subzone Status; Federal-Mogul World Trade, Inc., (Vehicle Parts Warehouse/Distribution Facility), Ft. Lauderdale, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from Broward County, Florida, grantee of Foreign-Trade Zone 25, for authority to establish special-purpose subzone status at the vehicle parts warehouse/distribution facility of Federal-Mogul World Trade, Inc., in Ft. Lauderdale, Florida was filed by the Board on January 19, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 5-96, 61 FR 3000, 1/30/96); and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 25A) at the Federal-Mogul World Trade, Inc., facility, in Ft. Lauderdale, Florida, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-502 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 862]

Grant of Authority for Subzone Status; Texaco Inc., (Oil Refinery), Butler County, KS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Commissioners of Sedgwick County, Kansas, grantee of Foreign-Trade Zone 161, for authority to establish special-purpose subzone status at the oil refinery complex of Texaco

Inc., in Butler County, Kansas, was filed by the Board on April 2, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 26-96, 61 FR 17874, 4-23-96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 161B) at the oil refinery complex of Texaco Inc., in Butler County, Kansas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050, # 2710.00.2500 and # 2710.00.4500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 97-504 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 865]

Grant of Authority for Subzone Status; Ashland Inc. (Oil Refinery); Boyd and Daviess Counties, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Cincinnati Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 47, for authority to establish special-purpose subzone status at the oil refinery complex of Ashland Inc., at sites in Boyd and Daviess Counties, Kentucky, was filed by the Board on June 17, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 51-96, 61 FR 33093, 6-26-96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 47B) at the oil refinery complex of Ashland Inc., at sites in Boyd and Daviess Counties, Kentucky, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—products for export; and,
—products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-500 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 864]

Grant of Authority for Subzone Status; Ashland Inc. (Oil Refinery); Stark and Allen Counties, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Akron-Canton Regional Airport Authority, grantee of Foreign-Trade Zone 181, for authority to establish special-purpose subzone status at the oil refinery complex of Ashland Inc., at sites in Stark and Allen Counties, Ohio, was filed by the Board on June 4, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 49-96, 61 FR 29530, 6-11-96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 181A) at the oil

refinery complex of Ashland Inc., at sites in Stark and Allen Counties, Ohio, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-499 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 861]

Expansion of Foreign-Trade Subzone 183A; Dell Computer Corporation, Austin, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, for authority to expand Foreign-Trade Subzone 183A at the Dell Computer Corporation plant in Austin, Texas, was filed by the Board on June 19, 1996 (FTZ Docket 53-96, 61 FR 33899, 7/1/96); and,

Whereas, notice inviting public comment was given in Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and

Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand Subzone 183A is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of December 1996.

Jeffrey P. Bialo,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-503 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[Order No. 863]

Grant of Authority for Subzone Status; Basis Petroleum, Inc. (Oil Refinery), Texas City, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Texas City Foreign Trade Zone Corporation, grantee of Foreign-Trade Zone 199, for authority to establish special-purpose subzone status at the oil refinery complex of Basis Petroleum, Inc., in Texas City, Texas, was filed by the Board on April 11, 1996, and notice inviting public comment was given in the Federal Register (FTZ Docket 29-96, 61 FR 17875, 4-23-96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if

approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 199C) at the oil refinery of Basis Petroleum, Inc., in Texas City, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 30th day of December 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97-505 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-583-008]

Certain Circular Welded Carbon Steel Standard Pipes and Tubes From Taiwan; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United

States and the period May 1, 1995 through April 30, 1996.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4475 or 482-3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

Because it is not practicable to complete this review within the time limits mandated by the Uruguay Rounds Agreements Act (245 days from the last day of the anniversary month for preliminary determinations, 120 additional days for final determinations), pursuant to Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until June 2, 1997. See Memorandum to the file dated December 13, 1996.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 19, 1996.

Ronald L. MacDonald,
*Acting Deputy Assistant Secretary for AD/
CVD Enforcement, Group III.*

[FR Doc. 97-497 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-809]

Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On October 1, 1996, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on certain stainless steel flanges (SSF) from India (61 FR 51261). This review covers exports of this merchandise to the United States by one manufacturer/exporter, Viraj Forgings Ltd. (Viraj), during the period March 1, 1995 through August 31, 1995.

We gave interested parties an opportunity to comment on our

preliminary results. We received no comments. The review indicates the existence of no dumping margins for this firm for this period.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2704 or 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments 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 antidumping duty order on SSF from India was published February 9, 1994 (59 FR 5994). On October 1, 1996, the Department published in the Federal Register the preliminary results of its new shipper review of the antidumping duty order on SSF from India (61 FR 51261). The Department has now completed this new shipper review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to

specification ASTM A-351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The review covers one Indian manufacturer/exporter, Viraj, and the period March 1, 1995 through August 31, 1995.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. We have determined that a margin of zero percent exists for Viraj for the period March 1, 1995 through August 31, 1995.

The Department shall instruct the U.S. Customs Service to assess no antidumping duties on all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act:

(1) The cash deposit rate for Viraj will be zero percent;

(2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) the cash deposit rate for all other manufacturers or exporters will continue to be 162.14 percent. This rate is the "All Others" rate established in the LTFV investigation.

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 the 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 (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This administrative review and this notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR § 353.22.

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-507 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

[A-201-601]

Fresh Cut Flowers From Mexico; Preliminary Results and Partial Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial termination of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. This review was initiated in response to requests by respondents, Rancho del Pacifico (Pacifico) and Rancho Guacatay (Guacatay). Although we initiated a review of both producers, we are terminating the review with respect to Guacatay because the respondent timely withdrew its request for review. This review covers one producer/exporter and entries of the subject merchandise into the United States during the period April 1, 1995 through March 31, 1996.

We have preliminarily determined that sales have not been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of the comment.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel Singer or Leon McNeill, AD/CVD

Enforcement, 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 Statutes and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department published in the Federal Register an antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491).

On April 30, 1996, Pacifico and Guacatay requested that the Department conduct an administrative review in accordance with § 353.22 (a)(1) of the Department's regulations. Pacifico and Guacatay also requested that the Department revoke the antidumping duty order as it pertains to them upon completion of the review. We published a notice of initiation on May 24, 1996 (61 FR 26518), covering Pacifico and Guacatay, and the period April 1, 1995 through March 31, 1996. On July 2, 1996, Guacatay timely withdrew its request for review. Because there were no other requests for review for Guacatay from any other interested party, the Department is now terminating this review in part in accordance with § 353.22(a)(5). We shall instruct the U.S. Customs Service to liquidate Guacatay's entries for this period at the rates in effect at the time of entry. Because Guacatay is a previously reviewed company, the cash deposit rate will continue to be the company-specific rate currently in effect.

The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review, such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS)

items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers sales of the subject merchandise entered into the United States during the period April 1, 1995 through March 31, 1996.

Determination Not To Revoke

On April 30, 1996, Pacifico requested revocation of the antidumping order, pursuant to § 353.222(d) of the Department's proposed regulations. According to § 351.222(d) of the proposed regulations, the Department need not conduct a review of the second year of the three-year period of sales at not less than fair value (LTFV) required for revocation. Because the proposed regulations have not been issued as final regulations, the current regulations remain in effect.

Under § 353.25(a)(2)(i) of the Department's current regulations, the Department may revoke an order if one or more producers or resellers covered by the order have sold subject merchandise at not less than NV for a period of at least three consecutive years. Although Pacifico was a respondent in the administrative reviews of the 1992/1993 POR and 1993/1994 POR, earning zero margins in both reviews, Pacifico did not participate in the administrative review of the 1994/1995 POR. See 61 FR 28166 (June 4, 1996). Therefore, the Department finds Pacifico ineligible for revocation at this time.

Duty Absorption

On June 21, 1996, the petitioner requested that the Department determine whether antidumping duties had been absorbed by Pacifico during the period of review (POR) pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995,

section 351.213(j)(2) of the Department's proposed antidumping regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 61 FR 7308, 7366 (February 27, 1996). The preamble to the proposed antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews in 1998 will be considered initiated in the fourth year. *Id.* at 7317. Although these proposed antidumping regulations are not yet binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the Act. This approach assures that interested parties will have the opportunity to request a duty absorption determination prior to the time for sunset review of the order under section 751(c). Because the order on certain fresh cut flowers from Mexico has been in effect since 1987, this is a transition order. Therefore, based on the policy stated above, the Department will first consider a request for an absorption determination during a review initiated in 1996. This being a review initiated in 1996, we are making a duty-absorption determination as part of this segment of the proceeding.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, Pacifico is itself the importer, *i.e.*, the exporter and the importer are the same entity; therefore, 751(a)(4) is applicable. We have preliminarily determined that there is no dumping margin on any of Pacifico's U.S. sales during the POR. We, therefore, preliminarily find that antidumping duties have not been absorbed by Pacifico on its U.S. sales.

United States Price

In calculating United States Price (USP), we used constructed export price (CEP), in accordance with subsections 772(b), (c), and (d) of the Act, because Pacifico's sales to the first unaffiliated purchaser occurred after importation into the United States. As in the original LTFV investigation and in all prior administrative reviews, all United States prices were weight-averaged on a monthly basis to account for perishability of the product. CEP was based on the packed F.O.B. prices to the first unaffiliated purchaser after importation into the United States.

Where appropriate, we made deductions from CEP for U.S. inland freight, U.S. and Mexican brokerage and handling charges, and for credit

expenses incurred on sales in the United States. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act. No other adjustments were claimed or allowed.

Normal Value

In calculating NV, we used home market prices to unaffiliated purchasers, as defined in section 773 of the Act. In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Pacifico's volume of home market sales of the subject merchandise to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Pacifico's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Pacifico.

Home market price was based on the F.O.B. farm gate unit price of subject merchandise sold to unaffiliated purchasers in the home market. No adjustments were claimed or allowed.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period April 1, 1995 through March 31, 1996:

Manufacturer/exporter	Margin (per-cent)
Rancho del Pacifico	0.00

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication. Parties who submit comments are requested to submit with their comments (1) a statement of the issue and (2) a brief summary of the comment. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain fresh cut flowers from Mexico 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 the reviewed company will be the rate established in the final results of this review;

(2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous 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 the merchandise, the cash deposit rate shall be 18.20 percent, the rate established in the LTFV investigation. See 52 FR 6361 (March 3, 1987).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d)(1) of the Act (19 U.S.C. 1675(a) and § 353.22 and § 353.25.

Dated: December 31, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

[FR Doc. 97-506 Filed 1-8-97; 8:45 am]

[A-351-824]

**Silicomanganese From Brazil:
Preliminary Results of Antidumping
Administrative Review**

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Notice of Preliminary Results of
Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicomanganese from Brazil in response to a request from one manufacturer/exporter, Companhia Paulista de Ferroligas (CPFL) and Sibra Eletro-Siderurgica Brasileira S.A. (Sibra) (collectively "Ferro-Ligas Group"). This review covers the period June 17, 1994, through November 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT:
Hermes Pinilla or Kris Campbell, Office of AD/CVD Enforcement, 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:

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 December 22, 1994, the Department published in the Federal Register the antidumping duty order on silicomanganese from Brazil (59 FR 66003). On December 4, 1995, we published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on

silicomanganese from Brazil covering the period June 17, 1994, through November 30, 1995 (60 FR 62070). On January 11, 1996, we received a request for review from the Ferro-Ligas Group covering the period June 17, 1994 through November 30, 1995.

On May 31, 1996, Elkem Metals Company, petitioner in the less-than-fair value investigation (LTFV) (hereafter petitioner), requested that the Department conduct an investigation to determine whether the Ferro-Ligas Group made sales at prices below the cost of production (COP) during the 1994-1995 review period. On September 16, 1996, based on petitioner's allegation and the evidence on the record, the Department determined, in accordance with section 773(b)(2)(A)(i) of the Act, that there were reasonable grounds to believe or suspect that the Ferro-Ligas Group made sales at prices below its COP and initiated a COP investigation of the Ferro-Ligas Group, pursuant to section 773 (b) (1) of the Act (see Memorandum to the File (September 16, 1996)).

Verification

From November 18 through November 26, 1996, in accordance with section 782(i) of the Act, we verified information provided by the Ferro-Ligas Group using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports.

Scope of Review

The merchandise covered by this review is silicomanganese from Brazil. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains, by weight, not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This review covers all silicomanganese currently classifiable under subheading 7202.30.000 of the Harmonized Tariff

Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

The review period is June 17, 1994 through November 30, 1995, and involves one manufacturer/exporter of silicomanganese from Brazil.

United States Price

For sales to the United States, we used export price (EP) as defined in section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and the use of constructed export price was not indicated by the facts of record.

We based EP on the packed, F.O.B. price to the first unaffiliated purchaser in the United States. We made deductions to EP for foreign inland freight and domestic brokerage and handling in accordance with section 772 (c)(2)(A) of the Act.

The Ferro-Ligas Group reported inventory carrying costs (ICCs) and indirect selling expenses which were attributed to sales in the U.S. market. Since nothing on the record shows that ICCs are direct selling expenses, we consider them to be indirect selling expenses. We did not make an adjustment for these expenses since these are indirect selling expenses which are not included among the adjustments applicable to EP under section 772(e) of the Act.

No other adjustments to EP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product the Ferro-Ligas Group sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act, because the Ferro-Ligas Group had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, it was appropriate to look at the prices at which the foreign like products were first sold for consumption in the exporting country for NV.

However, in accordance with section 773(a)(4) of the Act, we used constructed value (CV) as NV because all sales were below cost and, therefore, we disregarded all home market sales pursuant to section 773(b) of the Act. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing (COM) of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit and U.S. packing expenses (see our description of adjustments to cost information below). The COM of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses and profit, because all sales of the subject merchandise were below the COP, we calculated SG&A and profit for CV in accordance with section 773(e)(2)(B)(i) of the Act, the actual amounts incurred and realized by the respondent in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise. In accordance with section 773(a)(8) of the Act, we made circumstance-of-sale (COS) adjustments to CV by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Cost of Production Analysis

As stated above, the Department initiated a COP investigation of the Ferro-Ligas Group to determine whether sales were made below cost in the home market. See section 773(b) of the Act. Before making any fair-value comparisons, we conducted the COP analysis described below.

Calculation of COP

We calculated COP, in accordance with section 773(b)(3) of the Act, based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in packed condition ready for shipment to the United States. In conducting our calculations, we relied on the home market sales and COP information for the six-month period surrounding the Ferro-Ligas Group's sole sale to the United States, except in the following circumstances:

A. Major Inputs (Use of Facts Available)

The Ferro-Ligas Group purchased most major inputs for silicomanganese solely from affiliated parties. Sections 773(f)(2) and (3) of the Act specify the treatment of transactions between

affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Sections 773(f)(2) indicate that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration (where the production takes place). Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) indicates that, if transactions between affiliated parties involve a *major input*, then the Department may value the *major input* based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under 773(f)(2). Section 773(f)(3) applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation is being conducted in this case, the Department requested in its Section D questionnaire of September 16, 1996, and in its supplemental questionnaire of October 31, 1996, that the Ferro-Ligas Group provide both COP and market prices for each of the major inputs obtained from affiliates. In its October 16, 1996 response, the Ferro-Ligas Group declined to provide these data for "commercial and competitive reasons." (See the Ferro-Ligas Group October 16, 1996 section D questionnaire response at 10-11.) In its November 15, 1996 supplemental cost response the Ferro-Ligas Group further stated that its affiliates, Usinas Siderurgicas de Minas Gerais S/A (USIMINAS) and Companhia Siderurgica Paulista S/A (COSIPA), were unwilling to provide cost data and claimed that affiliate Companhia Vale do Rio Doce (CVRD) was unable to provide cost data because access to CVRD's business proprietary information was subject to strict pre-privatization procedures established by the Brazilian government. No evidence of, or details regarding, such procedures were provided in that submission. Because the Department's verification team left for Brazil on November 16, 1996, the Department was unable to follow up on this claim until verification.

At verification we again requested cost information for the major inputs. The Ferro-Ligas Group again claimed

that USIMINAS and COSIPA were unwilling, and CVRD unable, to provide the requested data. On the last day of verification, the Ferro-Ligas Group provided the verification team with a Brazilian court order issued in an unrelated case as sole support for its claim that CVRD could not provide the cost data requested by the Department.

In the absence of costs for five of the eight major inputs for silicomanganese, the Department was unable to perform an analysis to determine whether the transfer prices were below the COP. Section 776(a) of the Act requires that the Department use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. In addition, section 776(b) permits the Department to use "adverse inferences" in determining facts available where a party does not cooperate to the best of its ability.

In this case, as explained above, respondent declined to provide COP data for several major inputs purchased from affiliates. Furthermore, the Ferro-Ligas Group did not adequately show that it cooperated to the best of its ability to obtain these costs. If the Department were to accept a refusal by affiliated parties to provide data required in antidumping proceedings, this would allow such parties to provide data only when it would be advantageous to respondents and to selectively deny access to data which was disadvantageous to respondents. Therefore, in such situations, the Department treats affiliated parties as a single entity for purposes of supplying data. Because USIMINAS and CVRD have, directly or indirectly, controlling interests in the Ferro-Ligas Group, the Department presumes that these entities share the same economic interests as the Ferro-Ligas Group. Therefore, any non-disclosure of required data by USIMINAS and CVRD is treated as non-disclosure on behalf of the Ferro-Ligas Group. Finally, the Ferro-Ligas Group has not supported its claim that CVRD is barred from providing cost data on the major inputs because it is preparing for privatization. The court order provided at verification was issued to another party and did not apply to an antidumping proceeding; furthermore, the Ferro-Ligas Group provided no documentation clarifying what information was covered by the court order. Therefore, the Department has concluded that the Ferro-Ligas Group has not cooperated to the best of its ability and that the use of adverse facts

available for the costs of the affected major inputs is appropriate.

For our preliminary results of review, we used publicly available data and other information to value those major inputs purchased by the Ferro-Ligas Group from its affiliated suppliers for which cost information was not provided. See Calculation Memo of the Office of Accounting to the File, dated December 31, 1996 (Calculation Memo).

For the three remaining major inputs, cost data was provided. In accordance with sections 773(f) (2) and (3), we used the highest of transfer price, market price or COP. See Calculation Memo.

B. Financial Expense

In calculating net financial expense in its response, respondent subtracted what it claimed to be financial income from short-term sources. At verification, however, company officials stated that certain amounts included in the financial income value were generated from assets held longer than one year and were investment income, not income earned on working capital. Moreover, respondent failed to provide support for the short-term nature of the remaining items included in the financial income value. The Department considers financial income from long-term investments as not being related to the production activities of the company and, therefore, does not allow financial income from long-term investments as offsets to financial expense in calculating COP and CV. The Department only allows financial expense to be offset by interest income from short-term sources (*i.e.*, working capital). Because the Ferro-Ligas Group did not provide any documentation supporting the short-term nature of the financial income offsets, we disallowed its claimed offsets.

C. Value-Added Taxes (VAT)

When calculating the CV for the subject merchandise, respondent did not include value-added ICMS and IPI taxes in the material and energy costs. Section 773(e) of the Act directs the Department to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the VAT paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, as in the present case, whether the producer actually recoups its VAT through domestic market sales is irrelevant. The Department reasons that the VAT taxes paid on inputs used in manufacturing merchandise for export is a real cost that must be recovered by being included in the price of the finished product sold in the export

market. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added the amount to the reported CV.

D. Restructuring Costs

The Ferro-Ligas Group classified certain manufacturing costs as non-operating expenses, thereby excluding them from the reported COP. These costs fall into three major categories: depreciation and other costs associated with plants that were closed in prior years; costs associated with reducing the work force; and costs associated with lower production levels resulting from the bankruptcy and reorganization proceedings during 1995.

The costs associated with plants that were closed in prior years were treated as "other operating expenses" on the respondent's audited financial statements. Such items represent the cost to the respondent of holding idle assets and, as such, should be included in general and administrative expenses. The second category, costs associated with work-force reduction, were treated as manufacturing costs on the respondent's audited financial statements. However, the bulk of these costs relate to severance, pension payments, and a settlement with the workers' union. Such costs would properly be considered period costs (*i.e.*, costs that are more closely related to the accounting period rather than the current manufacturing costs) and, therefore, we have included them in general and administrative expenses. The third category, costs associated with lower production levels resulting from the bankruptcy and reorganization proceedings, were treated as non-operating expenses on respondent's audited financial statements. However, the Department normally treats such costs as a part of the COP. Furthermore, only one of the two producers owned by the Ferro-Ligas Group reduced the manufacturing costs on the financial statement to account for the lower production levels. The other producer treated these costs as normal manufacturing costs on the company-specific financial statement, even though for several months during the period a number of its facilities were shut down completely by the bankruptcy. Therefore, we added these costs back to the reported manufacturing costs.

The Ferro-Ligas Group also deducted the minority shareholder's portion of the company's net loss, as well as bankruptcy and reorganization costs, from the general and administrative expenses reported to the Department.

The minority shareholder's portion of the company's net loss is not an expense but rather is its share of the result of subtracting all of the company's expenses from its revenues. This figure is presented on the financial statement to inform investors of the portion of the entity's income or loss belonging to the non-controlling shareholders. The bankruptcy and reorganization costs consist of items, such as legal fees, identified by respondent as arising from this event. Although the Department does allow for the exclusion of extraordinary expenses, bankruptcy and reorganization costs do not fall into this category. Extraordinary expenses under U.S. generally accepted accounting principles (GAAP) are both unusual in nature and infrequent in occurrence. Neither bankruptcy nor reorganization costs can be considered either unusual or infrequent. Such costs are typically incurred by entities and, therefore, should be included in general and administrative expenses along with other period costs. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands*, 58 FR 37199-37204 (July 9, 1993).

Test of Home Market Prices

In determining whether to disregard home market sales made at prices below the COP, the statute directs us to examine whether (1) within an extended period of time, such sales were made in substantial quantities below their respective COPs, and (2) such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We compared model-specific COPs to the reported home market price less any applicable movement charges and direct selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of 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 determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the six-month period surrounding the U.S. sale were at prices less than the COP, we disregarded, in accordance with sections 773(b)(2) (B) and (C) of the Act, the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities." Respondent reported home market sales and COP data for the six months

surrounding the sole U.S. sale. Given respondent's request to limit home market reporting, as neutral facts available, we tested whether respondent recovered its costs within a reasonable period of time based on the six months of data respondent submitted and we found that respondent did not recover its costs.

We found that all of Ferro-Ligas reported home market sales were at below-cost prices and that such sales were in substantial quantities. As a result, we disregarded all of Ferro-Ligas home market sales and instead used CV in accordance with section 773(b)(1)(B) of the Act.

Preliminary Results of Review

As a result of our comparison of EP and NV based on CV, we preliminarily determine that the following weighted-average dumping margin exists for the period June 17, 1994 through November 30, 1995:

Manufacturer/exporter	Margin (per-cent)
The Ferro-Ligas Group	80.54

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of silicomanganese from Brazil 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 established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in the original LTFV investigation, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review, the cash deposit rate shall be 17.60 percent, the all-others rate established in the LTFV investigation (59 FR 55432, November 7, 1994).

This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22 of the Department's regulations.

Dated: December 31, 1996.

Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.

[FR Doc. 97-498 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DS-P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of export trade certificate of Review No. 92-00006.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Chris D. McFarland (d/b/a McChris International). Because this certificate holder has failed to file an annual report as required by law, the

Secretary is revoking the certificate. This notice summarizes the notification letter sent to Chris D. McFarland (d/b/a McChris International).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [Pub. L. No. 97-290, 15 U.S.C. 4011-21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ["the Regulations"] are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on July 2, 1992 to Chris D. McFarland (d/b/a McChris International).

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14(a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)]. Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On June 21, 1996, the Department of Commerce sent to Chris D. McFarland (d/b/a McChris International) a letter containing annual report questions with a reminder that its annual report was due on August 16, 1996. Additional reminders were sent on August 26, 1996 and on October 10, 1996. The Department has received no written response from Chris D. McFarland (d/b/a McChris International) to any of these letters.

On November 20, 1996, and in accordance with Section 325.10(c)[2] of the Regulations, [15 CFR 325.10(c)(2)], the Department of Commerce sent a letter by certified mail to notify Chris D. McFarland (d/b/a McChris International) that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Chris D. McFarland (d/b/a McChris International) thirty days to respond was published in the Federal Register on November 26, 1996 at 61 FR 60091. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Chris D. McFarland (d/b/a McChris

International) to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Chris D. McFarland (d/b/a McChris International) for its failure to file an annual report. The Department has sent a letter, dated January 2, 1997, to notify Chris D. McFarland (d/b/a McChris International) of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the Federal Register 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: January 2, 1997.

W. Dawn Busby,
Director, Office of Export Trading Company Affairs.

[FR Doc. 97-454 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-DR-P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request; Customer Satisfaction Surveys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed collection of information consisting of three surveys of users of the Commission's Hot-line, National Injury Information Clearinghouse, and

State Partners program. The Commission will use the results of these surveys to measure customer satisfaction with these three activities and to prepare a report on customer satisfaction required by Executive Order 12862 and the Government Performance and Review Act of 1993.

DATES: Written comments concerning the proposed collection of information must be received by the Office of the Secretary not later than March 10, 1997.

ADDRESSES: Written comments should be captioned "Customer Service Surveys" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed collection of information, or to obtain a copy of any of the survey forms to be used for this collection of information, call or write William Zamula, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0962, extension 1331.

SUPPLEMENTARY INFORMATION:

A. Background

The Government Performance and Review Act (GPRA) (Pub. L. 103-62, 107 Stat. 287; 31 U.S.C. §§ 1115-1119) directs Federal agencies to improve their effectiveness and public accountability by promoting "a new focus on results, service quality, and customer satisfaction." Executive Order 12862, dated September 11, 1993, requires Federal agencies to establish customer service standards and to publish customer service plans. That order further requires agencies to measure results against their customer service standards and to report those

results to their customers at least once each year. Agencies are also required to report those results to the National Performance Review, which will transmit them to the President and Vice President. Reports are due each September from 1997 through 1999.

Three Commission activities provide services directly to the public:

The CPSC Hot-line, a toll-free service that provides consumers with information about recalls of unsafe consumer products and information about using products safely;

The National Injury Information Clearinghouse, which provides data about incidents involving injuries associated with consumer products; and

The State Partners program, which supports product safety efforts of states and territories by providing news releases, training, speakers, and exhibits.

B. Surveys of Customer Satisfaction

During 1997, the Commission proposes to conduct three brief surveys to measure customer satisfaction with each of these programs. These surveys will be conducted by mail and telephone. The Commission will use the results of these surveys to prepare the report required by Executive Order 12862 and the GPRA, and to make any appropriate improvement to the programs. In 1996, the Commission conducted customer-service surveys on the Hot-line, the Clearinghouse, and the State Partners program.

C. Estimated Burden

The Commission staff estimates that the total hourly burden to the public imposed by these three surveys will be approximately 13.5 hours. The number of respondents, amount of time for each response, and hourly burden of each of the three surveys are listed below:

TOTAL HOUR BURDEN FOR THREE SURVEYS

Survey	Number of completed interviews	Time per respondent (minutes)	Total hour burden (hours)
Hot-line Survey	180	2	6
Clearinghouse Survey	150	2	5
State and Local Partners	49	3	2.5
Total	379	13.5

The staff estimates that the total monetary cost to the public of the three surveys will be approximately \$160. This cost estimate was obtained by estimating the value of respondents'

time at \$12, the average hourly wage in the private sector.

The Commission staff estimates that the agency will expend approximately 200 hours of professional staff time to collect the information during these

three surveys, and another 240 hours of professional staff time to analyze the data and prepare the reports required by the Executive Order. The average cost of professional staff time to the Commission is \$35 an hour. Thus, the

total cost of the three surveys to the Commission is estimated to be \$15,400.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information about the hourly burden and monetary costs imposed by this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: January 6, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97-518 Filed 1-8-97; 8:45 am]

BILLING CODE 6355-01-P

Proposed Collection; Comment Request—Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from persons who have been involved in or have witnessed incidents associated with consumer products. The Commission will consider all comments received in response to this notice before requesting a reinstatement of approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than March 10, 1997.

ADDRESSES: Written comments should be captioned "Product-Related Injuries" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of any of the interview guides used for this collection of information, call or write Carl Blechschmidt, Acting Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0416, extension 2243.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products. That legislation also requires the Commission to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses resulting from incidents involving consumer products.

The Commission uses this information to support development and improvement of voluntary standards, rulemaking proceedings, information and education campaigns, and administrative and judicial proceedings. These safety efforts are vitally important to remove unsafe products from channels of distribution and consumers' homes and to help make consumer products safer.

Persons who have sustained injuries or who have witnessed incidents associated with consumer products are an important source of safety information. From consumer complaints, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of incidents for investigation. These investigations may involve face-to-face or telephone interviews with accident victims or witnesses. The Commission also receives information about product-related injuries from persons who provide written information by using forms displayed on the Commission's internet web site or printed in the Product Safety Review and other Commission publications.

The Office of Management and Budget (OMB) approved the collection of information concerning product-related injuries under control number 3041-0029. OMB's most recent extension of approval will expire on May 31, 1997. The Commission now proposes to request an extension of approval with changes of this collection of information. The changes consist of the addition of 140 burden hours to cover

responses to telephone questionnaires used by hot-line operators to obtain information about deaths, injuries, or illnesses associated with selected products, and written information submitted on forms listed on the Commission's internet web site and printed in Commission publications.

B. Estimated Burden

Each year, the Commission staff obtains information about incidents involving consumer products from approximately 4,160 persons. The staff conducts face-to-face interviews at incident sites with approximately 700 persons each year. On average, an on-site interview takes approximately five hours. The staff will also conduct approximately 2,200 in-depth investigations by telephone. Each in-depth telephone investigation requires approximately 20 minutes. Additionally, the Commission's hotline staff interviews approximately 160 persons each year about incidents involving selected consumer products. These interviews take an average of 1.5 minutes each. Each year, the Commission also receives information from about 1,000 persons who complete forms requesting information about product-related incidents or injuries. These forms appear on the Commission's internet web site and are printed in the Product Safety Review and other Commission publications. The staff estimates that completion of the form takes about 12 minutes.

The Commission staff estimates that this collection of information imposes a total annual hourly burden of 4,452 hours on all respondents: 3,500 hours for face-to-face interviews; 748 hours for in-depth telephone interviews; 200 hours for completion of written forms; and four hours for responses to hot-line telephone questionnaires.

The Commission staff values the time of respondents to this collection of information at \$12 an hour. This is the average hourly wage for all private industry workers reported by the U.S. Bureau of the Census in the 1996 edition of the Statistical Abstract of the United States. At this valuation, the estimated annual cost to the public is about \$53,500.

The Commission staff estimates that this collection of information will require approximately 330 weeks of professional staff time each year. That estimate includes the time required to prepare the questionnaires, interviewer guidelines, and other instruments and instructions used to collect the information; to conduct the face-to-face and telephone interviews; and to record, review, and evaluate the responses

obtained from the interviews and completed written forms. Each week of professional staff time costs the Commission approximately \$1,400. Thus, the annual cost to the Federal government of this collection of information is estimated to be about \$462,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information concerning product-related injuries. The Commission specifically solicits information about the hourly burden and monetary costs imposed by this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other form of information technology.

Dated: January 6, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97-519 Filed 1-8-97; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, OMB Number, and Associated Forms: Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember; OMB No. 0704-0347, DD Forms 2627 and 2628.

Type of Request: Reinstatement.
Number of Respondents: 42.
Responses per Respondent: 1.9.
Annual Responses: 81.
Average Burden per Response: 5 minutes.

Annual Burden Hours: 7.

Needs and Uses: This collection of information is necessary to meet the requirements of Defense Logistics Agency Manual 8210.1, Contractor's Ground and Flight Operations. The information collected hereby, will provide the necessary data for DoD to determine approval for training in Government aircraft, or to function as a flight crewmember therein.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: January 3, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97-432 Filed 1-8-97; 8:45 am]

BILLING CODE 5000-04-M

Submission for OMB Review, Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and Associated Forms: Custody and Control of Unaccompanied Housing Rooms and Furnishings; AF Forms 228 and 191.

Type of Request: New collection.
Number of Respondents: 20,000.

Responses per Respondent: 1.

Annual Responses: 20,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: This collection of information is necessary to meet the requirements of Air Force Instruction 32-6005, Unaccompanied Housing Management and Operations. The information collected hereby, will provide the necessary data for

responsible Air Force officials to manage and control unaccompanied housing rooms and furnishings, and to effect assignment and termination thereto.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: January 3, 1997.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97-433 Filed 1-8-97; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Military Traffic Management Command; Notice of Availability of Form "Criteria for Eligibility as a Small Business for the Purpose of Transportation Service Acquisition"

AGENCY: Military Traffic Management Command (MTMC), Department of the Army.

ACTION: Notice.

SUMMARY: Notice is given that any carrier wanting their small business classification updated in their carrier approval file maintained at MTMC will need to request a form from MTMC.

DATES: Request for the form "Criteria for Eligibility as a Small Business for the Purpose of Transportation Service Acquisition" should be done on or before February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mrs. Sylvia Walker (Personal Property) or Mr. Rick Wirtz (Freight) both at 703-681-6393. To request a blank "Criteria for Eligibility as a Small Business for the Purpose of Transportation Service Acquisition" form, contact Ms. Patricia McPhail also at 703-681-6393. Questions regarding Small Business may be directed to The Small Business Administration, 202-606-4000.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform carriers that the Small Business Administration (SBA) has raised the ceiling on the amount of annual receipts a company can make and still be classified as a small business. That dollar amount rose from \$12.5 million to \$18.5 million. For the purpose of transportation service acquisition, a small business concern is one which is independently owned and operated, is not dominant in its field of operations, and together with its affiliates has annual receipts not exceeding \$18.5 million. Interested parties may refer to the SBA's regulations in 13 Code of Federal Regulations, part 121 for additional details.

Juanita H. Maberry,

Alternate, Army Federal Register Liaison Officer.

[FR Doc. 97-466 Filed 1-8-97; 8:45 am]

BILLING CODE 3710-88-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given that the Board will extend the date for holding the record open until February 28, 1997.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Previously announced in the December 2, 1996, Federal Register notice of December 12, 1996, Sunshine Act Meeting, 61 FR 63833.

PREVIOUSLY ANNOUNCED DATE FOR HOLDING THE RECORD OPEN: January 13, 1997, as announced at the hearing on December 12, 1996.

CHANGES IN MEETING NOTICE: The Board is extending the date to receive additional comments or supplements to the record from January 13, 1997, to February 28, 1997.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788-4016. This is a toll-free number.

Dated: January 7, 1997.

Robert M. Andersen,
General Counsel.

[FR Doc. 97-577 Filed 1-7-97; 9:50 am]

BILLING CODE 3670-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 10, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary for the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 1997.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Combined Application for the Talent Search and Educational Opportunity Centers Program.

Frequency: Annually.

Affected Public: Business or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 40,800.

Abstract: The application form is needed to conduct a national competition for program years 1997-98 for the Talent Search and Educational Opportunity Centers. These programs provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies and, in exceptional cases, secondary schools to establish and operate projects designed to provide information regarding financial and academic assistance available for individuals who desire to pursue a program of postsecondary education, and assist individuals to apply for admission to institutions that offer programs of postsecondary education.

[FR Doc. 97-451 Filed 1-8-97; 8:45 am]

BILLING CODE 4000-01-P

Office of Educational Research and Improvement; Notice of Proposed Information Collection Requests for Combined Application for the OERI Visiting Scholars Fellowship Program

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 4, 1996, a notice of proposed information collection for the Combined Application

for the OERI Visiting Scholars Fellowship Program was published in the Federal Register at 61 FR 64343 which solicited public comments for a 60 day period through February 3, 1997. Policymakers and librarians were not included in the abstract for this program. The abstract is corrected as the following: "The OERI Visiting Scholars Fellowship provides support to senior scholars, researchers, policymakers, education practitioners, librarians, and statisticians to engage in the use, collection, and dissemination of information about education and education research to work at OERI in Washington, DC. The information collected in the application will be used to determine who is selected for these fellowships."

FOR FURTHER INFORMATION CONTACT: Patrick Sherrill, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202-4651. Telephone: (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: January 3, 1997.

Gloria Parker,
Director for Information Resources Group.
[FR Doc. 97-453 Filed 1-8-97; 8:45 am]
BILLING CODE 4000-01-P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room

5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer of the Office of the Chief Information Officer publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 3, 1997.

Gloria Parker,
Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Case Service Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 82.

Burden Hours: 3,690.

Abstract: As required by Section 13 of the Rehabilitation Act, the data are submitted by State rehabilitation agencies each year. They contain the personal and program related characteristics, including economic

outcomes, of disabled persons whose cases are closed.

[FR Doc. 97-452 Filed 1-8-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97-57-000]

NorAm Gas Transportation Company; Notice of Change in Date of Technical Conference

January 3, 1997.

Take notice that the technical conference originally scheduled to be held on Thursday, January 8, 1997, at 10:00 a.m., will now be held on Thursday, January 23, 1997, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested parties and staff are permitted to attend. Linwood A. Watson, Jr.,

Acting Secretary.

[JR Dos. 97-480 Filed 1-8-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER97-858-000, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 3, 1996.

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

1. Cinergy Services, Inc.

[Docket No. ER97-858-000]

Take notice that on December 19, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Niagara Mohawk Power Corporation.

Cinergy and Niagara Mohawk Power Corporation are requesting an effective date of December 23, 1996.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Company

[Docket No. ER97-859-000]

Take notice that on December 19, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its market-based sales tariff with Progress Power Marketing, Inc. (Progress). This service agreement provides for

Southwestern's sale and Progress's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97-860-000]

Take notice that on December 19, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 18 to add one (1) new customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of December 18, 1996, to Sonat Power Marketing, L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric

[Docket No. ER97-861-000]

Take notice that on December 19, 1996, Portland General Electric Company (PGE), tendered for filing the 1996-1997 One Year Share-the-Shortage Agreement (the Agreement), among the following parties: Idaho Power Company; The Montana Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Power & Light Company; The Washington Water Power Company; Bonneville Power Administration; Public Utility District No. 1 of Chelan County; Public Utility District No. 1 of Cowlitz County; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Pend Oreille County; Public Utility District No. 1 of Snohomish County, The Eugene Water & Electric Board; City of Seattle acting by and through its City Light Department; City of Tacoma acting by and through its Public Utilities Department.

PGE states that the Agreement relates to service for the purpose of alleviating energy shortages of one or more of the parties to the Agreement and to help ensure that all of the parties can meet their obligations to serve their respective retail customer loads. A copy of the filing was served upon the parties to the Agreement.

The Parties request that the commission allow the Agreement to become effective December 1, 1996.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER97-862-000]

Take notice that on December 20, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing a proposed change to its Rate Schedule FERC No. 13, as supplemented. Such change consists of the Fifth Amendment, dated December 12, 1996, entered into by MidAmerican and Interstate Power Company (Interstate) to the Facilities Agreement dated September 4, 1981 entered into by Interstate and a predecessor of MidAmerican.

MidAmerican states that the purpose of the Fifth Amendment is to continue to provide Interstate with generation outlet transmission from Raun Substation to Lakefield Junction for Interstate's partial ownership share of Neal Generating Station Unit 4 (Neal 4) upon termination of the Coordinating Agreement dated January 22, 1968 relating to the Twin Cities-Iowa-Omaha-Kansas City 345 Interconnection. MidAmerican further states that MidAmerican, Interstate and the other four parties to the Coordinating Agreement have agreed to terminate such agreement and that, in the absence of the Fifth Amendment, such termination would eliminate Interstate's generation outlet transmission arrangement for its Neal 4 generation.

MidAmerican proposes that the Fifth Amendment become effective immediately upon termination of the Coordinating Agreement and requests a waiver of the 60-day notice requirement.

Copies of the filing were served upon representatives of Interstate, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER97-863-000]

Take notice that on December 20, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 4, entered into between Pepco and Aquila Power Corporation, Morgan Stanley Capital Group Inc., Heartland Energy Services, Inc., and Baltimore Gas and Electric Company. An effective date of December 20, 1996 for these service agreements, with waiver of notice, is requested.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER97-864-000]

Take notice that on December 20, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Western Power Services, Inc. (Western Power). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Western Power to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Western Power a Participant in the Pool. NEPOOL requests an effective date on or before February 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Western power.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Dayton Power and Light Company

[Docket No. ER97-865-000]

Take notice that on December 20, 1996, The Dayton Power and Light Company (Dayton), submitted a service agreement establishing JPower Inc. as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreement. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon JPower Inc. and the Public Utilities Commission of Ohio.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER97-866-000]

Take notice that on December 20, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to Florida Power Corporation pursuant to its open access transmission tariff (the T-6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on December 23, 1996.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER97-867-000]

Take notice that on December 20, 1996, Commonwealth Edison Company (Edison), submitted Amendment No. 5 to the Interconnection Agreement between Edison and Wisconsin Electric Power Company (Wisconsin Electric). Amendment No. 5 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Wisconsin Electric's unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 16.

ComEd requests an effective date of December 31, 1996 for Amendment No. 5, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Wisconsin Electric, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER97-868-000]

Take notice that on December 20, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to acting as agent for The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (Northeast Utilities) pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective as of December 1, 1996.

Copies of the filing have been served upon Northeast Utilities and the New Jersey Board of Public Utilities.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER97-869-000]

Take notice that on December 20, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated December 19, 1996 between Central Illinois Public Service Company (CIPS) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to IP pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96-50.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Sunoco Power Marketing, L.L.C.

[Docket No. ER97-870-000]

Take notice that on December 20, 1996, Sunoco Power Marketing, L.L.C. (Sunoco), tendered for filing pursuant to Rule 204, 18 CFR 385.204, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Sunoco intends to serve the electric power market as both a broker and a marketer of electric power. Sunoco seeks authority to purchase electric capacity, energy or transmission services from third parties, and to sell such capacity and energy to others at market-based rates. Sunoco is not affiliated, directly or indirectly, with any investor-owned utility or any entity owning or controlling electric transmission facilities. Sunoco is affiliated with a single "qualifying facility" under PURPA. However, Sunoco does not propose in this filing to market any affiliate-generated power (without prejudice to its right to seek such authority at a later date). Sunoco Rate Schedule No. 1 provides for the sale of electricity at negotiated market-based rates.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), (January 3, 1997)

[Docket No. ER97-872-000]

Take notice that on December 19, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 9 to add Allegheny Power Service Corporation, Duke/Louis Dreyfus L.L.C., Federal Energy Sales, Inc., Plum Street Energy Marketing, Inc., and Sonat Power Marketing L.P. to the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96-18-000. The proposed effective date under the Service Agreements is December 18, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Company

[Docket No. ER97-873-000]

Take notice that on December 20, 1996, New England Power Company, filed a Service Agreement and Certificate of Concurrence with Coral Power, L.L.C. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER97-874-000]

Take notice that on December 20, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to the Pan Energy Trading & market Services, L.L.C. (Pan Energy) under APS' Open Access transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on Pan Energy and the Arizona Corporation Commission.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

[Docket No. ER97-875-000]

Take notice that on December 20, 1996, Puget Sound Power & Light Company, as Transmission Provider, tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with the Bonneville Power Administration, as Transmission Customer (Bonneville). A copy of the filing was served upon Bonneville.

The Service Agreement is for firm point-to-point transmission service.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER97-876-000]

Take notice that on December 20, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Coral Power, L.L.C.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Coral Power, L.L.C. under Northern Indiana Public Service Company and Coral Power, L.L.C. request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER97-877-000]

Take notice that on December 20, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Central Illinois Public Service Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Central Illinois Public Service Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96-1426-000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana

Public Service Company has requested that the Service Agreement be allowed to become effective as of January 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER97-878-000]

Take notice that on December 20, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and American Electric Power Service Corporation.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to American Electric Power Service Corporation under Northern Indiana Public Service Company's Power Sales Tariff. Northern Indiana Public Service Company and American Electric Power Service Corporation requested waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER97-879-000]

Take notice that on December 20, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Federal Energy Sales, Inc. under Rate GSS.

Comment date: January 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97-438 Filed 1-8-97; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Protection Agency

Coastal Nonpoint Pollution Control Program: Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of Availability of Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact on Approval of Coastal Nonpoint Pollution Control Programs for New Jersey, New York, and Florida.

SUMMARY: Notice is hereby given of the availability of the Proposed Findings Documents, Environmental Assessments (EA's) and Findings of No Significant Impact for New Jersey, New York, and Florida. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. The Findings documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint pollution control program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs. The EA's were prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321 *et seq.*, to assess the environmental impacts associated with the approval of

the coastal nonpoint pollution control programs submitted to NOAA and EPA by New Jersey, New York, and Florida.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control programs submitted by New Jersey, New York, and Florida. The requirements of 40 CFR Parts 1500-1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of the Environmental Assessments. Specifically, 40 CFR section 1506.6 requires agencies to provide public notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Copies of the Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713-3121, x201.

DATES: Individuals or organizations wishing to submit comments on the proposed Findings or Environmental Assessments should do so by February 10, 1997.

ADDRESSES: Comments should be made to: Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713-3155, x195. (Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: January 6, 1997.

Robert H. Wayland,
Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.

David L. Evans,
Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 97-520 Filed 1-8-97; 8:45 am]

BILLING CODE 3510-12-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5673-5]

Notice of Public Meeting on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a two-day public meeting in Cincinnati, Ohio, on January 9 and 10,

1997, for the purpose of information exchange on technical issues related to the expedited development of a Stage I Disinfectants/Disinfection Byproducts Rule and an Interim Enhanced Surface Water Treatment Rule. Discussion will focus on treatment processes that impact byproduct formation, microbial control and related drinking water quality parameters, with particular emphasis on enhanced coagulation.

EPA is inviting all interested members of the public to participate in the meeting, which will be held in Room G-51 of the Andrew Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio. For further information regarding the agenda or other aspects of the meeting, members of the public are requested to contact Crystal Rodgers of EPA's Office of Ground Water and Drinking Water at (202) 260-0676, or contact via e-mail at rodgers.crystal@epamail.epa.gov.

Cynthia C. Dougherty,
Director, Office of Ground Water and Drinking Water.

Dated December 30, 1996.

[FR Doc. 97-559 Filed 1-8-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

December 31, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 10, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060-0448.
Title: Section 63.07, Special Procedures for Non-dominant Common Carriers.

Form No.: Not applicable.

Type of Review: Extension of an existing collection.

Respondents: Businesses or others for profit, which may include small businesses.

Number of Respondents: 5.
Estimate Hour Per Response: 100 hours (avg.).

Total Annual Burden: 500.

Estimated Costs To Respondents: Estimated engineer hourly salary \$18.42x500=\$9,210.

Needs and Uses: The National Environmental Policy Act (NEPA) requires all federal agencies to consider the impact of their actions upon the environment, 42 U.S.C. §§ 4321 *et seq.* Section 63.07 subjects domestic, facilities-based common carriers to the same requirements imposed on all Commission applicants and licensees. Commission applicants and licensees are required to submit an Environmental Assessment where their proposals may have a significant effect on the environment, as set forth in section 1.1307 of the Commission's rules. See 47 CFR § 1.1307. An Environmental Assessment is a narrative statement that describes the proposal, the environmental ramifications of the proposal, and the alternatives, if any, to the proposal. See 47 CFR § 1.1311. Without the information contained in Environmental Assessments, the Commission would be deprived of the environmental information needed to consider the environmental consequences of its actions approving the applications of domestic, facilities-based common carriers, and thus could not fulfill its statutory obligation under NEPA.

OMB Approval Number: 3060-0141.

Title: Application for Renewal of Private Operational Fixed Microwave Radio Station License.

Form No.: FCC 402R.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals, State or Local Governments, Businesses or other for-profit, non-profit institutions.

Number of Respondents: 4,000.

Estimated Time Per Response: 20 minutes.

Total Annual Burden: 1,320 hours.

Needs and Uses: Private Operational Fixed Microwave licensees are required to apply for renewal of their radio station authorization every five years. Commission personnel will use the data to determine eligibility for a renewal authorization and issue a radio station license. Data is also used by compliance personnel in conjunction with field engineers for enforcement purposes. This form is required by the Communications Act, International Treaties and FCC Rules 47 CFR Parts 1.922 and 101.

The form will be revised to include a space for the applicant to provide an Internet address, as well as a Taxpayer Identification Number. The Commission is required to collect a Taxpayer Identification Number (EIN or SSN) to comply with the Debt Collection Improvement Act of 1996 and the Internet address will provide another alternative for contacting the applicant. The information collected on FCC Form 402R may be electronically submitted to the Commission using the recently developed FCC Form 900. The number of respondents on FCC Form 402R will be adjusted accordingly after the Commission evaluates the use of the new electronic form and can provide an estimate of the number of renewals being submitted electronically versus FCC Form 402R.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97-479 Filed 1-8-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE & TIME: Tuesday, January 14, 1997 at 10:00 a.m.

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

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

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

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

Matters concerning participation in civil actions or proceedings or arbitration.

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

DATE & TIME: Thursday, January 16, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1996-50: Farm Credit Council, a corporation, Jan Witold Baran.

Advisory Opinion 1996-52: Robert E. Andrews for Congress, by Ronald S. Ladell, counsel

1997 Legislative Recommendations. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 219-4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97-679 Filed 1-7-97; 3:40 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the

proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1997.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Emerald Coast Bancshares, Inc.*, Panama City Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Emerald Coast Bank, Panama City Beach, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Financial Bancorporation*, Iowa City, Iowa; to acquire 100 percent of the voting shares of West Branch Bancorp, Inc., West Branch, Iowa, and thereby indirectly acquire West Branch State Bank, West Branch, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *FGH Bancorp, Inc.*, Herrin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Herrin, Herrin, Illinois, and thereby indirectly acquire Carterville State & Savings Bank, Carterville, Illinois.

2. *NCF Financial Corporation*, Bardstown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Nelson

County Bank & Trust, Bardstown, Kentucky.

Board of Governors of the Federal Reserve System, January 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-478 Filed 1-8-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System Federal Register Citation of Previous Announcement: 62 FR 408, January 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, January 8, 1997.

CHANGES IN THE MEETING: Change in the time of the open meeting to 11:00 a.m., Wednesday, January 8, 1997.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-647 Filed 1-7-97; 2:44 pm]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Record of Decision; Proposed Expansion Pacific Highway Port of Entry, Blaine, Whatcom County, Washington

I. Introduction

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) and the regulations issued by the Council on Environmental Quality, to expand to existing Pacific Highway Port of Entry (POE) in Blaine, Whatcom County, Washington. This Record of Decision (ROD) documents my decision regarding this proposal.

The existing facility is located on the west side of State Route 543 in Blaine, and serves as a major Port of Entry between the United States and the province of British Columbia, Canada. This ROD describes the alternatives considered and the rationale for selecting the environmentally preferred alternative.

The principal function of the proposed facility will be to accommodate the expansion requirements of the U.S. Customs Service, the Immigration and

Naturalization Service, the U.S. Department of Agriculture, Animal and Health Inspection Service, Food and Drug Administration, Food and Safety Inspection Service, U.S. General Services Administration/Public Buildings Service, and the U.S. Fish and Wildlife Service. The proposed expansion would replace the present facility, which is overcrowded and functionally obsolete.

II. Decision

Based upon review of the written materials associated with the environmental process, including the transcripts of the Scoping and Public Hearings and the comments received from those who reviewed the Draft, Final, and Supplemental Environmental Impact Statements, I have decided to proceed with the expansion of the POE. The site will expand from approximately 7 acres to 16 acres, part of which is already owned by the U.S. Government (approximately 9 acres would be acquired prior to construction). This ROD is in keeping with the statutory mission of General Services Administration to design, build, or lease, appraise, repair, operate, protect, and maintain federal properties. My decision is based upon the following factors:

The Pacific Highway POE is the largest commercial truck crossing port in Washington state, and is the U.S. Customs headquarters for Western Whatcom County, Washington and ports. Serving a major arterial highway, the POE also processes a significant amount of auto traffic as well as a majority of the state's bus traffic. Inspection agencies at the POE are responsible for monitoring vehicular and pedestrian traffic entering the U.S. This entails the use of surveillance equipment, inspection and detention facilities for vehicles and cargo, and detention facilities for people.

The present facility in Blaine can no longer efficiently nor effectively accommodate the volume of traffic encountered at this location, which has increased steadily in recent years. From 1978 to 1992, auto crossings have increased approximately 172 percent and truck crossings have increased approximately 252 percent. Between 1986 and 1991, the POE processed more than 6.7 million cars, trucks and buses. The flow of all traffic north and south bound has been severely affected. Furthermore, it is anticipated the growth in border traffic volume would continue, resulting from the 1989 Free Trade Agreement and the North America Free Trade Agreement (NAFTA), between the U.S. and Canada.

Because of the POE's location on a major north-south trucking route, traffic volumes that are processed directly reflect the level of trade between the two countries. Therefore, the continued increase in trade is anticipated to result in a concomitant increase in border traffic especially truck traffic, in the near future. In FY 1994, truck traffic increased 10.4 percent according to U.S. Customs. The inability of the POE to process current traffic volumes is not only related to the lack of capacity of individual processing units, but also because of an outdated site layout and inadequate site size, both of which are inadequate to ensure a safe and expedient flow of traffic.

In addition to the increase in traffic volume, the nature of transportation has changed a substantial degree during the past 20 years since the facility was constructed. New transportation technology that requires specific dimensions and handling systems, as well as automated cargo processing systems have rendered the existing facilities obsolete. The present 20-year facility is inadequately equipped to handle increasingly large loads of cargo and livestock at one time both in terms of space and processing equipment. Finally, structural and utility constraints of existing buildings do not allow for full utilization of modern office technology.

III. Alternatives Considered

The GSA has examined a range of alternatives that could feasibly attain the objectives of the proposed project. These alternatives are described in the Final EIS and Final Supplemental EIS and are summarized as follows:

A. Site Configuration

As reflected in the Draft and Final Environmental Impact Statements and the Draft and Final Supplemental Environmental Impact Statements, the GSA has conducted an intensive effort over a two-year period to study the best way to expand the POE facility. Because of the unique requirements of POE's, alternative sites on State route 543 have not been considered. POE's must, by law, be located at treaty designated locations set by the International Boundary Commission. Federal inspection facilities are by policy, situated at these points in order to perform their legal mission requirements. Therefore, expansion of the existing site was considered the only feasible alternative. A number of potential site configurations were investigated, two of which were deemed more desirable for expansion of the POE: Alternative 3B and Alternative 5.

B. Take No Action

This alternative assumes the existing facility would be maintained in its current condition. Existing processing capacities would become increasingly more inadequate as the volume of border traffic, particularly trucks, continues to increase. Increased traffic and processing delays would result in queuing conditions at the POE and possible also on State Route 543 north of the POE and into Canada. The absence of adequate facilities at Pacific Highway and associated delays may ultimately force truck traffic to utilize smaller border crossings not located along a major state highway. The inefficiencies and disadvantages associated with inadequate facilities would be worsened if the Take No Action Alternative were selected.

IV. Environmentally Preferred Alternative

As required by the National Environmental Policy Act (NEPA), a lead agency must identify its preferred alternative. The environmentally preferred alternative is the alternative which best promotes the national environmental policies incorporated in NEPA. In general, this would be the alternative resulting in the least damage to the natural environment and which best protects natural and cultural resources.

While Design Alternative 3B and 5 are similar, Design Alternative 5, is identified as GSA's environmentally preferred alternative. Design Alternative 5 would impact the least amount of wetlands by shifting the development focus on the western side of the site farther south than Design Alternative 3B. Design Alternative 5 would also include additional northbound truck parking to the east of State Route 543 for use by our client agencies.

V. Environmental Impacts and Mitigation Measures

In terms of environmental harm, this alternative would have only minor impacts to: topography; soils; hydrology; visual resources; fiscal considerations; land use and zoning; transportation; and noise. However, moderate impacts would occur to biological resources (wetlands). No significant impacts were identified.

All practicable means to alleviate, minimize and/or compensate environmental harm will be considered in the development of the project. Although several mitigation measures were recommended in the Draft EIS, only those that can be implemented under the authority of GSA were

adopted. For example, additional land is to be purchased to minimize the loss of wetlands. GSA shall monitor the implementation of those adopted mitigation measures necessary to assure measures specified in the Draft and the Record of Decision are carried out.

VI. Conclusion

Environmental and other relevant concerns presented by interested agencies and private citizens have been addressed sufficiently in the Final Environmental Impact Statement and Final Supplemental Environmental Impact Statement and are hereby acknowledged and incorporated into this ROD by reference. The General Services Administration believes there are no outstanding environmental issues to be resolved with respect to the proposed project and which are within the mission capabilities of this agency.

After consulting with the GSA staff, reviewing both the Final EIS and the Final Supplemental EIS and all of its related materials, it is my decision the GSA will proceed with Design Alternative 5 as the environmentally preferred alternative for the expansion of the Pacific Highway Port of Entry in Blaine, Whatcom County, Washington.

Dated: December 23, 1996.

L. Jay Pearson,

Regional Administrator.

[FR Doc. 97-525 Filed 1-8-97; 8:45 am]

BILLING CODE 6820-23-M

Office of Acquisition Policy; Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

ACTION: Notice.

SUMMARY: Title VII of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102-366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The program has been extended for an additional one-year period by the Omnibus Consolidated Appropriations Act (Public Law 104-208). The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to

successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstated only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from October 1, 1995 to September 30, 1996. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after January 1, 1997.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of \$25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procedure Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds \$25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 2, 7, and 8 in SIC Group 15, the National Capital Region in individual SIC code 1794, and Regions 2, 3, 5, 6, 7, and 9 in individual SIC code 1796) shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 2, 7, and 8, and individual SIC code 1794 in the National Capital Region, and in individual SIC code 1796 in Regions 2, 3, 5, 6, 7, and 9, shall be set aside for

small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges Counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Trash/garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 4, 5, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 4, 5, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: December 16, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 97-526 Filed 1-8-97; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Health Data Needs, Standards, and Security.

Times and Dates:

9:00 a.m.-5:30 p.m., January 21, 1997.

9:00 a.m.-5:30 p.m., January 22, 1997.

9:00 a.m.-5:30 p.m., February 10, 1997.

9:00 a.m.-5:30 p.m., February 11, 1997.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Status: Open.

Purpose: Under the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), the Secretary of Health and Human Services is required to adopt standards for specified transactions to enable health information to be exchanged electronically. The law requires that, within 24 months of adoption, all health plans, health care clearinghouses, and health care providers who choose to conduct these transactions electronically must comply with these standards. The Secretary is required to consult the NCVHS in complying with these provisions. As part of the consultation process, the Committee will submit recommendations to the Secretary during 1997.

To assist in the development of the NCVHS recommendations to HHS, the NCVHS Subcommittee on Health Data Needs, Standards, and Security is holding a series of public meetings to obtain the views, perspectives and concerns of interested and affected parties. The Subcommittee recognizes that there are natural tensions which exist between those who generate the

information which goes into these transactions and those who use the information. At the meetings, the Subcommittee will discuss these and other issues which may arise when a uniform set of standards must be implemented by all data generators and users. Generators of this data include hospitals, physicians, nurses, dentists, pharmacists, and other providers of health care. Users of this data include health insurers, health plans, researchers, and managers of quality, utilization and risk.

For the meetings, specific organizations representing both the generators and users of this data will be invited by the Subcommittee to provide answers to the following questions in writing, to make brief oral presentations of their answers, and to answer further questions from the Subcommittee. Representatives of ANSI accredited Standards Developing Organizations will be asked to present their views of these issues as well.

Questions To Be Addressed

1. What are your organization's expectations for the results of the Administrative Simplification standards requirements in the Health Insurance Portability and Accountability Act of 1996 (HIPAA)? In what ways will the outcome affect the members of your organization, both positively and negatively?

2. Does your organization have any concerns about the process being undertaken by the Department of Health and Human Services to carry out the Administrative Simplification requirements of this law? If so, what are those concerns and what suggestions do you have for improvements?

3. What major problems are experienced by the members of your organization with the current transactions specified under the HIPAA? For generators of the data, how readily available is the information that you need to provide for the transactions and how meaningful is that information from a clinical perspective? For users of the data, are you receiving the information you need from the transactions to pay the bill, manage the care process, etc., and what is your perception of its quality?

4. How can the goal of administrative simplification best be achieved while meeting the business needs of all stakeholders?

In addition, the Subcommittee will receive a presentation from the Health Care Financing Administration on unique identifiers for providers and payers on January 21. On January 22, the Subcommittee will discuss other business consistent with its charge.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:30 and 9:00 a.m. or 12:30 and 1:00 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

FOR FURTHER INFORMATION CONTACT: Substantive program information

as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 444-D, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690-7100, or Marjorie S. Greenberg, Acting Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436-7050. Information also is available on the NCVHS homepage: <http://aspe.os.dhhs.gov/ncvhs/index.htm>.

Dated: January 2, 1997.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 97-434 Filed 1-8-97; 8:45 am]

BILLING CODE 4151-04-M

Centers for Disease Control and Prevention

Epidemiology Program Office, Office of the Director, Centers for Disease Control and Prevention (CDC), Notice of Meeting

Name: Guide to Community Preventive Services Task Force Meeting.

Times and Dates: 8:30 a.m.-5 p.m., January 27, 1997; 8:30 a.m.-5 p.m., January 28, 1997.

Place: Terrace Garden Inn, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services. The primary purpose of this second meeting is to continue in the development of a shared vision for the Guide; review and assess the methods used in the initial development of the first two chapters; and to select additional topics to be included in the Guide.

Matters to be Discussed: Agenda items include the definition of "community" for the Guide; defining target audiences for the Guide; process for selection of topics to be included in the Guide; updates on current chapters in progress: the prevention of (a) motor vehicle injuries and (b) vaccine preventable diseases; and selection of new topics for upcoming chapters.

Agenda items are subject to change as priorities dictate.

FOR ADDITIONAL INFORMATION CONTACT: Marguerite Pappaioanou, Chief, Community Preventive Service Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D-01, Atlanta, Georgia 30333, telephone 404/639-4301.

Persons wishing to reserve a space for this meeting should call 404/639-4311 by close of business on January 21, 1997.

Dated: January 3, 1997.

Joseph E. Salter

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-467 Filed 1-8-97; 8:45 am]

BILLING CODE 4163-18-P

National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC); Notice of Meeting

Name: Translating Advances in Genetics into Public Health Action.

Times and Dates: 10 a.m.-5:30 p.m., January 27, 1997; 8 a.m.-3 p.m., January 28, 1997.

Place: Terrace Garden Hotel, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: CDC has established a Task Force on Genetics in Disease Prevention to: (1) develop a strategic plan for CDC-wide genetics programs, (2) coordinate and support program efforts, and (3) convene constituents and consultants for their individual advice on strategic planning, priorities for CDC activities, and policy development. This Task Force was formed in October, and is in the process of collecting and summarizing information about CDC efforts related to genetics that will be used during strategic planning.

This meeting will enable invited participants (individuals from academia, public health, professional organizations, consumer groups, and industry) to provide input and discuss strategic planning issues and needs associated with the translation of advances in genetics into public health action. Information gained from this meeting will be considered, along with that previously received, in drafting strategic planning documents. These documents will then be distributed for further comment.

Matters to be Discussed: Agenda items include discussions on population-based assessment functions, development of public health policies and guidelines, quality assurance and prevention effectiveness functions, and needs for professional

education and information dissemination efforts.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Dometa Williams, Genetics Task Force, NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341, telephone 770/488-7120, FAX 770/488-7197.

Dated: January 3, 1997.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-460 Filed 1-8-97; 8:45 am]

BILLING CODE 4163-18-P

Food and Drug Administration

[Docket No. 97N-0003]

Hoffman-LaRoche, Inc., et al.; Withdrawal of Approval of 11 New Drug Applications, 1 Abbreviated Antibiotic Application, and 20 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 new drug applications (NDA's), 1 abbreviated antibiotic application (AADA), and 20 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: February 10, 1997.

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 6-525	Gantrisin (sulfisoxazole) Tablets	Hoffman-La Roche, Inc., 340 Kingsland St., Bldg. 719-4, Nutley, NJ 07110.
NDA 12-486	Taractan (chlorprothixene) Tablets	Do.
NDA 12-772	Haldrone (paramethasone acetate) Tablets	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.

Application no.	Drug	Applicant
NDA 12-966	Masterone (dromostanolone propionate)	Hoffman-La Roche, Inc.
NDA 13-071	Libritabs (chlordiazepoxide) Tablets, 5, 10, 25 milligrams (mg).	Do.
NDA 13-664	GANTANOL (sulfamethoxazole) Suspension	Do.
NDA 16-109	Sinubid (acetaminophen, phenylpropanolamine HCl, and phenyltoloxamine citrate) Extended Release Tablets.	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 16-943	Halotex (haloproglin) 1% Solution	Westwood-Squibb Pharmaceuticals, Inc., 100 Forest Ave., Buffalo, NY 14213-1091.
NDA 17-914	OTIC-TRIDESILON (desonide-acetic acid) Solution 0.05%	Bayer Corp., 400 Morgan Ln., West Haven, CT 06516-4175.
NDA 18-366	Chymex (bentiromide) Solution	Savage Laboratories, Division of Altana, Inc., 60 Baylis Rd., Melville, NY 11747.
NDA 18-470	Cibacalcin (calcitonin-human, for injection)	Ciba-Geigy Corp., Summit, NJ 07901.
AADA 62-078	Ampicillin Trihydrate (bulk)	Sandoz Pharmaceuticals, 59 Route 10, East Hanover, NJ 07936-1080.
ANDA 70-120	Propranolol Hydrochloride Tablets, 10 mg	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
ANDA 70-121	Propranolol Hydrochloride Tablets, 20 mg	Do.
ANDA 70-122	Propranolol Hydrochloride Tablets, 40 mg	Do.
ANDA 70-123	Propranolol Hydrochloride Tablets, 60 mg	Do.
ANDA 70-124	Propranolol Hydrochloride Tablets, 80 mg	Do.
ANDA 85-288	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg.	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144-2555.
ANDA 85-484	Chlorpromazine Hydrochloride Tablets, USP, 50 mg	Do.
ANDA 85-748	Chlorpromazine Hydrochloride Tablets, USP, 200 mg	Do.
ANDA 85-750	Chlorpromazine Hydrochloride Tablets, USP, 10 mg	Do.
ANDA 85-751	Chlorpromazine Hydrochloride Tablets, USP, 25 mg	Do.
ANDA 85-752	Chlorpromazine Hydrochloride Tablets, USP, 100 mg	Do.
ANDA 87-819	Hydroxyzine Hydrochloride Tablets, USP, 10 mg	Do.
ANDA 87-820	Hydroxyzine Hydrochloride Tablets, USP, 25 mg	Do.
ANDA 87-821	Hydroxyzine Hydrochloride Tablets, USP, 50 mg	Do.
ANDA 87-822	Hydroxyzine Hydrochloride Tablets, USP, 100 mg	Do.
ANDA 88-344	Tripolidine Hydrochloride Pseudoephedrine Hydrochloride Syrup, 1.25 mg/30 mg per 5 milliliters (mL).	H. R. Cenci Laboratories, Inc., P.O. Box 12524, Fresno, CA 93778-2524.
ANDA 88-814	Promethazine with Codeine Syrup (Promethazine Hydrochloride and Codeine Phosphate Oral Solution, 6.25 mg/10 mg/5 mL).	Do.
ANDA 88-815	Promethazine VC Plain Syrup (Promethazine Hydrochloride and Phenylephrine Hydrochloride Oral Solution, 6.25 mg/5 mg/5 mL).	Do.
ANDA 88-816	Promethazine Hydrochloride, Phenylephrine Hydrochloride, Codeine Phosphate Syrup, 6.25 mg/5 mg/10 mg per 5 mL.	Do.
ANDA 89-018	Tripolidine Hydrochloride Pseudoephedrine Hydrochloride and Codeine Phosphate Cough Syrup, 1.25 mg/30 mg/10 mg per 5 mL.	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 February 10, 1997.

Dated: December 30, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97-524 Filed 1-8-97; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information

collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form No.:* HCFA-2082; *Use:* The data reported in the HCFA-2082 are the basis of actuarial forecasts for Medicaid service utilization and costs; of analysis and cost savings estimates required for legislative initiatives relating to

Medicaid and for responding to requests for information from HCFA components, the Department, Congress and other customers.; Frequency: Annually; *Affected Public*: State, local, or tribal government; *Number of Respondents*: 54; *Total Annual Responses*: 54; *Total Annual Hours*: 17,214.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Linda Mansfield, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: December 31, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97-455 Filed 1-8-97; 8:45 am]

BILLING CODE 4120-03-P

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1997:

Name: Council on Graduate Medical Education

Date and Time: February 5, 1997, 1:00 p.m.—5:00 p.m., February 6, 1997, 8:30 a.m.—4:00 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008, Palladian Room.

This meeting is open to the Public.

Agenda: The agenda will include two panel discussions, one is a summary of the current policy environment, the other academic medicine, managed care and GME. Discussions on the suggested future directions for COGME. Reports and recommendations in the following areas: International Medical Graduates and Options Paper—Reducing First-Year Resident Numbers.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443-6326, Council on

Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A-27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: January 3, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97-522 Filed 1-8-97; 8:45 am]

BILLING CODE 4160-15-P

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Biomedical Research Technology (Telephone Conference Call).

Date: January 30, 1997.

Time: 2:00 p.m.

Place: National Institutes of Health, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892-7965.

Contact Person: Dr. Sharon Moss, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892-7965, (301) 435-0822.

Purpose/Agenda: To evaluate and review contract proposals.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. (Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: January 3, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97-447 Filed 1-8-97; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of a Joint Environmental Impact Statement /Environmental Impact Report for Federal and State Actions Associated With Furthering the Purposes of the September 28, 1996, Agreement Between the United States, State of California, and MAXXAM, Inc. and its Subsidiary, Pacific Lumber Company

AGENCY: Fish and Wildlife Service, Interior.

Cooperating Agencies: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce, Environmental Protection Agency, Forest Service, Agriculture, Bureau of Land Management, Interior, California State Resources Agency, California State Department of Forestry and Fire Protection, California State Department of Fish and Game.

ACTION: Notice of additional public scoping meeting and extension of scoping comment period.

SUMMARY: As specified in the official Notice of Intent (FR, Vol. 61, No. 250, p. 68285), five public scoping meetings were scheduled and all scoping comments to the notice were requested to be received by February 10, 1997. This present Notice announces that a sixth public scoping meeting has been scheduled and the above agencies request all scoping comments to this notice be received by February 18, 1997. The sixth public scoping meeting has been scheduled for Tuesday, February 11, 1997, Radisson Plaza Hotel, 1400 Parkview Avenue, Manhattan Beach, California, from 1 p.m. to no later than 4 p.m., and from 6 p.m. to no later than 9 p.m.

ADDRESSES: Comments regarding the scope of the EIS should be addressed to Mr. Bruce Halstead, U.S. Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, CA 95521-5582. Comments should be received on or before February 18, 1997, at the above address. Written comments may also be sent by facsimile to (707) 822-8136. Comments received will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the above office; please call for an appointment.

FOR FURTHER INFORMATION CONTACT: Dennis Mackey, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland,

Oregon 97232-4181, Telephone: (503) 231-6241.

John H. Doebel,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97-463 Filed 1-8-97; 8:45 am]

BILLING CODE 4310-55-P

Bureau of Land Management

[NV-930-97-1430-01; N-56717]

Termination of Recreation and Public Purposes Classification; Nevada

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification N-56717 in its entirety and provides for opening the land to disposal by exchange to American Land Conservancy, pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 CFR 2200).

EFFECTIVE DATE: January 9, 1997.

FOR FURTHER INFORMATION CONTACT:

Cheryl Frassa, Las Vegas District Office, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, NV 89108, (702) 647-5116.

SUPPLEMENTARY INFORMATION: On February 22, 1995, a lease was issued to the Armenian Apostolic Church in Las Vegas for a church and community center pursuant to the Recreation and Public Purposes Act (43 CFR 2740) for the following described land comprising 5 acres:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,

SEC. 18, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The church and community center were not constructed and the proponent relinquished the lease on November 25, 1996. American Land Conservancy has requested the parcel in an exchange. The lands are segregated for exchange purposes by notation to the public land records and will remain closed to other forms of disposition.

Pursuant to Recreation and Public Purpose Act of July 25, 1979 (43 CFR 2740), classification of the above described lands, serial number N-56717, is hereby terminated in its entirety. And in accordance with section 206 of the Federal Land Policy and Management Act of October 21, 1976, (43 CFR 2200), and the Federal Land Exchange Facilitation Act of August 20, 1988, (43 CFR Parts 2090 and 2200), the land will remain closed to all other forms of appropriation

including the mining and mineral laws, pending disposal of the land by exchange.

Dated: December 30, 1996.

Michael F. Dwyer,

District Manager.

[FR Doc. 97-456 Filed 1-8-97; 8:45 am]

BILLING CODE 4310-HC-P

[WY-040-07-1430-01; WYW-137885]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Sublette County has been examined and found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at not less than the fair market value.

Sixth Principal Meridian

T. 32 N., R. 107W.,

Sec. 23, Lot 1.

The above lands contain .06 acres, more or less.

SUPPLEMENTARY INFORMATION: The BLM proposes to sell the surface estate of the above described land to Kenneth and Mary J. Hallinan. A portion of their home was inadvertently constructed on public land.

FOR FURTHER INFORMATION CONTACT:

Grace Jensen, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941, 307-367-4358.

The proposed sale is consistent with the Pinedale Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The land contains no other known public values. Detailed information concerning this action is available for review at the Bureau of Land Management, Pinedale Resource Area Office, 432 E. Mill Street, Pinedale, Wyoming, 82941.

Conveyance of the public land will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals to the United States of America, together with the right to prospect for, mine and remove the minerals.

3. 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 other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Federal Land Policy and Management Act and leasing under the mineral leasing laws. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever occurs first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, District Manager, Rock Springs, 280 Highway 191 North, Rock Springs, Wyoming 82901. Any adverse comments will be reviewed 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: December 18, 1996.

Michelle J. Chávez,

District Manager.

[FR Doc. 97-510 Filed 1-8-97; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 28, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by January 24, 1997.

Carol D. Shull,

Keeper of the National Register.

Florida

Brevard County, Gleason, William H., House, 1736 Pineapple Ave., Melbourne, 96001608

Louisiana

Ouachita Parish, Bynum House, 604 Grammont St., Monroe, 96001611

Harvey House, 608 Grammont St., Monroe, 96001610

St. Martin Parish, Bonin House, 421 N. Main St., St. Martinville, 96001609

Minnesota

Meeker County, District No. 48 School, off Co. Hwy. 6, approximately 1 mi.

S of US 12, Collinwood Township, Dassel vicinity, 96001612
 Steele County, Bridge No. L-5573 (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 95 over the Straight River, E of US 65, Clinton Falls Township, Owatonna vicinity, 96001613

Nebraska

Lancaster County, Charlton, William H., House, US 77, approximately 1 mi. S of jct. with NE 33, Roca vicinity, 96001614
 Scotts Bluff County, Tri-State Land Company Headquarters Building, 13 W. Overland St., Scottsbluff, 96001615

New Mexico

Sierra County, Elephant Butte Historic District, Roughly, along NM 51 from the Elephant Butte Dam to Mescal Canyon and along NM 52 from Ash Canyon to Long Ridge, Elephant Butte vicinity, 96001616

Ohio

Ashland County, City Hall and Opera House, 156 N. Water St., Loudonville, 96001618
 Myers Block—Home Company Building, 1 E. main St., Ashland, 96001620
 Clark County, Ollie's Tavern, 10516 Marquart Rd., New Carlisle vicinity, 96001619
 Cuyahoga County, Humphrey Concrete House, 128 E. 156th St., Cleveland, 96001617
 Lake County, Penfield, Louis A., House, 2203 River Rd., Willoughby Hills, 96001622
 Lorain County, Smith, Charles William and Anna, House, 651 W. Broad St., Elyria, 96001623
 Stark County, Eagles Building—Strand Theater, 243 E. Main St., Alliance, 96001624
 Stahl—Hoagland House, 330 W. Wooster St., Navarre, 96001621

Texas

Hunt County, Katy Depot, 3201 Lee St., Greenville, 96001625
 Travis County, Wroe—Bustin House, 506 Baylor St., Austin, 96001626

Virginia

Loudoun County, Cleremont Farm, E side of VA 619, .6 mi. NE of VA 743, Upperville vicinity, 96001627

Wisconsin

Calumet County, High Cliff Mounds, SW of jct. of High Cliff Rd. and S entrance to High Cliff State Park, Sherwood vicinity, 96001629
 Columbia County, Church Hill Historic District, Roughly bounded by Adams, Pleasant, Lock, and Franklin Sts., Portage, 96001628

Wyoming

Natrona County, Church of Saint Anthony, (Buildings Designed by Garbutt, Weidner, and Sweeney in Casper MPS), 604 S. Center St., Casper, 96001631
 Elks Lodge No. 1353, (Buildings Designed by Garbutt, Weidner, and Sweeney in Casper MPS), 108 E. 7th St., Casper, 96001632
 Roosevelt School, (Buildings Designed by Garbutt, Weidner, and Sweeney in Casper MPS), 140 E. K St., Casper, 96001633
 Sweetwater County, Wardell Court Historic Residential District, Wardell Crt., jct. with D St., Rock Springs, 96001630.

[FR Doc. 97-487 Filed 1-8-97; 8:45 am]
 BILLING CODE 4310-70-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Proposed Collection: Comment Request

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before February 21, 1997.

ADDRESS INFORMATION TO: Mary Ann Ball, Bureau of Management, Office of Administration Services, Information Support Services Division, U.S. Agency for International Development, Room 1113, SA-16, Washington, D.C. (703) 736-4743 or via e-mail MBall@USAID.Gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-552.
Form Number: N/A.
Title: Financial Status Report.
Type of Submission: Renew.

Purpose: USAID wants to require grant and cooperative agreement recipients who work in multiple countries in Eastern Europe and the New Independent States to provide expenditure reports by country. USAID/ENI has stated in the "remarks" section of SF-269 or SF-269A, or other applicable approved financial report form that "For assistance programs in Eastern Europe or the New Independent States which cover programs in more than one country, recipients shall specify the amount of the total Federal share which was expended for each country * * *." The USAID/ENI has sought a class deviation to the statute from the Office of Budget and Management in accordance with the 22 CFR 226.4. The information are being collected so that USAID will know how much of its funds are being spent for each country in order to report to Congress, the Office of Management and Budget and other requesters. Also, the reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Reporting Burden

Respondents: 80,
Annual responses: 320,
Total Annual responses: 5120.

Dated: December 6, 1996.

Willette L. Smith,
Acting Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 97-508 Filed 1-8-97; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 20, 1996, Ansys, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1- Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylcegonine (9180)	II

The firm plans to manufacture the listed controlled substances to produce

standards and controls for in-vitro diagnostic drug testing systems.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: December 31, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-428 Filed 1-8-97; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that in a letter dated November 12, 1996, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of n-ethylamphetamine (1475) a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the listed controlled substance to supply a customer in Switzerland.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 10, 1997.

Dated: December 18, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-429 Filed 1-8-97; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIME AND DATE: Wednesday, January 22, 1997; 8:30 A.M. to 5:00 P.M. and Thursday, January 23, 1997; 8:30 A.M. to 3:30 P.M.

PLACE: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center Education Center Auditorium, One Columbus Circle, N.E., Washington, D.C. 20544. The public should enter through the South Lobby entrance of the Thurgood Marshall Federal Judiciary Building.

STATUS: The meeting will be open to the public.

NOTICE: At its public meeting, the Commission will consider general administrative matters and substantive agenda items including small business, future claims and the United States Trustee Program; Commission working groups will consider the following substantive matters: Chapter 11, government, jurisdiction and procedure, small business, consumer bankruptcy, and service and ethics. Two open forum sessions for public participation will be held on January 23, 1997 from 8:30 A.M. to 10:00 A.M. and from 2:30 P.M. to 3:30 P.M.

SUPPLEMENTARY INFORMATION: Any individual or organization who wants to make an oral presentation to the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities may do so at the open forum sessions. Persons who would like to make an oral presentation to the Commission at the open forum sessions may register in advance by contacting the National Bankruptcy Review Commission at (202) 273-1813 no later than Tuesday, January 21, 1997 before 5:00 P.M. EST and providing name, organization (if applicable), address and phone number, or may register in person at the National Bankruptcy Review Commission registration desk at the meeting site by providing name, organization (if applicable), address and phone number. If the volume of requests to speak to the Commission at the open forum sessions exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration.

Oral presentations will be limited to five minutes per speaker. Persons speaking are requested, but not required, to supply twenty (20) copies of

their written statements prior to their presentations to the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G-350, Washington, DC 20544. Written submissions are not subject to any limitations.

FOR FURTHER INFORMATION CONTACT:

Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G-350, Washington, D.C. 20544; Telephone Number: (202) 273-1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 97-530 Filed 1-8-97; 8:45 am]

BILLING CODE 6820-36-P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.
2. *Current OMB approval number:* 3150-0036.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:*

Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of 10 CFR 110 or to export incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. *The number of annual reporting respondents:* 100. *The number of annual recordkeeping respondents:* 125.

6. *The number of hours needed annually to complete the requirement or request: reporting,* 130 hours (1.3 hours

per response); *recordkeeping*, 150 hours (1.2 hours per respondent).

7. **Abstract:** 10 CFR 110 provides application, reporting, and recordkeeping requirements for exports and imports of nuclear material and equipment subject to the requirements of a specific license or a general license and exports of incidental radioactive material. The information collected and maintained pursuant to 10 CFR 110 enables the NRC to authorize only imports and exports which are not inimical to U.S. common defense and security and which meet applicable statutory, regulatory, and policy requirements.

Submit, by March 10, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703-321-3339. Members of the public who are located outside of the Washington, DC area can dial FedWorld, 1-800-303-9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703-487-4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F33, Washington, DC 20555-0001, or by telephone at 301-415-7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this second day of January, 1997.

For the Nuclear Regulatory Commission.
Gerald F. Cranford,
Designated Senior Official for Information Resources Management.

[FR Doc. 97-472 Filed 1-8-97; 8:45 am]
BILLING CODE 7590-01-P

**Commonwealth of Massachusetts:
Staff Assessment of Proposed
Agreement Between the Nuclear
Regulatory Commission and the
Commonwealth of Massachusetts**

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed Agreement with the Commonwealth of Massachusetts.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) has received, from the Governor of the Commonwealth of Massachusetts, a proposal to enter into an Agreement pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (Act). The proposed Agreement would permit Massachusetts to assume certain portions of the Commission's regulatory authority. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing a summary of the NRC staff assessment of the proposed Massachusetts radiation control program. Comments are requested on the proposed Agreement, especially public health and safety aspects, and the assessment.

The Agreement will effectively release (exempt) persons in Massachusetts from certain portions of the Commission's regulatory authority. The Act also requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the Federal Register and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires January 23, 1997.

Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555-0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Copies of the proposed Agreement, along with copies of the request by

Governor Weld including referenced enclosures, applicable legislation, regulations for the control of radiation, and the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2322 or e-mail RLB@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Commission has received a request from Governor William Weld of Massachusetts to enter into an Agreement whereby the NRC would discontinue, and the Commonwealth would assume, certain regulatory authority as specified in the Act. Section 274 of the Act authorizes the Commission to enter into such an agreement.

Section 274e of the Act requires that the terms of the proposed Agreement be published for public comment once each week for four consecutive weeks. This notice is being published in the Federal Register in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism whereby a State may assume regulatory authority, otherwise reserved to the NRC, over certain radioactive materials¹ and uses thereof. In a letter dated March 28, 1996, Governor Weld certified that the Commonwealth of Massachusetts has a program for the control of radiation hazards that is adequate to protect health and safety of the public within the Commonwealth with respect to the materials covered by the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The specific authorities requested by the Commonwealth of Massachusetts under this proposed Agreement are (1) the regulation of byproduct materials as defined in Section 11e.(1) of the Act, (2) the regulation of source materials, (3) the regulation of special nuclear materials in quantities not sufficient to form a critical mass, (4) the evaluation

¹ The materials, sometimes referred to as "agreement materials," are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) Byproduct materials as defined in Section 11e.(2) of the Act; (c) Source materials as defined in Section 11z. of the Act; and (d) Special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

of the safety of sealed sources and devices (containing materials covered by the Agreement) for distribution in interstate commerce, and (5) the land disposal of low-level radioactive waste (as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. 2021b) received from other persons. The Commonwealth does not wish to assume authority over the regulation of byproduct materials as defined in Section 11e.(2) of the Act, that is over tailings from the recovery of source materials from ore, but does reserve the right to apply at a future date for an amended agreement to assume authority in this area.

(b) The proposed agreement contains nine articles that (1) list the materials and activities to be covered by the Agreement; (2) specify the activity for which the Commission will retain regulatory authority; (3) allow for future amendment of the Agreement; (4) allow for certain regulatory changes by the Commission; (5) reference the continued authority of the Commission for purposes of safeguarding nuclear materials and restricted data; (6) commit the Commonwealth and NRC to exchange information necessary to maintain coordinated and compatible programs; (7) recognize reciprocity of licenses issued by the respective agencies; (8) identify criteria for the suspension or termination of the Agreement; and (9) specify the proposed effective date. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes in style. Also, because of several issues posed by this request which required resolution before the Agreement could be concluded, the effective date requested by the Governor could not be realized. The final text of the Agreement, with the actual effective date, will be published after the Agreement is approved by the Commission.

(c) The Massachusetts radiation control program currently regulates users of naturally-occurring and accelerator-produced radioactive materials, and users of certain radiation-producing electronic machines. The program was enabled by Massachusetts law (Massachusetts General Law [M.G.L.] Chapter 111, §5B) in 1958. This statute was later replaced by M.G.L. Chapter 111, Sections 5M through 5P. In 1987, M.G.L. Chapter 111H was added to provide for the regulation of low-level radioactive waste. Section 7 of the legislation contains the authority for the Governor to enter into an Agreement with the Commission.

The Massachusetts regulations contain provisions for the orderly transfer of authority over NRC licenses to the regulatory control of the Commonwealth. After the effective date of this proposed Agreement, licenses issued by NRC will continue in effect under Massachusetts regulatory authority until these licenses expire or are replaced by Commonwealth issued licenses.

(d) The NRC staff assessment finds the proposed Massachusetts program adequate to protect public health and safety, and compatible with the NRC program for materials regulation.

II. Summary of the NRC Staff Assessment of the Massachusetts Program for the Control of Agreement Materials

NRC staff has examined the proposed Massachusetts radiation control program with respect to the ability of the program to regulate agreement materials. The examination was based on the Commission's policy statement "*Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*" (referred to herein as the "criteria") (46 FR 7540; January 23, 1981, as amended).

(a) *Organization and Personnel.* The proposed program unit responsible for regulating agreement materials will consist of 13 technical/professional positions within the existing radiation control program of the Massachusetts Department of Public Health. The qualifications for staff members specified in the personnel position descriptions, and the qualifications of the current staff members, meet the criteria for education, training and experience. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Most staff members hold advanced degrees, and have had additional training and experience in radiation protection. Senior staff have more than five years experience each in radiation control programs. The program director has a master's degree in public health and 15 years experience in regulatory health physics.

(b) *Legislation and regulations.* The Massachusetts Department of Public Health is designated by statute to be the radiation control agency. The Department is provided by statute with the authority to promulgate regulations, issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions,

and orders. Licensees are required by law to provide access to inspectors.

The Department has adopted regulations (Massachusetts Regulations for the Control of Radiation or MRCR) providing radiation protection standards essentially identical to the standards in 10 CFR Part 20. Technical definitions in the MRCR are also essentially identical. The MRCR require consideration of the total radiation doses to individuals from all sources of radiation (except background radiation and radiation from medical treatment or examinations, as is the case in the NRC rules), whether the sources are in the possession of the licensee or not. The MRCR also require appropriate surveys and personnel monitoring under the close supervision of technically competent people, and the use of radiation labels, signs and symbols essentially identical to those contained in 10 CFR Part 20. Posting requirements and instruction of workers requirements adopted in the MRCR are compatible with the equivalent current requirements of the NRC.

Nothing in the Massachusetts statutes or regulations seeks to regulate areas not permitted by the Atomic Energy Act. The MRCR contain a provision to avoid interference with those regulatory requirements imposed by NRC pursuant to the Act, and for which Commonwealth licensees have not been exempted under the agreement.

(c) *Storage and Disposal.* The MRCR also contain compatible requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both waste disposal by material users and the land disposal of waste received from other persons. The NRC staff noted some differences in the MRCR waste regulations as compared to the NRC regulations in 10 CFR Part 61, but determined that the differences are related either to the prohibition of shallow land burial as a disposal technology or to the ownership of the disposal site by the Massachusetts Low-Level Radioactive Waste Management Board. Because of these special provisions, NRC staff determined that the differences in the regulations do not reduce the ability of the Massachusetts radiation control program to protect health and safety, nor reduce the compatibility of the program or the regulations themselves.

(d) *Transportation of Radioactive Material.* The MRCR contains rules equivalent to 10 CFR Part 71 as in effect prior to April 1, 1996. Effective on that date, the NRC amended Part 71. Under current policy, an existing Agreement State is allowed up to three years after

NRC adopts a final rule to adopt a compatible rule, or to impose each regulatory provision of the rule using an alternate legally binding requirement (LBR), such as an order or license condition. A State seeking an agreement is expected to have effective rules or LBRs compatible with those of NRC in effect at the time the agreement becomes effective. The intent of this expectation is to spare licensees in the new Agreement State from the "whipsaw" effect of being subjected first to the new NRC requirements, then the old requirements when the agreement takes effect, then again to the new requirements when later adopted by the State. Massachusetts is in the process of adopting rules compatible with the revised 10 CFR Part 71. However, these rules may not become effective before the Agreement is signed. Massachusetts intends to impose the requirements of the new Part 71 rules in the interim by issuing appropriate orders to the affected licensees.

(e) *Recordkeeping and Incident Reporting.* The MRCR incident reporting requirements are similar to the requirements in the NRC rules. The NRC staff noted that for some NRC rules that specify a records retention period of less than five years, the retention period specified in the MRCR is shorter. The NRC staff concluded, however, that the retention periods specified in the MRCR rules are adequate since the retention periods are long enough to permit examination of the records during routine inspections. The MRCR imposes retention requirements similar to the NRC rules for records which must be retained indefinitely or until the license is terminated.

(f) *Evaluation of License Applications.* The MRCR contains requirements equivalent to the current NRC regulations specifying the required content of applications for licenses, renewals, and amendments. The MRCR also provide requirements equivalent to the NRC requirements for issuing licenses and specifying the terms and conditions of licenses. The agreement materials program unit has adopted a procedure for processing applications that assures the regulatory requirements will be met, or, if appropriate, exceptions granted. The program unit has the authority by Statute to impose requirements in addition to the requirements specified in the regulations. The program unit also retains by regulation the authority to grant specific exemptions from the requirements of the regulations. The MRCR specifies qualifications for the use of radioactive materials in or on

humans that are similar to the NRC requirements in 10 CFR Part 35.

The Massachusetts licensing procedures manual, along with the accompanying regulatory guides, are adapted from similar NRC documents and contain adequate guidance for the agreement materials program unit staff to use when evaluating license applications.

(g) *Inspections and Enforcement.* The Massachusetts radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The agreement materials program unit has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted procedures for enforcement in the MRCR.

(h) *Regulatory Administration.* The Massachusetts Department of Public Health is bound by procedures specified in Commonwealth statute for rulemaking. The program has adopted procedures to assure fair and impartial treatment of license applicants.

(i) *Cooperation with Other Agencies.* The MRCR deems the holder of an NRC license on the effective date of the Agreement to possess a like license issued by Massachusetts. The MRCR provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. The MRCR also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. Licenses in timely renewal are not excluded from the transfer continuation provision. The MRCR provide exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The Department of Public Health and the Department of Labor and Industries have entered into a Memorandum of Understanding, as authorized elsewhere in Massachusetts law, which provides for the Department of Public Health to exercise the responsibility and authority of the Department of Labor and Industries with respect to radiation and radioactive materials. The Department of Environmental Protection is designated as the agency to adopt the suitability standards for any proposed disposal site under the Massachusetts Low-Level Radioactive Waste

Management Act. The Department of Public Health will license and regulate the site only after the Executive Secretary for Environmental Affairs has determined that the report on the site characterization study is in conformance with the suitability standards, and the Low-Level Radioactive Waste Management Board has selected the operator.

The proposed Agreement commits the Commonwealth to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the Commission's program for the regulation of like materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the Commonwealth to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff has concluded that the Commonwealth of Massachusetts meets the requirements of Section 274 of the Act. The Commonwealth's statutes, regulations, personnel, licensing, inspection, and administrative procedures are compatible with those of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Since the Commonwealth is not seeking authority over byproduct material as defined in Section 11e.(2) of the Act, Subsection 274o is not applicable to the proposed Agreement. The language of the Agreement requested by Governor Weld has been

revised to reflect that the effective date of the proposed Agreement and the location at which it will be signed remain to be determined. Certain conventions have been used to highlight the proposed revisions. New language is shown inside boldfaced arrows, while language that would be deleted is set off with brackets.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 19th day of December, 1996.

For the U. S. Nuclear Regulatory Commission.

Paul H. Lohaus,

Acting Director, Office of State Programs.

Appendix A Proposed Agreement

Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Massachusetts for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in Sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Massachusetts is authorized under Massachusetts General Laws, Chapter 111H, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Massachusetts certified on [June 1, 1995.] March 28, 1996, that the Commonwealth of Massachusetts (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect [the] public health

and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [November 1, 1995.] (date to be determined) that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation[s] between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth, acting in behalf of the Commonwealth, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. By-product materials as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. Licensing of Low-Level Radioactive Waste Facilities.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of by-product, source, or

special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of by-product, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other by-product, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting by-product material.

Article III

This Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E, whereby the Commonwealth can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against

hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of like materials. The Commonwealth and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on [April 24, 1996,] (date to be determined) and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [Boston, Massachusetts] (location to be determined), in triplicate, this [24]th Day of [April, 1996] (date to be determined).

For the United States Nuclear Regulatory Commission.

Shirley Ann Jackson,
Chairman.

For the Commonwealth of Massachusetts.

William F. Weld,
Governor.

[FR Doc. 97-403 Filed 1-8-97; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26640]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 3, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 27, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation (70-8977)

Entergy Corporation, 639 Loyola Avenue, New Orleans, Louisiana 70113 ("Entergy"), a registered holding company, has filed a declaration with the commission pursuant to sections 6(a) and 7 of the Act.

Entergy adopted an employee stock option plan, known as the Entergy Stock Investment Plan ("Plan"), dated October 29, 1993. In connection with the

implementation of the Plan, the Commission, by order dated December 28, 1993 (HCAR No. 25963), authorized Entergy, from time to time through March 31, 1997, to (i) grant options ("Options") to eligible employees (as hereinafter defined) to purchase up to 2,000,000 shares of its common stock, \$5 par value, or any successor security ("Stock"), and (ii) to issue and sell up to 2,000,000 shares of such Stock upon the exercise of such Options. In addition, Entergy was authorized to purchase, from time to time through March 31, 1997, up to 2,000,000 shares of Stock to be held as treasury shares, pending resale to such employees, for the purpose of satisfying the anticipated requirements of the Plan.

The Plan, as currently in effect, provides for three consecutive annual offerings of Stock, with the first such annual period commencing on April 1, 1994 and the third and final such annual period terminating March 31, 1997. Entergy now proposes to renew and extend the Plan for an additional three year period commencing April 1, 1997, and to amend the Plan to provide for such renewal and extension and for the sale of up to 2,000,000 additional shares of Stock during this extended term.

Accordingly, Entergy requests authorization, from time to time during the period through March 31, 2000, to grant additional Options pursuant to the terms of the Plan, as amended, and, in connection with the execution of such Options (and the Options previously granted), to sell up to an aggregate maximum of 4,000,000 shares of its Stock (including the 2,000,000 shares currently authorized) which may be either authorized but unissued shares or previously issued shares purchased by Entergy on the open market and held by the Corporation as treasury shares. Entergy intends, pursuant to rule 42, to purchase on the open market, from time to time through March 31, 2000, up to an aggregate maximum of 4,000,000 shares of Stock (including the 2,000,000 shares currently authorized), to be held as treasury shares pending resale to participating employees pursuant to the terms of the Plan.

Funds for the purchase of shares of Stock on the open market to satisfy the requirements of the Plan will be obtained from internally generated funds. Proceeds from the sale of shares of Stock under the Plan will become part of the general corporate funds of Entergy and will be used (i) to purchase Stock of Entergy sold or to be sold by Entergy under the Plan, or (ii) for other general corporate purposes. Any authorization that is required under the

Act for entergy to issue or sell shares of Stock for corporate purposes other than as set forth herein would be the subject to a separate filing or filings with the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-444 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 13, 1997.

An open meeting will be held on Monday, January 13, 1997, at 10:00 a.m. A closed meeting will be held on Thursday, January 16, 1997, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Monday, January 13, 1997, at 10:00 a.m., will be: Consideration of whether to issue a release proposing rules and soliciting comments to require the front of prospectuses to be drafted in plain English and amending current rules to provide standards on the meaning of clear, concise and understandable disclosure in prospectuses. For further information, contact Ann D. Wallace in the Division of Corporation Finance at (202) 942-2980, or Kathleen Clarke in the Division of Investment Management at (202) 942-0724.

The subject matter of the closed meeting scheduled for Thursday, January 16, 1997, at 2:30 p.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: January 7, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-621 Filed 1-7-97; 12:34 pm]

BILLING CODE 8010-01-M

[Release No. 34-38114; File No. SR-CHX-96-30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Standards for Approved Lessors of Exchange Memberships

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 12, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On December 11, 1996, the Exchange filed Amendment No. 1³ to the proposed rule change, on December 17, 1996, the Exchange filed Amendment No. 2⁴ and on December 30, 1996, filed Amendment No. 3⁵ to

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from David T. Rusoff, Foley & Lardner to David Sieradzki, SEC, dated December 11, 1996 ("Amendment No. 1"). Amendment No. 1 changes the period of time for an Approved Lessor to lease a seat on the exchange from "a reasonable time" to within 60 days after becoming an Approved Lessor. The Exchange will have the authority to extend the 60 day time period upon the request of an Approved Lessor for good cause shown. In addition, Article IA, Rule 1, Interpretation and Policy .01 is amended to reduce the percentage ownership required to be considered a control person from 10% to 5%. This is consistent with recent changes to Article VI, Rule 2, where the 5% standard was used.

⁴ See Letter from David T. Rusoff, Foley & Lardner to David Sieradzki, SEC, dated December 17, 1996 ("Amendment No. 2"). Amendment No. 2 adds language describing the amendment to Article XIV, Rule 2, relating to the imposition of transaction fees.

⁵ See Letter from David T. Rusoff, Foley & Lardner to Katherine England, SEC, dated December 30, 1996 ("Amendment No. 3"). Amendment No. 3 changes language in Article I, Rule 10 relating to the ability of the Exchange to waive the requirement that no person own or have voting power for more than ten percent of the outstanding memberships. The former language, which provided that the requirement may be waived by the Exchange "under appropriate circumstances," has been replaced by "for good cause shown." In addition, the Amendment makes several technical, non-substantive changes to the filing.

the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article I, Article VIII and Article XIV of, and add a new Article IA to, the CHX's Rules, to create standards for Approved Lessors (as defined below) of Exchange memberships.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create a new form of membership known as an "Approved Lessor." An Approved Lessor will be an individual or entity that desires to purchase a membership in the CHX for the sole purpose of providing a financing mechanism for another person or entity that desires to become a member or member organization ("lessee"). A lessor that registers with and is approved by the CHX will be an Approved Lessor.

When an Approved Lessor has entered into this financing relationship (or lease) with a lessee, the Approved Lessor will not be considered a "member" or "member organization" of the CHX for purposes of the Act, or for purposes of the CHX's Certificate of Incorporation, Constitution and Rules except that an Approved Lessor will have the right to vote on proposals to liquidate or dissolve the Exchange and shall possess liquidation rights, as set forth in Article IX, Sec. 2 of the Constitution, upon such dissolution. In addition, an Approved Lessor shall be

subject to the Exchange's member arbitration rules. Among other things, this means that an Approved Lessor will be inactive with respect to CHX activities. For example, Approved Lessors will not be permitted to vote (except as stated above) or trade on the CHX as a member or have any access to the CHX trading floor unless an Approved Lessor is also a "member" (i.e., is a registered broker-dealer and has been approved by the Exchange as a "member" or "member organization") pursuant to another membership.

A lessee will be deemed a "member" or "member organization," and, as a result, a lessee must satisfy all the requirements to become a member or member organization currently set forth in CHX Certificate of Incorporation, Constitution, Rules and the federal securities laws. A lessee will not, however, be entitled to vote on a proposal to dissolve or liquidate the Exchange and will not have any liquidation rights.

Because Approved Lessors will not be "members" of the CHX, they will not be required to be registered as broker-dealers. However, to prevent inappropriate persons or entities from having indirect dealings on the CHX, Approved Lessors will be required to submit information to the CHX on Form BD and/or Form U-4. The CHX will be permitted to disapprove registration as an Approved Lessor if the lessor is the subject of a statutory disqualification or fails to meet other pre-requisites set forth in the rule. For example, a lessor may be denied registration as an Approved Lessor if, among other things, it or its employees or control persons are subject of or a party to a disciplinary proceeding, are or have been, suspended, barred or expelled by a regulatory entity (including a self-regulatory organization) described in the rule, have been convicted of certain criminal offenses set forth in the rule, or have not paid dues, fines, charges or other debts to a regulatory entity.

In addition, an Approved Lessor will be required to enter into a financing arrangement (or lease) with a lessee within sixty days (this time period may be extended upon request of an Approved Lessor for good cause shown) after becoming approved as an Approved Lessor or the termination of an earlier financing arrangement (or lease). If a financial arrangement (or lease) is not entered into, the Approved Lessor will be required to promptly dispose of the membership. If not promptly disposed of, the CHX will be permitted to sell the membership on the Approved Lessor's behalf. This

provision will prevent Approved Lessors from acquiring one or more memberships purely to speculate on the price of the membership and will ensure that memberships do not sit idle.

Until the Approved Lessor enters into a financing arrangement (or lease) with a lessee, or, after such financing arrangement (or lease) has been terminated and the seat transferred to Approved Lessor, the Approved Lessor will still not be a "member" for purposes of the federal securities laws or the Exchange's Certificate of Incorporation, Constitution and Rules (except with respect to voting on dissolution, rights to net proceeds on dissolution, and the Exchange's member arbitration rules). During this time, the membership shall be viewed as inactive, but the dues shall continue to accrue and will be the obligation of the Approved Lessor.

Current CHX rules protect the CHX and other CHX members by providing that the proceeds received in the transfer of a membership are first to be applied to satisfy the debts owed by the transferor member to the Exchange or certain other persons. However, because Approved Lessors are not "members" of the Exchange, the Exchange will require Approved Lessors, and their lessees, to enter into a standard subordination and sale agreement with the CHX that provides that the CHX is authorized to sell the membership under certain circumstances when obligations are owed to the CHX or certain other creditors by the lessee and whereby the Approved Lessor agrees to be bound by CHX rules relating to Approved Lessors, among other things.

The proposed rule change also makes technical, nonsubstantive changes to improve the clarity of Article I, Rule 17.

The proposed rule change sets forth specific provisions that the CHX will require in any financing agreement or lease. The CHX will require that these agreements be filed with, and approved by, the CHX. Additionally, the transfer of the title to the membership to a lessee will be posted in the same manner as all other transfers of memberships.

Furthermore, the proposed rule change prohibits members and Approved Lessors from owning or controlling 10% or more of the outstanding memberships on the Exchange.

Finally, the proposed rule change amends Article XIV, Rule 2, relating to the imposition of transaction fees to reflect present practice. The rule currently provides that the rate of these fees shall be fixed before the close of each fiscal year. The proposed rule

provides that they are fixed from time to time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

⁶ 15 U.S.C. § 78f(b).

⁷ 15 U.S.C. § 78f(b)(5).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CXH-96-30 and should be submitted by January 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-443 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38112; File No. SR-NASD-96-53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Registering and Termination the Registration of Registered Individuals

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 19, 1996, NASD Regulation Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NASD Regulation has designated this proposal as one constituting a rule through which the Association imposes dues, fees and other charges under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 2 of Schedule A to the By-Laws of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to eliminate the scheduled fee rollbacks and to retain the current fee level for registration and termination of registration of individuals indefinitely. Below is the

text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Fees

Sec. 2.

(b) Each member shall be assessed a fee of \$85.00 for each application filed with the Association for registration of a registered representative or registered principal [from August 1, 1995 through December 31, 1996. Such fee shall be \$70.00 from January 1, 1997 through December 31, 1997 and shall be \$65.00 thereafter]. Additionally, each member shall be assessed a surcharge of \$95.00 for registrations involving a special registration review filed with the Association [from August 1, 1995 through December 31, 1997 and shall be \$85.00 thereafter]. The following shall apply to the filing of applications to register or transfer the registration of registered persons or registered principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount in percent
1,000-1,999	10
2,000-2,999	20
3,000-3,999	30
4,000-4,999	40
5,000 and over	50

(h) (i) Each member shall be assessed a fee of \$40.00 for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws [from August 1, 1995 through December 31, 1996. Such fee shall be \$35.00 from January 1, 1997 through December 31, 1997 and shall be \$25.00 thereafter].

(ii) A late filing fee of \$65.00 shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination [from August 1, 1995 through December 31, 1996. Such fee shall be \$60.00 from January 1, 1997 through December 31, 1997 and shall be \$50.00 thereafter].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Regulation has a major systems development project underway to completely redesign the Central Registration Depository ("CRD"). The CRD is a computerized system for one-stop registration and licensing of NASD members and their associated persons. The system was developed in 1981 to standardize and streamline the registration process by accommodating a single filing and payment of fees for registration in multiple jurisdictions. Today the system processes filing on behalf of 50 states, the District of Columbia and Puerto Rico, seven (7) self-regulatory organizations and the Commission.

The redesigned CRD, scheduled for a staged implementation in 1996 and 1997, will feature electronic filings, re-engineered work processes, expedited relicensing and a highly structured, relational database to better serve the information requirements of regulators, members and investors. In addition, the new system will include investment adviser registration for the SEC and states, an E-mail communication capability for system participants and a document imaging/storage/retrieval service for support documents required in certain filing situations.

NASD Regulation had originally intended to fund the CRD redesign effort from the current registration filing fees based on expected activity levels in the 1995-1997 period. In 1995 registration activity declined significantly, and the resulting lower revenue levels are now expected to continue through 1997. As a result, in 1995 the NASD adopted a temporary fee increase in order to continue the investment in this

⁸ 17 C.F.R. 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

important systems project.² The temporary fees were implemented on August 1, 1995, and applied to all filings received on or after that date. The fee increase was to be reduced for most types of filings made in calendar year 1997 and was to return to the pre-1995 levels in calendar year 1998.

NASD Regulation has added functionality to the new CRD system and improved the system's compatibility with various computer operating systems, such as Windows 95 and Windows NT. This has resulted in delays and cost increases in implementing the redesigned CRD. Accordingly, NASD Regulation is proposing to amend Schedule A, Section 2 to eliminate the scheduled fee rollbacks and to retain the current fee level indefinitely. This fee level will provide \$4 million in extra revenue each year over the revenue produced by the pre-1995 fee levels.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act³ which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule provides a consistent basis for assessments among member firms and fairly assesses a charge to cover the costs incurred by the Association in the implementation of the redesigned CRD System.

2. Statutory Basis

The proposed rule change is consistent with Section 15A of the Act⁴ in general and furthers the objectives of Section 15A(b)(5)⁵ in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the NASD's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the NASD and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (e) of Rule 19b-4 thereunder.⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the National Association of Securities Dealers. All submissions should refer to File No. SR-NASD-96-53 and should be submitted by January 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

[FR Doc. 97-439 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38115; File No. SR-NASD-95-54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to a Modification of the Operation of the Small Order Execution System During Locked and Crossed Markets

January 3, 1997.

On November 15, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder.³ The rule change amends NASD Rule 4730(b)(4)⁴ to provide that during locked or crossed markets, SOES will execute orders in five-second intervals against a locked or crossed market maker at the best price, regardless of whether the market maker entered the quotation locking or crossing the market.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37845, October 21, 1996) and by publication in the Federal Register (61 FR 55342, October 25, 1996). One comment letter was received.⁵ This order approves the proposed rule change.

I. Description of Rule Change

The rule change approved today modifies SOES to provide that during

¹ The NASD amended the proposed rule change four times subsequent to its initial filing. Amendment No. 4 filed October 16, 1996, changed the narrative in the proposed rule change. Amendment No. 3, filed October 2, 1996, replaced Amendment No. 2, which was filed September 23, 1996. Amendment No. 2, in turn, replaced Amendment No. 1, which was filed August 5, 1996.

The proposed rule change, as originally submitted, would have provided market makers with a 15-second grace period following their receipt of a Small Order Execution System ("SOES") execution report during locked and crossed markets in which to update their quotation in that security before being required to execute another SOES order in that security. The filing as amended would establish a 5 second grace period between SOES executions in locked and crossed markets. See letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market to Katherine England, Assistant Director, Division of Market Regulation, Commission (October 2, 1996).

² 15 U.S.C. § 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ NASD Manual, Marketplace Rules (CCH), Rule 4730.

⁵ Letter from Edward J. Johnsen, Vice President & Counsel, Morgan Stanley & Co. Inc. ("Morgan Stanley"), to Jonathan G. Katz, Secretary, Commission, dated November 14, 1996.

² Securities Exchange Act Release No. 36025 (July 26, 1995), 60 FR 39200 (Aug. 1, 1995).

³ 15 U.S.C. § 78o-3.

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4.

⁸ 17 CFR 200.30-3(a)(12).

locked or crossed markets, SOES will execute orders in five-second intervals against a market maker whose quotation is locked or crossed at the best price, regardless of whether the market maker entered the quotation locking or crossing the market. Currently, when markets are not locked or crossed, SOES provides market makers with a 15-second period of time following their receipt of a SOES execution report to update their quotation before being required to execute another order in that security through SOES. The NASD represented in its filing that when the market for a Nasdaq National Market security is locked or crossed,⁶ however, SOES is currently designed so that the market maker whose quotation is locked or crossed and the market maker who has entered a locking or crossing quotation will have SOES orders representing shares equal to the SOES minimum exposure limit⁷ or the firm's exposure limit, whichever is greater, executed by SOES against the market maker's account without any delay between SOES executions ("locked and crossed market rule").⁸ Thus, in such instances, unlike the operation of SOES during non-locked or crossed markets, the market maker's account will receive SOES executions without any delay between executions until its exposure limit is exhausted. In addition, during locked or crossed markets, SOES orders are executed against market makers whose quotations are locked or crossed irrespective of any preference indicated by the SOES order entry firm.

The locked and crossed market rule was intended to increase the accuracy of displayed quotations in NNM securities

⁶ Quotations are "locked" when the bid price quoted by one market maker in a security equals the ask price quoted by another market maker in the same security. Quotations are "crossed" when the bid price quoted by one market maker in a security is greater than the ask price quoted by another market maker in the same security.

⁷ The minimum exposure limit for SOES is currently twice the maximum SOES order size for a given security. Thus, the minimum exposure limit for a Nasdaq/National Market security in the 1,000-share tier size is 2,000 shares. The NASD has filed a proposed rule change that would, among other things, eliminate minimum exposure limits in SOES. See Securities Exchange Act Release No. 38008 (December 2, 1996), 61 FR 64550 (December 5, 1996) (publishing notice of filing of SR-NASD-96-43).

⁸ See Rule 4730(b)(4). The Commission notes that Rule 4730(b)(4) currently provides that "a Market Maker with a quotation for that security in the Nasdaq System that is causing the locked or crossed market may have orders representing shares equal to the minimum exposure limit or the firm's exposure limit, whichever is greater, executed by SOES for that Market Maker's account at its quoted price if that price is the best price." Rule 4730(b)(4) by its terms does not apply to market makers whose quotations have been locked or crossed. The proposed rule would change this distinction and both types of firms to the Rule.

by providing an incentive for market makers to reduce the frequency and duration of locked and crossed markets.⁹

The NASD stated in its filing that the magnitude of SOES orders received and executed during locked and crossed markets is such that market makers execute significant volume through SOES before they are able to rectify locked and crossed markets. The NASD further stated the rule change was intended to continue to provide market makers an incentive to update their quotations in locked and crossed markets while enhancing market makers' ability to react to SOES transactions in locked and crossed markets.¹⁰

II. Comments

Morgan Stanley opposes the proposed rule change. It states that the interval proposed is too short for it to react to a locked or crossed market. It recommends a 15 second interval at a minimum, but argues that a SOES market maker whose quotation has been locked or crossed should not be subject to SOES executions for: (i) 90 seconds after its quotation has been locked or crossed; or (ii) whatever period of time is needed for the locking or crossing market maker to notify the NASD, and for the NASD, in turn, to notify the market maker that its quotation has been locked or crossed. It also recommends that NASD provide a market maker whose quotation has been locked or crossed with a warning window on its screen.

III. Discussion

The Commission finds that the rule change is consistent with the provisions of Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act and Rule 11Ac1-1 ("Quote Rule") thereunder.¹¹ Among other things,

⁹ See Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (order approving SR-NASD-88-1). The NASD stated in its filing that prior to the approval of SR-NASD-88-1, SOES would not execute orders in locked and crossed markets.

¹⁰ The NASD indicated that many locked and crossed markets occur after trading halts are lifted or when market makers are adjusting their quotations in response to material news disclosed concerning the issuer of the security.

¹¹ Section 15A(b)(9) provides that the rules of the NASD must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) directs the NASD to adopt rules designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other

things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market.

Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The Commission believes that the rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing Nasdaq market makers with a brief period to update their quotations during locked and crossed markets before being subject to a SOES execution. The Commission recognizes that a locked or crossed market can occur during unusual market conditions. Consequently, it is not unreasonable to provide market makers with a very brief period to update their quotes. At the same time, market makers should have an incentive to fix a locked or crossed market as quickly as possible in order to correct the quotation anomaly. Thus, the quote update period for locked and crossed markets should be as short as possible. The Commission believes that the rule strikes this balance by encouraging market makers to remedy quickly locked and crossed markets that occur, given that market makers will continue to face executions at intervals that are less than one-third of the length of intervals between unpreferred SOES executions during times when markets are not locked or crossed.

The Commission does not believe that the alternatives recommended by Morgan Stanley provide market makers with a sufficient incentive to remedy locked and crossed markets that occur. Therefore, it disagrees with Morgan Stanley's argument. The Commission also notes that the rules change will continue to permit retail investors to have immediate access to the best prices displayed by Nasdaq market makers on Nasdaq because SOES will continue to execute trades during locked and crossed markets. By contrast, Morgan Stanley's suggestion that the NASD not permit executions against a market maker's quotation that has been locked

or crossed until the locking or crossing market maker has notified the NASD, and the NASD, in turn, has notified the market maker that its quotation has been locked or crossed, would be highly inefficient and would be inconsistent with the NASD's statutory mandate that its rules remove impediments to and perfect the mechanism of a free and open market. The Commission also notes that each of the alternatives suggested by Morgan Stanley would inhibit the ability of investors to obtain executions at a market maker's displayed quotations if it were implemented. Thus, the Morgan Stanley alternatives do not give due recognition to the interests of investors or to the interest of the NASD in discouraging locked and crossed markets.

The 5-second interval between SOES executions during locked and crossed markets will apply to all SOES users and participants. Although the proposal will limit to a small extent the ability to investors to obtain executions in locked and crossed markets by providing a 5-second interval between executions, the Commission believes that the rule change appropriately balances the interests of investors and the need for market makers to have a very brief period to update their quotations expeditiously in locked or crossed markets. The rule change also is intended to enhance the production of fair and orderly quotations in NNM securities. This, in turn, should encourage market makers to enter more competitive quotations.

The Quote Rule requires that brokers and dealers execute orders to buy and sell securities at their published quotes unless communicating a revised bid or offer or unless updating their quotations in response to an execution. The 5-second interval is intended to provide market makers with an opportunity to update their quotations in response to an execution. Market makers who do not so will be required to execute further transactions at their published bid or offer.¹² The Commission notes that if the NASD adopted either alternative suggested by Morgan Stanley, Nasdaq market makers would not be required to execute orders to buy and sell securities at their published quotes even when they are not communicating a revised bid or offer or

updating their quotations in response to an execution.¹³

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-54 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

[FR Doc. 97-445 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 38106; File No. SR-NYSE-96-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to an Interpretation of Rule 409 ("Statements of Accounts to Customers")

December 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 5, 1996,² the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed with the Commission a proposed rule change which consists of an interpretation with respect to the meaning and administration of existing Exchange

¹³ Morgan Stanley argues that market makers whose quotes have been locked or crossed may not always have adequate notice that their quotation has been locked or crossed. It recommends that the NASD provide a market maker whose quotation has been locked or crossed with a warning window on its screen. While the suggestion has merit, the Commission does not believe that it is a necessary prerequisite for approving a rule change providing market makers with five additional seconds to update their quotations.

¹⁴ 17 CFR 200.30-3(a)(12) (1989).

¹⁵ 15 U.S.C. 78s(b)(1).

² On December 5, 1996, the NYSE filed Amendment No. 1 with the Commission. The proposed rule change was submitted on September 25, 1996. However, amendments to the rule language were improperly identified in contravention of Section 19(b); therefore, the filing is deemed to be filed on the later date. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 5, 1996.

Rule 409 ("Statements of Accounts of Customers"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

RULE 409: STATEMENTS OF ACCOUNTS TO CUSTOMERS

(a)

/01 Applicability

Compliance with Rule 409(a) and the accuracy of statements of accounts thereunder is the responsibility of the member organization carrying the customer account for which the statement is required, unless such responsibility has been allocated to a non-member carrying organization pursuant to an Exchange approved agreement under Rule 382.

/02 Information To Be Disclosed

Statements of accounts to customers must clearly and prominently disclose on the front of the statement:

- 1. the identity of the introducing and carrying organization and their respective phone numbers for service;¹*
- 2. where the customers' assets included on the statement are carried;*
- 3. that the carrying organization is a member of SIPC and whether any of the customers' assets included on the statement are not covered by SIPC;*
- 4. the opening and closing balances for the account.*

/03 Use of Third Party Agents

Prior to utilizing a "third party agent" to prepare and/or transmit statements of accounts to customers, a member organization shall represent/undertake in writing to the Exchange that:

- 1. the third party is acting as agent for the member organization;*
- 2. the member organization retains responsibility for compliance with Rule 409(a);*
- 3. the member organization has developed procedures/controls for reviewing and testing the accuracy of statements of accounts prepared and/or transmitted by the third party agent;*
- 4. the member organization will retain copies of statements of accounts prepared and/or transmitted by the third party agent in accordance with applicable books and records requirements.*

Allocation of responsibilities for preparation and/or transmission of statements to any person other than a carrying organization pursuant to an agreement approved by the Exchange in accordance with Rule 382 (Carrying

¹ If the phone number of the clearing organization appears on the back of the statement it must be in "bold" or "highlighted" letters.

¹² See Securities Exchange Act Release No. 29801 (October 10, 1991), 56 FR 52098 (approving 15-second interval following a market maker's receipt of a SOES execution report to update its quotation before being required to execute another order in that security through SOES).

Agreements) shall be deemed to be utilization of a "third party agent".

An introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a "third party agent" and may not itself prepare and or transmit such statements.

/04 Assets Not In Possession/Control of Member Organization

Where a statement of account includes assets that are not within the possession or control of the member organization such assets must be clearly and distinguishably separated on the statement, and it must be clearly indicated on the statement that such externally held assets: are not within the possession or control of the member organization, are included on the statement solely as a service to the customer, information (including valuation) is derived from the customer or other external source for which the member organization is not responsible, and are not covered by SIPC.

/05 Use of Logos, Trademarks, etc.

Where the logo, trademark or other similar identification of a person (other than the carrying or introducing organization) appears on a customer account statement, the identify of such person(s) and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be utilized in a manner which is misleading or causes customer confusion.

/06 Combined Statements

Where a member organization carrying a customer's account and another person(s) who separately offers financial related products/services to the same customer (e.g. mutual fund sales/custodial services, banking products/services, insurance products/services, securities products/services, etc.) seek to jointly formulate and/or distribute their respective customer account statements together with a statement summarizing or combining assets held in different accounts, ("summary statement"), the Exchange will require:

1. That the summary statement:
 - a. indicate that the "summary statement" is provided for informational purposes and includes assets held at different entities;
 - b. identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing/

carrying brokerage firms, fund distributor, banking/insurance product providers, etc.);

c. clearly distinguish between assets held by each entity by way of use of columns, coloring or other distinct form of demarcation;

d. identify the customer's account number at each entity;²

e. provide a telephone number for customer service at each entity;²

f. disclose which entity carries each of the different assets or categories of assets included on the summary;

g. identify and distinguish between those accounts/assets covered and not covered by SIPC.

2. To the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation shall be recognizable as having been arithmetically derived from the separately stated totals or their components.

3. That the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) be clearly distinguishable by color, pagination or other distinct form of demarcation.

4. That there be a written agreement between the carrying organization and each other person jointly formulating and/or distributing its respective customer account statements attesting that each such person has developed procedures/controls for reviewing and testing the accuracy of its respective statements or any information included by it on a summary statement.

5. The summary statement shall comply with Rule 409 and all interpretations thereof.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

² Where the customer account number and telephone number for customer service at each entity are included on each entit[ies]y's respective customer account statement, such account and telephone numbers need not be included on the summary statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to set forth an interpretation concerning the meaning and administration of Exchange Rule 409 with respect to the establishment of standards regarding the distribution of "summary statements" and the use of "third party agents" to prepare and/or distribute customer account statements. The proposed interpretation also codifies existing Exchange policy as to certain information that must be disclosed on account statement. Other items in the proposed interpretation address statements that include assets not in possession or control of a member organization and the use of logos and trademarks on statements.

Exchange Rule 409 addresses the responsibility of member organizations carrying customer accounts to send statements of these accounts to their customers. The Exchange has received requests from member organizations to allow them jointly, with other financial institutions (e.g., banks and investment companies), to formulate and distribute to common customers a "summary statement" together with their respective customer account statements. These requests generally involve entities that are part of a financial services "group" or "family" or where the Exchange member organization carries accounts for a broker-dealer that is part of such a group. The "summary statement" provides an overview of the customer's accounts at the separate entities and is supported by the detail on the separate respective statements.

The Exchange has worked with industry representatives to develop parameters so that this may be accomplished in a manner that will provide customers with accurate account statements that clearly identify the respective entities involved and distinguish brokerage from non-brokerage assets.

Specifically, the Exchange will require that the summary statement: indicate that the statement is informational and includes assets held at different entities; identify each entity, their relationship to each other and their respective functions; distinguish clearly between assets held by each entity³; identify the customer's account numbers at each entity and provide a

³ Columns, coloring or other distinct form of demarcation should be used to clearly distinguish assets.

customer service telephone number at each entity⁴; disclose which entity holds each of the different assets on the summary; and distinguish between accounts that are or are not covered by SIPC. Additionally, any aggregation of account values must be recognizable as having been derived from the separately stated totals; the beginning and end of each separate underlying statement must be clearly distinguishable; and there must be a written agreement between the parties jointly distributing the statements that each has developed procedures/controls for testing the accuracy of its own information on the customer statement.

The proposed interpretation will codify that carrying firms are responsible for sending statements to customers and for ensuring the accuracy of such statements. However, it is recognized that in many cases "third party agents" (e.g., service bureaus or other independent entities) prepare or transmit customer account statements. Therefore, the proposed interpretation to Rule 409 would also establish Exchange policy regarding use of "third party agents" to prepare and transmit statements of accounts and to set forth certain representations which must be made in writing by the member organization to the Exchange. Specifically, the member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with Rule 409(a), that the member organization has developed procedures and implemented controls for reviewing and testing the accuracy of statements and that it will retain copies of all such statements. In addition, the interpretation states that an introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a "third party agent" and may not itself prepare and or transmit such statements.

The proposed interpretation also clarifies that certain information must be disclosed on the front of account statements, i.e., the identity of the introducing and carrying organizations, where customer assets included on the statement are held, whether such customer assets are covered by SIPC,

⁴ Where the customer account number and telephone number for customer service at each entity are included on each entity's respective customer account statement, such account and telephone numbers need not be included on the summary statement.

and the opening and closing account balances.

The interpretation also requires that where the account statement includes assets not within the possession or control of the member organization, such assets must be clearly separated on the statement. In addition, the statement must clearly indicate that such externally held assets: are not within the possession or control of the member organization; are included on the statement solely as a service to the customer; and are not covered by SIPC. Moreover, the summary statement must indicate that the member organization is not responsible for any information derived from the customer or other external source relating to such assets.

As to the use of logos and trademarks, the proposed interpretation provides that where the logo, trademark or other identification of a person (other than that of the carrying or introducing organization) appears on an account statement, then the identity of such person and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be misleading or cause customer confusion.

The Exchange believes that this proposed interpretation will give member organizations the flexibility to distribute summary statements to customers or use third party agents to prepare and transmit customer account statements, while providing appropriate safeguards through detailed disclosure to customers and required undertakings to the Exchange.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5)⁵ of the Act which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. This proposal complies with the Act in that it establishes standards enabling members and member organizations to distribute summary statements and to use third party agents to prepare and distribute these statements, while providing customer protection through appropriate disclosures and implementation of specified procedures and controls.

⁵ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to the File No. SR-NYSE-96-27 and should be submitted by January 30, 1997.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-489 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38113; International Series Release No. 1042; File No. SR-PHLX-96-45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Approval of Proposed Rule Change Relating to Minimum Transaction Size for Customized Foreign Currency Options

January 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 1, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to revise the minimum opening and closing transaction size and responsive quotation size for customized foreign currency options from 100 to 50 contracts. The proposal was published for comment in the Federal Register on November 20, 1996.² No comments were received on the proposed rule change. This order approves the Exchange's proposal.

On November 1, 1994, the Commission approved the Exchange's proposal to trade customized foreign currency options.³ Users now have the ability to customize the strike price and quotation method and choose any underlying and base currency combination out of all Exchange listed currencies, including the U.S. dollar. The product was introduced to attract institutional customers who like the flexibility and variety offered in the over-the-counter market but would prefer the benefits attributed to an exchange auction market to hedge their exchange rate risks.

The Exchange originally instituted a 300 contract minimum opening transaction size pursuant to Rule 1069(a)(6). A number of mid-sized corporations and institutions then told the Exchange that the contract value was too large for their purposes. They believed that customized currency options would fill a market need for them, but that the opening transaction size was prohibitive. The Exchange, thus, determined to reduce the transaction size in stages. In March of 1995, the Exchange reduced the size of an opening transaction to 200 contracts⁴ and then reduced it further to 100

contracts in August of that year.⁵ According to the Exchange, that size, however, still remains too large for a significant segment of medium sized corporations, especially those that are located in Canada and the Pacific basin. Those companies would like the opportunity to hedge their currency risk using an exchange traded customized option contract in a cost-effective manner. Therefore, the Exchange now proposes to reduce the minimum opening transaction size to 50 contracts, which would be equivalent in dollar terms to an average minimum transaction value for customized foreign currency options of between \$2 and \$3 million.⁶

The minimum size of the closing transaction and the minimum responsive quote size obligation would also be reduced from 100 contracts to the lesser of 50 contracts or the remaining contracts.

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),⁷ in that the proposal is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change is designed to make the customized foreign currency option market accessible to more medium sized corporate foreign currency option users while maintaining the focus of this market towards institutional investors. As a result, the Commission believes that the proposal may serve to add liquidity to this market, which would benefit all users of customized foreign currency options.

Even with lowering the minimum opening transaction size to 50 contracts, the minimum value of an opening customized foreign currency option transaction involving any approved currency will be between \$2 and \$3 million. The Commission believes that because the customized foreign currency option market is used almost exclusively by institutional investors, and because the dollar value of opening transactions in customized foreign currencies is still very substantial, lowering the minimum transaction size

to 50 contracts should not result in the entrance of unsophisticated investors into this market. Furthermore, the Exchange, in publicizing the reduction of the minimum contract size for customized foreign currency options to its members in a regulatory circular, will emphasize the necessity for compliance with the Phlx suitability rule, Rule 1026, applicable to options transactions.⁸ Rule 1026(b), among other things prohibits a member from recommending to a customer an opening transaction in any option contract, unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer is capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract. Based on the foregoing, the Commission believes that this proposal does not raise any regulatory concerns that were not adequately addressed by the Exchange when the Commission approved the trading of customized foreign currency options.⁹ Moreover, the institutional nature of customized foreign currencies should remain unchanged, even with the reduction in minimum opening transaction size being approved herein.¹⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Phlx-95-43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

[FR Doc. 97-442 Filed 1-8-97; 8:45 am]

BILLING CODE 8010-0-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).

⁸ Telephone conversation between Michelle R. Weissbaum, Vice President and Associate General Counsel, Phlx, and Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on November 13, 1996.

⁹ See Securities Exchange Act Release No. 34925, *supra* note 3.

¹⁰ The Commission notes that it would have serious concerns about any further reductions in the minimum opening contract size, which could change the institutional nature and intent of the product.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1)

² Securities Exchange Act Release No. 37944 (November 13, 1996), 61 FR 59125.

³ Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720.

⁴ Securities Exchange Act Release No. 35464 (March 9, 1995), 60 FR 14043.

⁵ Securities Exchange Act Release No. 6176 (August 31, 1995), 60 FR 46879.

⁶ See Securities Exchange Act Release No. 37944, *supra* note 2.

⁷ 15 § 78f(b)(5).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has 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 burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 18, 1996 [FR 61, page 16968].

DATES: Comments must be submitted on or before February 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Coles, Office of Information Management Programs, (202) 366-054, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Driver Qualification Files.
OMB Control Number: 2125-0065.
Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Form Number: N/A.

Affected Public: Motor Carriers.

Abstract: The authority for driver qualification files is contained in 49 U.S.C. 504, 31133, 31136, and 31502, and 49 CFR 1.48, with penalty provisions in 49 U.S.C. 521 and 522. 49 CFR 391.51 requires a motor carrier to maintain a driver qualification file for each regularly employed driver and each intermittent, casual, and occasional driver. The file contains the minimum amount of information necessary to document that a driver is qualified to drive a commercial motor vehicle in interstate commerce. A driver qualification file is used by the FHWA and motor carrier to ensure that a driver who operates a commercial motor vehicle in interstate commerce, can by reason of experience and/or training, safely operate a type of commercial motor vehicle; has been issued an appropriate driver's license; and has not been disqualified to operate a commercial motor vehicle. Public demand for highway safety requires that the hiring of commercial motor vehicle drivers be restricted to those drivers with records which prove their ability to safely operate a commercial motor vehicle.

Estimated Annual Burden: The total annual burden is 1,076,166 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW, Washington, DC 20503, Attention DOT 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 January 3, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97-523 Filed 1-8-97; 8:45 am]

BILLING CODE 4910-62-P

Surface Transportation Board

[STB Finance Docket No. 33323]

Chicago Rail Link, L.L.C.; Lease and Operation Exemption; Union Pacific Railroad Company

Chicago Rail Link, L.L.C. (CRL), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 8.5 miles of rail lines owned by the Union Pacific Railroad Company (UP). CRL will be leasing and operating track numbers 1 through 9, 110, 500, 501, 702, 710, and 711 in UP's Irondale Yard, Chicago, IL, east of Torrence Avenue between 117th Street and 122nd Street.

The transaction was expected to be consummated on or shortly after December 26, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33323, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: January 2, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 97-482 Filed 1-8-97; 8:45 am]

BILLING CODE 4915-00-P

[STB Finance Docket No. 33324]

Northern Plains Railroad, Inc.; Lease and Operation Exemption; Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway

Northern Plains Railroad, Inc. (NPR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease and operate approximately 377.55 miles of railroad owned by the Soo Line Railroad Company, d/b/a Canadian Pacific Railway: (1) between Thief River Falls, MN (MP 309.69) and Harlow, ND (MP 472.24); and (2) between Fordville, ND (MP 390.99) and Kenmare, ND (mp 605.99).

The transaction is expected to be consummated on or about January 6, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33324, must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Byron D. Olsen, Esq., Felhaber, Larson, Fenlon & Vogt, P.A., 601 Second Avenue South, Suite 4200, Minneapolis, MN 55402.

Decided: January 2, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 97-483 Filed 1-8-97; 8:45 am]

BILLING CODE 4915-00-P

[Docket No. AB-55 (Sub-No. 500)]

CSX Transportation, Inc.—Abandonment—in Barbour, Randolph, Pocahontas, and Webster Counties, WV

AGENCY: Surface Transportation Board.

ACTION: Notice of findings.

SUMMARY: The Board has issued a certificate and decision authorizing CSX Transportation, Inc. (CSXT), to abandon that portion of its rail line extending between milepost BUI-28.40 at Elkins, WV, and milepost BUK-121.7 at Bergoo, WV, subject to environmental and historic preservation conditions if there is salvage. The transaction also was exempted from the offer of financial assistance and public use procedures of 49 U.S.C. 10904 and 10905.

EFFECTIVE DATE: The abandonment certificate will become effective on January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(c) of the ICCTA provides, in general, that, if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10903-05. Thus, the provisions of current 49 U.S.C. 10903-05 apply to this proceeding on remand.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (292) 927-5721.

Decided: December 31, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen, Vernon A. Williams, Secretary.

[FR Doc. 97-481 Filed 1-8-97; 8:45 am]

BILLING CODE 4915-00-P

[STB Docket No. AB-471X]

South Kansas and Oklahoma Railroad, Inc.; Abandonment Exemption; in Sumner County, KS

South Kansas and Oklahoma Railroad, Inc. (SKO) has filed a notice of exemption under 49 CFR 1152 Subpart

F—*Exempt Abandonments* to abandon a 9.2-mile portion of its line of railroad between milepost 257.2, at Oxford, and milepost 266.4, near Wellington, in Sumner County, KS.

SKO has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line in over 3 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29³ must be filed by January 21, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 29, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

³ The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

SKO has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by

January 14, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 3, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97-484 Filed 1-8-97; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Office of the Secretary

Credit Union Study; Request for Comments

AGENCY: Office of the Secretary, DOT.

SUMMARY: Legislation recently enacted by Congress requires the Secretary of the Treasury (Secretary) to conduct a study of credit unions and submit a report to Congress by September 30, 1997.

This notice invites all interested parties to provide their views on the topics listed below and on any other issues relating to the study that they may wish to bring to our attention. We strongly encourage all interested parties to submit comments for the record.

DATES: Comments should be in writing and must be received by February 28, 1997.

ADDRESSES: Send written comments to: Credit Union Study, Department of the Treasury, Room 3025, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: For further information, please contact: Joan

Affleck-Smith, Director, Office of Financial Institutions Policy, at (202) 622-2740, or Edward DeMarco, Financial Economist, at (202) 622-2792.

SUPPLEMENTARY INFORMATION: Section 2606 of the Omnibus Consolidated Appropriations Act for 1997 (Public Law No. 104-208) requires the Secretary to conduct a study of corporate credit unions and other credit union issues. In conducting the study, the Secretary must consult with the National Credit Union Administration (NCUA), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

Suggested Format of Comments

Please comment on some or all of the issues under study, as listed below.

I. National Credit Union Share Insurance Fund

In 1970, Congress created the National Credit Union Share Insurance Fund (NCUSIF) as a way for credit unions to obtain federal deposit insurance. Like the Federal Deposit Insurance Corporation's Bank Insurance Fund and Savings Association Insurance Fund, the NCUSIF insures each depositor for up to \$100,000. However, the NCUSIF is structured and administered differently than the insurance funds for banks and thrifts. In the legislation, Congress directs the Secretary to study specific issues pertaining to the NCUSIF.

First, the Secretary must evaluate the treatment of the NCUSIF's required 1 percent deposit by member credit unions. Legislation enacted in 1984 required each credit union to maintain a deposit with the NCUSIF equal to 1 percent of its insured shares. Credit unions count these deposits as assets while the NCUSIF counts these same funds as part of its equity. Congress raises the question of whether or not the accounting treatment of the 1 percent deposit is appropriate. Congress also requires the Secretary to study how the NCUA uses the deposit amounts when determining equity capital ratios.

Second, the Secretary must analyze the potential for, and potential effects of, having some entity other than the NCUA administer the NCUSIF.

We request comments on:

1. The NCUA's oversight of the NCUSIF;
2. The desirability of having credit unions expense the 1 percent deposit that they maintain at the NCUSIF; and
3. The advantages and disadvantages of separating the NCUSIF from the NCUA.

We also request responses to the following specific questions regarding the NCUSIF:

4. Does the current accounting treatment of credit unions' 1 percent deposit create risks to the NCUSIF, credit unions, or both? In particular, what is the risk that large losses in the NCUSIF would impair the 1 percent deposit at a time when credit unions were under stress?

5. If you believe that the 1 percent deposit should remain refundable (i.e., should continue to be treated as an asset), explain why. In particular, identify how such treatment promotes safety and soundness and protects the NCUSIF and ultimately the taxpayers. If the 1 percent deposit remains refundable, how should the deposit be used in determining a credit union's equity capital ratio?

If you believe that the 1 percent deposit should be expensed, explain why. In particular, identify how expensing the deposit would promote safety and soundness and protect the NCUSIF and ultimately the taxpayers. In addition, please describe how the existing deposits should be expensed.

6. The NCUA currently has a single office—the Office of Examination and Insurance—handle both examination and share insurance. Do any conflicts arise from that structure? Would any such conflicts be most properly handled by separating examination and insurance within the NCUA or by establishing management and oversight of the NCUSIF outside of the NCUA? If the latter, should the NCUSIF be a stand-alone agency or incorporated into the FDIC or some other existing federal agency? Explain.

7. What changes, if any, are needed in the NCUA's current oversight or operation of the NCUSIF? If you advocate changes, explain why those changes are needed. Identify the safety and soundness or taxpayer risk issues involved, and how your proposed solution deals with the identified problem.

II. Corporate Credit Unions

The network of corporate credit unions, including U.S. Central Credit Union, emerged in the 1970s to meet the liquidity and investment demands of the growing number of natural person credit unions. Currently, corporate credit unions provide liquidity to member credit unions, invest member credit unions' excess funds, and perform check-clearing and other related transactional services for member credit unions. In this study, we will examine, in cooperation with federal banking agencies, the ten largest corporate credit unions, including examining their investment practices,

financial stability, financial operations, and financial controls.

In addition, Congress directed the Secretary to evaluate the NCUA's supervision of corporate credit unions. Concern has been raised that, at least until recently, the NCUA did not adequately oversee the risk-taking of corporate credit unions and had no specialized examination group to deal with the unique circumstances of corporate credit unions. While the NCUA has addressed many of these shortcomings, Congress requested an assessment of the NCUA's supervision of corporates today.

At the time of this notice's publication, the NCUA is finalizing substantial changes to its regulation governing corporate credit unions, 12 CFR Part 704. The proposed changes to Part 704 would significantly alter certain regulatory requirements applicable to corporate credit unions. The NCUA received extensive public comments on those proposed changes, and we have reviewed those comments. In your comments, be careful to distinguish between Part 704 as in effect at the time this notice is published and the revised Part 704 proposed by the NCUA. Should the NCUA complete the rulemaking process and issue a final Part 704 regulation before the comment period for this notice ends, you should focus your comments on the new Part 704.

We request comments on:

8. The safety and soundness of corporate credit unions; and

9. The NCUA's supervision of corporate credit unions.

We also request responses to the following specific questions regarding corporate credit unions:

10. What is the appropriate scope of activities for corporate credit unions?

11. What risks, if any, do corporate credit unions pose today to natural person credit unions or to the NCUSIF?

12. Are the current investment practices of corporate credit unions appropriate? Are NCUA regulations and NCUA oversight adequate for the risks undertaken by corporate credit unions?

III. NCUA Regulations

Congress directed the Secretary to examine the NCUA's current regulations. In particular, we will focus on NCUA regulations affecting (i) the NCUSIF, (ii) corporate credit unions, and (iii) credit union safety and soundness.

At the time of this notice's publication, the NCUA is finalizing substantial changes to its regulation governing the investment and deposit activities of natural person credit unions

at 12 CFR Part 703. The proposed changes to Part 703 would significantly alter certain regulatory requirements applicable to such credit unions. The NCUA received extensive public comments on those proposed changes, and we will review those comments. In your comments, be careful to distinguish between Part 703 as in effect at the time this notice is published and the revised Part 703 proposed by the NCUA. Should the NCUA complete the rulemaking process and issue a final Part 703 regulation before the comment

period for this notice ends, you should focus your comments on the new Part 703.

We request comments on:

13. NCUA regulations in the specified areas.

We also request responses to the following specific questions regarding NCUA regulations:

14. In order to improve credit unions' safety and soundness, what changes, if any, should be made in the Federal Credit Union Act or the NCUA's regulations? Explain.

15. Are there elements of safety and soundness regulation of banks and thrifts that, if carried over to credit union regulation, would make a meaningful improvement in the NCUA's oversight of credit unions' safety and soundness? Explain.

Dated: December 26, 1996.

Richard S. Carnell,

Assistant Secretary for Financial Institutions.

[FR Doc. 97-141 Filed 1-8-97; 8:45 am]

BILLING CODE 4810-25-P

Corrections

Federal Register

Vol. 62, No. 6

Thursday, January 9, 1997

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209-AA09

Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)

Correction

In rule document 96-31837 beginning on page 66830 in the issue of Wednesday, December 18, 1996, make the following corrections:

§2640.201 [Corrected]

1. On page 66845, in the third column, in paragraph (c)(1), "Note to paragraph (a)(1)" should read "Note to paragraph (c)(1)".

§2640.202 [Corrected]

2. On page 66846, in the second column, in paragraph (b), in the second line, insert "(1)" before "An".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-07-1320-01; MTM 80697]

Notice of Hearing

Correction

In notice document 96-31502 appearing on page 65418 in the issue of Thursday, December 12, 1996, in the second column, in the land description, under T. 1 N., R. 40 E., P.M.M., "Sec. 8: E¹/₂, SW¹/₂SE¹/₄" should read "Sec. 8: E¹/₂, N¹/₂NW¹/₄" and "Sec. 14: S¹/₂N¹/₄,

NW¹/₂" should read "Sec. 14: S¹/₂SW¹/₄, SE¹/₄".

BILLING CODE 1505-01-D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives

Correction

In rule document 96-31571 beginning on page 65323 in the issue of Thursday, December 12, 1996 make the following correction:

On page 65325, in the third column, footnote 3 was omitted and should read as follows: "As indicated in the comment to Rule 3.9 of the ABA Model Rules of Professional Conduct, "administrative agencies have a right to expect lawyers to deal with them as they deal with the courts."

BILLING CODE 1505-01-D

Federal Register

Thursday
January 9, 1997

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control
Devices; Revision of the Manual on
Uniform Traffic Control Devices; Final
Rule

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****23 CFR Part 655**

[FHWA Docket 95-8]

RIN 2125-AD57

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices**AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Final Amendments to the Manual on Uniform Traffic Control Devices (MUTCD).

SUMMARY: This document contains amendments to the MUTCD which have been adopted by the FHWA for inclusion therein. The MUTCD is incorporated by reference in 23 CFR Part 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety and provide a more uniform application of highway signs, signals, and markings.

DATES: The final rule is effective January 9, 1997. Incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Linda L. Brown, Office of Highway Safety (202) 366-2192, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3416, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD, 1988 Edition is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for \$44 from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, Stock No. 650-001-00001-0. The purchase of the MUTCD includes the new MUTCD Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operation published September 1993.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the

request was received. This document contains the disposition of proposed changes which were published on June 12, 1995, at 60 FR 31008. Text changes required as a result of amendments contained herein will be distributed to everyone currently appearing on the FHWA Federal Register mailing list and will be published in the next edition of the MUTCD. Those wishing to be added to this Federal Register mailing list should write to the Federal Highway Administration, Office of Highway Safety, HHS-10, 400 Seventh Street, SW., Washington, DC 20590.

The FHWA has reviewed the comments received in response to FHWA Docket No. 95-8 and other information related to the MUTCD and these proposals. The FHWA is acting on the following requests for change to the 1988 edition of the MUTCD. Each action and its basis is summarized below:

Request I-10(C)—Standardization of Traffic Control Devices on Private Property

This amendment to the MUTCD adds language to section 1A-3 to encourage each State to adopt Section 15-117 of the Uniform Vehicle Code (UVC). This section of the UVC states that traffic control devices used on private property (e.g. shopping center, business complex or sports arena) open to the public shall be installed and maintained pursuant to the standards contained in the MUTCD. Although adoption of this amendment as a vehicle code is a State decision, we believe that it is in the interest of the public's safety that we strongly encourage the use of standard traffic control devices on private property open to public travel.

The FHWA received a total of 29 comments in response to this change to the MUTCD. Twenty-six comments supported this amendment to extend the provisions contained in the MUTCD to all streets and highways open to public travel, regardless of ownership. Three of the 29 comments opposed including this language in the MUTCD but agreed with the idea of encouraging traffic control devices on private property at the State's option.

This change will not impose any additional costs on State and local highway jurisdictions but will encourage uniformity of traffic control devices.

Request I-12(C)—Add New Highway Classification for Special Purpose Roads

Although 20 of the 28 comments in response to this request were in favor of the concept to add a new highway classification and appropriate standards

to the MUTCD to address the special needs for low volume and low speed road signs, most comments indicated that further study is needed to define appropriate categories and standards. The National Committee on Uniform Traffic Control Devices (NCUTCD) is developing proposed text for the MUTCD on traffic control devices for low-volume roads.

The FHWA believes that the information contained in the NCUTCD proposal will provide more substantive data. Additional information will be published in a future notice of proposed rulemaking and the public will be given another opportunity to review and comment. This request is deferred until that time.

Request II-118(C)—Standard Motorcycle Warning Sign

The FHWA conducted research evaluation on seven possible motorcycle symbol signs to warn motorcyclists of possible hazardous roadway conditions. Since the motorcycle symbols did poorly in the motorist comprehension test, the FHWA is not adopting a standard symbol at this time. Twenty-two of the 27 people responding to this request agreed with this FHWA position. The evaluation results indicated that the intended message is difficult to portray. Generally, the motorist is used to seeing the hazard for which the driver is being warned shown in the sign. Many of the incorrect test responses indicated that the signs were warning of a "hazard" and the presence of "motorcycles" ahead.

The FHWA will research this concept further and try to develop a symbol sign which may be understood by both the motorist and the motorcyclist. Meanwhile, the FHWA recommends that the State and local highway agencies develop special word message signs as allowed in MUTCD section 2C-40 and use existing symbol signs to warn both motorcyclists and motorists of specific hazardous roadway conditions.

Request II-120(C)—Standard Warning Sign for Substandard Vertical Curves Over Railroad Crossing (W10-5)

The FHWA is adopting a new advance symbol sign for railroad grade crossings where conditions are sufficiently abrupt to create a hang-up of long wheelbase vehicles or trailers with low ground clearance. The MUTCD already contains provisions for the placement of special word message signs where there is a need to give advance notice of special hazardous conditions at railroad grade crossings. Based on conducted research, the FHWA amends the MUTCD to also

include the following new warning symbol sign for "Low Ground

Clearances" (W10-5) which may be used at these special locations:

BILLING CODE 4910-22-P



W10-5

BILLING CODE 4910-22-C

This symbol is used by the New York State Department of Transportation (NYSDOT) and is similar to the research symbol tested and found to be acceptable with the truck driver population. Sometimes a change from word messages to symbols requires time for public education and transition. New warning and regulatory symbol signs such as this that may not be readily recognizable by the public, shall be accompanied by an educational plaque which is to remain in place for at least 3 years after initial installation. Advisory messages and speed plates may also be used to supplement these signs. The appropriate color is yellow background with black symbol and border. This information is included as a new section 8B-11 to the MUTCD.

Since the decision for a State or local highway jurisdiction to use this sign is optional, no additional costs are imposed.

Request II-138(C)—Stop Sign Placement

The FHWA received 21 out of 30 comments in agreement with the 50 feet maximum placement distance for intersection Stop Signs as shown in Figure 2-2. Nine of the comments which opposed the 50 feet maximum felt that more placement flexibility was needed. Although the FHWA believes that 50 feet is an optimum distance for sign conspicuity reasons, we do recognize that there may be times when flexibility is needed. It is important to

note that Figure 2.2 is a typical drawing and not a standard drawing. A typical drawing provides recommended practice for the design, application, and installation of traffic control devices. In this specific case, 50 feet is the recommended maximum placement distance for the Stop Sign unless an engineering study by a State or local highway agency determines that an increased distance is needed.

MUTCD Section 2A-21 is modified to reflect the flexibility allowed in this typical drawing. This change will not impose any additional costs on State or local highway jurisdictions.

Request II-179(C)—Don't Drink and Drive Symbol Sign

The FHWA received requests from concerned citizens including Mothers Against Drunk Driving (MADD) to adopt a symbol sign in the MUTCD to deter the drinking public from driving while intoxicated. Based on research studies and docket comments, the FHWA does not intend to include a symbol in the MUTCD. However, State and local highway agencies do have the option of developing special regulatory word message signs such as "Drive Sober" and other appropriate word messages as provided in Section 2B-44 of the MUTCD.

The FHWA Office of Research and Development collected comprehension and recognition data for several variations of symbol signs but found the word message sign to be better. The FHWA initially proposed to add the

word message "Drive Sober" sign into MUTCD section 2B-44 "Other Regulatory Signs," instead of a symbol sign because it performed very well in the evaluation study. Its message of "drive sober" covers both drivers under the influence of alcohol and drivers under the influence of illicit drugs. Based upon the comments we received, there was wide variation in what the appropriate word message should be for this sign.

The FHWA received 31 comments in response to this change to the MUTCD. A total of seventy-seven percent (24 of 31) of the respondents oppose the use of this sign. Of the 23 percent that support the sign, 12 percent want its use limited or made optional. There were also four related letters addressed to the Office of Highway Safety regarding a "Drunk Driving Victim Memorial Sign Program" that is being tried in Oregon and Washington. Although the results of this program are not yet available, these letters imply support of a "Drive Sober" sign. The inclusion of these additional letters change the numbers to 69 percent (24 of 35) in opposition and 31 percent (11 of 35) in support. The primary reasons given in the comments for opposing the sign are as follows:

1. No need for sign,
2. Will encourage vandalism,
3. Costly to install and maintain,
4. It does not regulate, warn or give guidance.

Request II-193(C)—Logos on Specific Service Signs

This item is more of a clarification rather than a change to the MUTCD. The FHWA is modifying the language in section 2G-5.2 to clarify that a business LOGO can be either a business identification symbol, trademark, or a word message. When a business LOGO is a word message then it should have a blue background with a white legend and border. Twenty-one of the 25 comments received agree with this

clarification. This amendment does not impose any additional requirements or costs to State and local highway jurisdictions.

Request II-194(C)—Recycling Collection Center Sign (I-11)

This amendment adopts a symbol sign for Recycling Collection Centers (I-11). Since the symbol is already in use and recognized by the public, the FHWA intends to include this symbol in MUTCD Section 2D-48 for directing

motorists to recycling centers. Twenty one of the 26 comments received supported this symbol. These signs should not be used on freeways and expressways. If used on these facilities, the recycling center sign is considered as one of the supplemental sign destinations. Since the decision for a State or local highway jurisdiction to use this sign is optional, no additional costs are imposed.

BILLING CODE 4910-22-P



COLORS
RETROREFLECTIVE WHITE LEGEND
AND BORDER ON RETROREFLECTIVE
GREEN BACKGROUND

Request II-199(C)—Reclassify Reduced Speed Signs From Regulatory Series to Warning Series

This request to reclassify the Reduced Speed Signs as a warning sign rather than regulatory sign is denied. Twenty of the 27 comments received supported this decision.

All of the speed limit signing series are currently regulatory. The Reduced Speed Ahead signs perform adequately as regulatory signs. The commenters indicated, and FHWA agrees, there is not a need to change this sign from a regulatory sign to a warning sign. The driver is familiar with the current signing.

Additionally, to change the present signs from black on white to black on yellow would impose an unnecessary

cost burden to the State and local highway jurisdictions.

Request II-204(C)—Golf Cart Crossing Symbol

The FHWA received a request from both Virginia Beach, Virginia, and Palm Desert, California, to develop a warning symbol for golf cart crossings. Palm Desert has also indicated the need to warn motorists to share the roadway with these slower moving vehicles. There are really two issues to address in this section: (1) The need for a golf cart crossing symbol, and (2) The need for a sign to warn motorists to share the roadway with the slower moving golf carts.

(1) The need for a golf cart crossing symbol:

A total of 73 percent (19 of 26) of the respondents agree that a standard symbol sign is needed for golf cart crossings. A total of 27 percent (7 of 26) were opposed to a standard symbol sign for golf cart crossings.

(2) The need for a sign to warn motorists to share the roadway with the slower moving golf carts:

A total of 42 percent (11 of 26) of the respondents agree that there may be a need for a sign to warn motorists to share the roadway with the slower moving golf carts. A total of 58 percent (15 of 26) of the respondents opposed the use of such a sign because they feel these golf carts should not be sharing the roadway since they do not meet the safety requirements of motor vehicles.

BILLING CODE 4910-22-P



W11-11

BILLING CODE 4910-22-C

Based on modifications to the conducted research, the FHWA approves the "Golf Cart Crossing" warning symbol sign (W11-11) shown above. This new warning symbol shall be accompanied by an educational plaque which is to remain in place for at least 3 years after initial installation (see MUTCD section 2A-13). This same symbol may also be used at the State's discretion in those situations where it is necessary to warn motorists to share the road with golf carts and other slower-moving forms of transportation, such as bicycles and mopeds. This amendment does not impose any additional costs on State or local highway jurisdictions. The "Share the Road" sign is addressed in more detail in Request II-228(C).

Request II-205(C)—Mandatory Turn Sign Alternatives

After further review of this request to allow the mandatory movement overhead sign (R3-5) to be post-mounted as an alternate to the mandatory turn word message sign (R3-7), the FHWA has decided not to approve this application. Although 19 of the 27 comments received agreed with FHWA's initial position to relax the requirements in this section of the MUTCD, the FHWA is concerned that the single arrow and word message "ONLY" on a post-mounted R3-5 sign does not adequately indicate to the motorist the applicable lanes for the required movement. Eight of the 27 comments received also expressed this concern. The FHWA is also concerned about the increased cost associated with the need for higher sign posts and additional warning panels. Therefore, this request for change to the MUTCD is denied.

Request II-209(C)—Signs for the Disabled

The signs for two types of facilities designated for persons with disabilities were considered in this request: (1) The sign for "Van Accessible" parking and (2) the sign for telephone facilities accessible to the hearing impaired.

The MUTCD section 2B-31 is amended to add a "Van Accessible" sign (R7-8a) for placement below the Reserved Parking sign (R7-8) where parking spaces are designed to accommodate wheelchair-accessible vans. The "Van Accessible" sign should have green legend on a white background or the same colors as any alternate design used for R7-8. If used as a guide sign, the "Van Accessible" sign should have white legend on a blue background and include a directional arrow. Twenty-one of the twenty-eight comments supported this amendment. Since use of the sign is optional for State or local highway jurisdictions, no additional costs are imposed.

The request to add to the MUTCD the special hearing impaired telephone symbols for text telephones and for assistive listening systems is denied. Sixteen of the twenty-eight comments received opposed the use of this signing. Most comments expressed concern regarding the types of signs and many comments indicated that other adequate types of signs and information are available for these accessible facilities. Also these facilities increasingly are being provided at many public facilities and through mobile telephone. The road user's misunderstanding of the symbol and the proliferation of signs were also concerns discussed in the comments.

Request II-211(C)—Non-Carrier Airport Symbol

This request to adopt a new symbol sign to distinguish non-carrier airports is denied. Although the FHWA is not adopting a new symbol, provisions are

contained in MUTCD section 2D-48 for distinguishing between different types of transportation facilities. They provide for the use of a supplemental plaque with the specific name of the facility.

The text in MUTCD section 2D-48 is expanded to specifically address airport signing. The text indicates that supplemental plaques with the name of the airport may be used below the current airport symbol sign (I-5). The addition of the airport name to the guide sign provides specific and commonly used destination information which the motorist can readily associate with their destination and type of airport service available, including commercial and/or non-carrier services. Eighteen of the twenty-five comments received agreed with this FHWA position.

Request II-212(C)—Increased Letter Size of Street Name Signs

The section 2D-39 of the MUTCD is modified to increase the recommended letter sizes for street name signs to a minimum of 6 inch uppercase letters, 4½ inch lowercase letters, and 3 inch letters for street abbreviations or city sections (e.g., Avenue, Road, NW.). However, for local roads with speed limits 25 mph or less, the existing MUTCD language is modified to provide an option for the continued use of a minimum 4 inch uppercase letter size with 2 inch lowercase letters for street abbreviations or city sections. All street name signs are required to be retroreflective.

Twenty-seven of the forty comments agreed with the proposed changes. However, many of these and of the opposing comments indicated that for roads with low volume and low speeds, the current letter sizes are adequate. The 4-inch option was added in response to these concerns and because it reduces associated costs of installing larger sign posts.

Since the recommended change from 4 inch to 6 inch letter size may impose some additional costs on State and local jurisdictions, the FHWA is establishing a compliance date for the installation of street name signs. The compliance date is 15 years after the issue date of this final rule or as signs are replaced within the 15 year period. This will allow replacement after a normal service life of the signs.

Request II-214(C)—Golf Course Recreational Area

This request to include a symbol sign for guiding motorists to golf courses is denied. Although 13 of the 24 comments supported the use of a symbol, the type of symbols recommended varied widely in design. The comments opposing the use of a symbol, including those from States with many golf courses, indicated that word messages such as "Public Golf Course" or the golf course name are more effective for the guide signs. Comments also indicated concerns regarding sign proliferation particularly associated with a seasonal or low traffic generating facility.

Request II-215(C)—Regulatory and Street Name Signs on Same Post

This amendment to the MUTCD allows the option of installing regulatory and street name signs on the same sign post. Twenty-three of the twenty-seven comments supported this amendment since its use may simplify the sign installation process and improve motorist guidance information. Two of the four commenters who opposed adoption agree with the concept, but disagree with the requirement for vertical separation of 6 inches. The purpose of vertical separation is to ensure that the shape of the sign, particularly the STOP sign, is recognized by motorists.

Sections 2B and 2D are changed to allow this alternate application. Vertical separation of the signs is not required as long as the shape of the signs are not compromised. This amendment does not impose any additional requirements or costs to State and local highway jurisdictions.

Request II-218(C)—Reduce Number of Panels Shown on Directional Assemblies

This amendment to reduce the amount of information displayed on

directional assemblies by displaying only one route shield and route number with appropriate cardinal directions and arrows is denied. Experience and performance history indicate that the present system performs well and the public understands it. Although 16 of the 25 comments supported the concept of reducing the amount of information displayed, many expressed concern that the proposed assembly method may be confusing.

Request II-224(C)—Cellular Phone Sign for Emergency Situations

The proposed cellular phone symbol sign for use in emergency situations is denied. However, the FHWA will conduct further research and will consider other alternates for a symbol including those submitted in the docket responses. The FHWA received a total of 24 comments in response to this proposal. Many of the 21 comments in agreement with the proposal expressed concern that this particular symbol was confusing. Although they agreed with the concept of a sign to inform the motorist how to dial for emergency assistance, they recommended a word message sign instead of the symbol.

Until an appropriate symbol is developed through research, the FHWA recommends using a word message sign similar to the standard D12-3 sign. The sign would read, "Emergency Dial—" along with the appropriate number to dial. MUTCD section 2D-45 is revised to reflect this change. This amendment will not impose any additional requirement or costs on State and local highway jurisdictions.

Request II-225(C)—Local Transit Logo and Carpool Symbol

This amendment increases the maximum vertical dimension of transit system logos on Park and Ride signs to 36 inches for freeways and expressways. All 25 of the comments received supported this change. The larger signs will provide greater legibility on high speed facilities such as freeway and expressways and sections 2D and 2E are revised accordingly. This amendment will not impose any additional requirements or costs on State and local highway jurisdictions.

Request II-226(C)—General Motorist Service Signing for Alternative Fuels

The FHWA revises MUTCD sections 2D-45 and 2F-33 to include within the

current "GAS" category for general services the use of word message alternative fuel designations for compressed natural gas (CNG) and electric vehicle (EV) charging. As an option, the D9-11 symbol sign may be used with the appropriate letter abbreviations substituted for the appropriate alternative fuel. The FHWA will conduct research on an appropriate symbol sign for electric vehicle charging.

Twenty-one of the thirty comments received agreed that signing for alternative fuels is needed. With the increasing number of vehicles using alternative fuels in response to the Clean Air Act Amendments of 1990, consideration of additional signs to provide availability information to the motorist has merit. This change allows States and local highway agencies to place signs for whatever alternative fuels are available at various locations. Since the decision for a State or local highway jurisdiction to use this sign is optional, no additional costs are imposed.

Request II-228(C)—Share the Road Warning Signs

This amendment to the MUTCD adds a new section 2C-39 to include a discussion regarding the "Share the Road" word message sign (W16-1) which may be used with the farm machinery symbol (W11-5), the bicycle symbol (W11-1), and other appropriate symbol signs where a need exists to warn drivers to share the road with other modes of roadway transportation. The "Share the Road" sign shall have a yellow background with black message and shall be rectangular as shown below.

This amendment also adopts an updated version of the farm machinery symbol also shown below (W11-5a). This symbol may be used as an alternate to the W11-5 symbol currently shown in the MUTCD. The FHWA conducted research on the "Share the Road with Farm Equipment" sign and, based on the results of the study, found that the adopted sign's meaning comprehension rate was 92 percent and its action comprehension rate was 100 percent. The results indicated that almost all drivers were aware of the meaning the sign conveyed and the appropriate action to be taken.

BILLING CODE 4910-22-P



W11-5a

BILLING CODE 4910-22-C

There were 49 comments received of which 38 agreed with the FHWA position, 10 opposed and one was undecided. This amendment does not impose any additional requirements or costs on State and local highway jurisdictions.

Request II-229(C)—General Service Sign for Truck Parking

This amendment to MUTCD section 2D-45 and 2F-33 permits the word message "Truck Parking" to be included on General Motorist Service Signs. Twenty-five of the twenty-eight comments received agreed with this concept and indicated that they would like a symbol sign for truck parking. The FHWA intends to conduct a research evaluation to develop an appropriate symbol for truck parking. In the interim, State and local highway agencies have the option of using the word message "Truck Parking" sign (D9-15) in conjunction with other general motorist service information signs. The word message "Truck Parking" should be placed on a panel below the other general motorist services.

This change does not impose any additional requirements or costs on State and local highway jurisdictions.

Request II-241(C)—Overhead Guide Sign Arrows

This request to improve overhead guide signs by using consistent directional arrows which point upwards and which indicate if the roadway turns left or right is denied. Nineteen of the thirty comments received opposed this

request. Eight commenters agreed and three were undecided.

Upon FHWA's initial observation, this request for change appeared to have the potential of providing more consistent, timely, and useful information to the motorist. However, further review suggests a departure from the established standards would require additional in-depth research and analysis before making such a significant change. A change of this nature has the potential of imposing extreme burden and additional costs to the States. Therefore, the FHWA is denying this request due to the absence of further data to substantiate the change. Experience and history in the use of the arrows indicate no adverse problems.

Request II-246(C)—Adopt-A-Highway Signs

This request to include a standard sign in the MUTCD for "Adopt-A-Highway" programs is denied because of the wide variances in the suggested size of signs, the background and letter colors, the lateral placement, and the frequency of placement for these signs. In many cases, standardizing of these signs would result in adverse local publicity, decreased participation, and would impose unnecessary cost burdens on State and local highway jurisdictions. However, because of the national interest in the Adopt-A-Highway program, the FHWA is modifying the MUTCD section 2D-48 to include general guidance for States to follow when establishing this local program.

The FHWA received 35 comments in response to this request to include standards for the design and placement of "Adopt-A-Highway" signs in the MUTCD. Twenty-two of the comments agreed with the idea of having standards but many of those who agreed were not consistent in their recommended design and placement standards. Thirteen of the thirty-five comments opposed the idea of standards. Fifty percent of those opposing were State highway agencies.

Request III-54(C)—Variation of Line Width and Spacing for Crosswalks

This request to increase the maximum spacing for crosswalks from 24 inches to 48 inches with a maximum spacing not to exceed twice the line width is denied. The FHWA received 29 comments to this docket, of which 18 were in agreement with FHWA's position. Eleven of the eighteen were State highway agencies and two were cities.

The FHWA considers the current maximum longitudinal spacing of 24 inches adequate in that the crossing area is highly visible and recognizable both for the motorist and for the pedestrian. In addition, the FHWA has no record of any operational problems related to the standard 24-inch maximum spacing. Since the FHWA has no statistical data to show that the proposed 48-inch maximum spacing would not adversely affect visibility, we hesitate to change the MUTCD without evaluation data which supports the design safety of the proposed crosswalk configuration. Therefore, this request is denied.

Request III-68(C)—Lane Drop Marking Pattern

This approved amendment to the MUTCD adds lane drop marking patterns to section 3A-6 which describes widths and patterns of longitudinal lines. Since lane drop markings are already described in the fourth paragraph of MUTCD section 3B-11, it is appropriate to include a discussion in section 3A-6. This amendment also changes the term "special marking" as used in section 3B-11 to "lane drop marking." In addition, the lane drop marking is not restricted to interchange ramps but is also available for use with mandatory lane drops on arterial streets and highways. Twenty-four of the twenty-six comments received agreed with this change.

This change does not impose any additional requirements or costs on State and local highway jurisdictions but instead furthers consistency and clarity in traffic control and operations.

Request IV-47(C)—Use of Steady and Flashing Downward Yellow Arrows in Lane Control Signals

This approved amendment to the MUTCD allows lane control signals to be darkened on non-reversible freeway lanes. The FHWA also is denying further experimentation with the flashing and steady DOWNWARD YELLOW ARROW because the Minnesota evaluation report found that the experimental YELLOW ARROW was not understood by motorists. The FHWA received a total of 22 comments in response to this change to the MUTCD. Four of the comments disagreed with FHWA's recommendation to darken signals because it may imply that a signal is not functioning. The FHWA does not believe that this will create a problem since other special types of signals such as ramp metering signals are currently allowed to be darkened when not in use and there have been no identified problems with this practice.

This change does not impose any additional costs on State and local highway jurisdictions but will encourage uniformity of traffic control devices.

Request IV-95(C)—Intersection Control Beacons

This approved amendment to MUTCD section 4E-3, Intersection Control Beacons, involves two separate issues. The first amendment requires a beacon on each intersection approach that is controlled by a "RED" Intersection

Control Beacon. Although the original request for change suggested two beacons, the FHWA believes that in the majority of situations, one beacon would provide adequate visibility. Twenty-one of the twenty-three comments received agreed with the FHWA position. However, section 4E-3 currently allows for the use of a supplemental beacon if needed.

The second issue involves mandatory use of a STOP sign in conjunction with a red intersection control beacon. The FHWA received no adverse comments to this request for change. Therefore, the next to last paragraph in section 4E-3 is modified to require a STOP sign in conjunction with a flashing red intersection control beacon.

This amendment does not impose any significant increase in costs on State and local highway jurisdictions.

Request IV-118(C)—Relocate Section 4C, Signal Warrants

This amendment redesignates the MUTCD section 4C, Warrants for Traffic Signals, as the new section 4B, and the current section 4B, Traffic Control Signals, as the new section 4C. This transposition allows the MUTCD users to determine, firstly, if a signal is warranted and, secondly, to read the description for signal design and application.

The FHWA received a total of 24 comments in response to this change to the MUTCD. All but one of the comments agreed to transposing sections 4B and 4C.

This change does not impose any additional costs on State and local highway jurisdictions.

Request IV-122(C)—Disabled Pedestrians

This request included two items. The first item included in this request was the concept of allowing a second signal button that permits additional time for slow walking pedestrians to cross the roadway. There is nothing currently in the MUTCD to prevent highway agencies from extending the pedestrian crossing interval in areas of demonstrated need. Therefore this request is denied. Twenty-one of the twenty-seven comments received were opposed to this concept of a second signal button. Some of the other major concerns expressed with the installation of the second button are the following:

1. The MUTCD already allows a highway agency to establish pedestrian signal timing to accommodate the needs of the user at the specific location.

2. The second button would just be another button for all pedestrians to push and then the signal would likely be using the longer timing every cycle.

3. Intermittent, longer, pedestrian clearance intervals may jeopardize coordination flow.

The second request was to allow the installation of pedestrian detectors that are easily activated for pedestrians with physical disabilities. There were no adverse comments addressing this issue. The FHWA adopts this recommendation and is including it as an option in MUTCD section 4B-29.

This change which allows the option of installing easily activated pedestrian detectors for persons with physical disabilities does not impose any additional costs on State and local highway jurisdictions.

Request IV-124(C)—Educational Plaque for Pedestrian Signals

This amendment will allow the use of an educational plaque that can be used in conjunction with pedestrian signal indications. The FHWA is adopting the use of this optional educational plaque where both symbol-type and word message pedestrian signal indications are used.

A total of 27 of the 30 comments received agreed with the use of the educational plaque. The wording of the plaque shown in the notice of proposed rulemaking has been slightly modified to reflect the following comments:

1. After the wording DONT START use FINISH CROSSING IF STARTED.

2. Pedestrians should be aware of all vehicles, not just turning cars.

3. The highlighted flashing hand symbol is more easily understood.

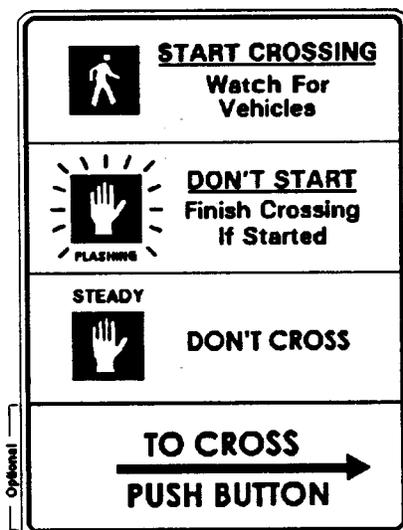
4. All intersections do not have marked crosswalks.

5. Eliminate the wording WAIT ON CURB because all intersections do not have curbs.

6. Many intersections in the United States do not have push buttons for operating signals and, therefore, the bottom section of the sign with the caption "TO CROSS. . . PUSH BUTTON" should be made optional.

7. Since both symbols and word messages are allowed for pedestrian signal indications, two plaque designs are necessary.

This change will not impose any additional costs on States and local jurisdictions.



R10-3b
225 mm x 300 mm
(9" x 12")

BILLING CODE 4910-22-C

Note: Word message (R10-3c) may be used in place of WALK/DON'T WALK symbol.

Request VI-88(C)—Emergency Flashers

This amendment to the MUTCD allows the use of vehicle hazard warning signals to supplement rotating dome or strobe lights as flashing identification beacons.

The intent of the original request was to allow the use of emergency flashers (vehicle hazard warning signals) or rotating domes and strobe lights on maintenance vehicles.

In the notice of proposed rulemaking, the FHWA originally proposed to allow the use of emergency flashers on maintenance vehicles during normal daytime maintenance operations without addressing the issue of rotating domes and strobe lights.

From a review of the comments, the intent of the amendment as originally stated in the NPRM was evidently not clear. The FHWA received a total of 26 comments in response to this change to the MUTCD. Eleven comments agreed, eight opposed and seven suggested use as a supplement. Some respondents viewed it as allowing vehicle hazard warning signals to be used in lieu of rotating domes and strobe lights. Other commenters viewed the amendment as allowing them to be used in addition to rotating domes and strobe lights.

The FHWA believes it may bolster motorists' safety if the difference in what the motorist expects between

seeing a disabled vehicle or from seeing a work area is preserved. Therefore, the FHWA adopts the optional use of vehicular hazard warning signals as a supplement to rotating domes or strobe lights and MUTCD section 6F-7c is changed accordingly.

This change does not impose any additional costs on State and local jurisdictions but encourages uniformity of traffic control devices.

Request VII-2(C)—School Bus Stop Ahead Symbol Sign

This request to adopt the School Bus Stop Ahead symbol sign submitted by the North Carolina Department of Transportation is denied. This symbol did not perform well in the FHWA research study. In addition, 23 of the 30 comments in response to this request were either opposed or indicated that further study is needed to define a more appropriate symbol.

This request is denied but FHWA will conduct further research and will consider other alternates for a symbol including those submitted by respondents.

Request VIII-26(C)—Maximum Flash Rate at Railroad Highway Grade Crossings

This approved amendment increases the maximum flash rate from 55 to 65 flashes per minute. This will make the AAR Signal Manual of Recommended Practices, the Railroad Highway Grade Crossing Handbook, and the MUTCD all

compatible with one another. In addition, this amendment is compatible with research and standard practices.

All 27 of the comments received were in support of this amendment. This change imposes no additional costs on State and local highway jurisdictions but will encourage uniformity of traffic control devices.

Request VIII-29(C)—Symbol for Railroad Advance Warning Sign

The request to replace the standard round Railroad Advance Warning Sign (W10-1) with a diamond-shaped sign is denied. The W10-1 sign is intentionally unique from other warning signs and is intended to convey to motorists the special attention they need to apply when approaching a railroad highway grade crossing.

All but one of the twenty-nine comments supported the FHWA position.

Request VIII-30(C)—Symbol for Number of Tracks Sign

The request to replace the word message "Tracks" in the standard Number of Tracks Sign (R15-2) with a symbol showing railroad tracks is denied.

Twenty-six of the twenty-seven comments received were in support of denying this amendment because the current sign is well understood and the proposed sign offered no proven benefit.

Request VIII-36(C)—Signs and Markings for No Lane Change Zones at Railroad Crossings

The request to require pavement markings at railroad-highway grade crossings to prohibit vehicle lane changing on the tracks when there are two or more lanes in one direction is denied. All 26 comments received supported the FHWA recommendation that this request not be adopted.

No-passing markings continue to be required on 2-lane, 2-way roadways approaching railroad-highway grade crossings as discussed in Section 8B-4 of the MUTCD. The MUTCD already contains provisions for pavement markings and signing where an engineering study determines a need to prohibit lane change movements in the vicinity of multi-lane approaches to railroad highway grade crossings.

Request VIII-37(C)—Fast Train Signs

This request to develop a warning sign and warrants for its use on approaches to high speed (80 to 110 mph) rail crossings that may or may not be equipped with automatic warning devices is deferred. Warrants are a set of criteria that can be used to define the relative need for and appropriateness of traffic signs. Of the 27 comments received for this request, 14 supported and 13 opposed its adoption. There was little consensus on the message to be used on the sign although several of the respondents suggested a succinct message, such as "HIGH SPEED TRAINS" or "FAST TRAIN." Several of those supporting this request suggested that it be republished when more specific information on the size, shape, and warrants for the sign are developed.

The Railroad-Highway Grade Crossing Technical Committee of the NCUTCD is currently developing a proposal on the shape, message, and warrants for use of this sign. The FHWA believes that the information in this NCUTCD proposal will provide more substantive data upon which to evaluate this request. This request will be published with additional information in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request VIII-38(C)—Supplementary Plaques on STOP and YIELD Signs Used at Railroad-Highway Grade Crossings

The request to permit the use of a supplementary plaque with STOP or YIELD Signs at Railroad-Highway Grade Crossings to indicate the number of tracks or to WATCH FOR SECOND TRAIN is deferred. The proposal to

include the number of tracks sign under the STOP or YIELD sign, received 27 comments of which 17 supported, 8 opposed, and 2 were undecided. A number of those supporting this proposal requested that the number of tracks sign be black and yellow rather than red and white as proposed.

The proposal to include the supplemental plaque message "WATCH FOR SECOND TRAIN," received 27 comments of which 9 supported, 16 opposed, and 2 were undecided. Many of those opposed expressed concern that such a long message would detract from the purpose of the STOP or YIELD sign.

The Railroad-Highway Grade Crossing Technical Committee of the NCUTCD is currently evaluating this proposal concerning the color and message length of this sign. The FHWA believes that the information provided in this NCUTCD proposal will provide more substantive data upon which to evaluate this request. This request will be published with this additional information in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request VIII-39(C)—Warrants for Warning Devices at Railroad-Highway Grade Crossings With High-Speed Train Operations

This request to include recommended warrants for use of warning devices at railroad crossings hosting high speed trains (80 to 110 mph) is deferred. There were 26 comments received of which 23 supported, 2 opposed and 1 was undecided. The two that opposed adoption felt that warrants for warning devices at railroad-highway grade crossings should be the same whether or not high-speed trains were involved. None of the 26 comments suggested specific warrants to be used. Until specific warrants can be developed this request is deferred.

The Railroad-Highway Grade Crossing Technical Committee of the NCUTCD is currently addressing this issue of warrants for warning devices. The FHWA believes that the information developed by the NCUTCD will provide more substantive data upon which to evaluate this request. This request will be published with proposed warrants in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request VIII-40(C)—Placement of the Crossing Identification Number Tag

The request to include in Part VIII standards for the design and placement of the U.S. DOT/AAR National Rail-Highway Crossing Inventory number plate is deferred. There were 23

comments received of which 18 supported, 3 opposed, and 2 were undecided. The 3 that opposed this request expressed the opinion that this number plate is not a traffic control device and does not belong in the MUTCD.

The FHWA number plate can provide valuable information to identify a specific crossing to authorities in an emergency situation (i.e. stalled vehicle on tracks), and the number should be displayed in a prominent and consistent location at all railroad-highway grade crossings. Since this identification plate is displayed on railroad right-of-way, its location should be agreed to by the railroads, FRA, and the FHWA. Until the placement issue is resolved this request is deferred. This request will be published with proposed location of the number plate in a future notice of proposed rulemaking which will provide another opportunity for the public to review and comment.

Request IX-6(I)—Marking Hazardous Bicycle Conditions

The language in MUTCD section 9C-6 is modified to clarify that object markers as discussed in this section, not only apply to bicycle trails which are exclusively for bicycles but to any roadway open to bicycle travel. Twenty-one of the twenty-three comments agreed with this change. This change is editorial and does not impose any additional costs to the State and local jurisdictions.

Rulemaking Analyses and Notices, Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. Most of the changes in this notice provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This final rule adds some alternative

traffic control devices and only a very limited number of new or changed requirements. Most of the changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372
(Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, and Traffic regulations.

The FHWA hereby amends chapter I of title 23, Code of Federal Regulations, part 655 as set forth below.

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and; 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways [Amended]

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988, including revision No. 1 dated January 17, 1990, Revision No. 2 dated March 17, 1992, Revision No. 3 dated September 3, 1993, Errata No. 1 to the 1988 MUTCD Revision 3, dated November 1994, Revision No. 4 dated November 1, 1994, and Revision No. 5 dated December 24, 1996. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. The 1988 MUTCD, including Revision No. 3 dated September 3, 1993, may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), P.O. Box 371954, Pittsburgh, PA 15250-7954, Stock No. 650-001-00001-0. The amendments to the MUTCD titled, "1988 MUTCD Revision No. 1," dated January 17, 1990, "1988 MUTCD Revision No. 2" dated March 17, 1992, "1988 MUTCD Revision No. 3," dated September 3, 1993, "1988 MUTCD Errata No. 1 to Revision No. 3," dated November 1994, "1988 MUTCD Revision No. 4," dated November 1, 1994, and "1988 MUTCD Revision No. 5," dated December 24, 1996 are available from the Federal Highway Administration, Office of Highway Safety, HHS-10, 400 Seventh Street, SW., Washington, DC 20590. These documents are available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

* * * * *

Issued on: December 24, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 97-196 Filed 1-6-97; 8:45 am]

BILLING CODE 4910-22-P

Federal Register

Thursday
January 9, 1997

Part III

Department of Education

Postsecondary Education; National Direct
and Federal Perkins Student Loan
Programs; Directory of Designated Low-
Income Schools; Notice

DEPARTMENT OF EDUCATION**Office of Postsecondary Education;
Availability of the 1996-97 Federal
Perkins Loan and National Direct
Student Loan Programs Directory of
Designated Low-Income Schools for
Teacher Cancellation Benefits for the
1996-97 School Year**

AGENCY: Department of Education.

ACTION: Notice of availability of the 1996-97 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for teacher cancellation benefits for the 1996-97 school year.

SUMMARY: The Secretary announces that the 1996-97 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the Federal Perkins Loan and National Direct Student Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan canceled if the borrower teaches full-time for a complete academic year in a designated elementary or secondary school having a high concentration of students from low-income families. In the 1996-97 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1996-97 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Patricia Reese, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4621), Washington, DC 20202-5447, Telephone (202) 708-5182.

Information concerning deferment and cancellation of a Federal Perkins Loan or National Direct Student Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4310), Washington, DC 20202-5447, Telephone (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; (3) each of the major Federal Perkins Loan billing services; and (4) the U.S. Department of Education, including its regional offices.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures contained in the Federal Perkins Loan program regulations at 34 CFR 674.53, 674.54 and 674.55.

The Secretary has determined that, for the 1996-97 academic year, full-time teaching in the schools set forth in the 1996-97 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with the institution that awarded their loan, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1996-97 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Direct and Federal Perkins Loan Cancellations)

Dated: January 6, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97-516 Filed 1-8-97; 8:45 am]

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Executive Order

Thursday
January 9, 1997

Part IV

The President

Presidential Determination No. 97-14—
Drawdown From DoD Articles and
Services for Assistance for the Victims
of Conflict and Other Persons at Risk
From Northern Iraq

Presidential Determination No. 97-15—
Assistance Program for the New
Independent States of the Former Soviet
Union

Presidential Documents

Title 3—

Presidential Determination No. 97-14 of December 27, 1996

The President

Drawdown From DoD Articles and Services for Assistance for the Victims of Conflict and Other Persons at Risk From Northern Iraq

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense for the purpose of providing assistance to the victims of conflict and other persons at risk for Northern Iraq.

Therefore, I hereby direct the drawdown of up to \$10,000,000 of such articles and services from the inventory and resources of the Department of Defense, for the purposes and under the authorities of the Migration and Refugee Assistance Act of 1962, as amended, section 2(c).

The Secretary of State is authorized and directed to report this determination to the Congress, and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, December 27, 1996.

Presidential Documents

Presidential Determination No. 97-15 of December 27, 1996

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (d) under the heading "Assistance for the New Independent States of the Former Soviet Union" in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as enacted in Public Law 104-208), I hereby determine that it is in the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, December 27, 1996.

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Vol. 62, No. 6

Thursday, January 9, 1997

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