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Contents

Federal Register

Vol. 62, No. 56

Friday, March 24, 1997

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 62, No. 56
Monday, March 24, 1997

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–0926]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted amendments to its Regulation CC relating to the availability of funds and collection of checks. The amendments do not represent any major policy changes and are intended to clarify the regulation and, in some cases, reduce the compliance burden for depository institutions.

EFFECTIVE DATE: April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Florence Young, Assistant Director (202/452–3955), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Senior Attorney (202/452–3198), Heatherun Allison, Attorney (202/452–3565), Legal Division; Manley Williams, Attorney (202/452–3667), Kyung Cho-Miller, Attorney (202/452–2412), and Obrea Poindexter, Attorney (202/452–2412), Division of Consumer and Community Affairs. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

I. Overview

The Board has adopted amendments to its Regulation CC (12 CFR Part 229), Availability of Funds and Collection of Checks. The amendments are clarifying and technical in nature and do not represent any major policy changes. The amendments to subpart B of the regulation, governing availability schedules and disclosures, address a variety of issues, including the treatment of deposits received at ''contractual'' branches (such as affiliate banks [1]). Many of the amendments are designed to reduce the burden on banks of complying with the regulation. For example, the amendments would provide more flexibility for hold notices under emergency conditions, clarify the various media by which banks may give written notices, and delete certain notice content requirements. The Board has also updated the model forms in Appendix C. Banks that use earlier versions of the model forms are protected from civil liability under § 229.21(e), but all banks are encouraged to use the new versions when reordering or reprinting supplies.

The amendments to subpart C, governing collection of checks, clarify the interaction between Regulation CC and the Uniform Commercial Code (U.C.C.); set forth rules for checks drawn on banks in Guam, American Samoa, and the Northern Mariana Islands; and address other check collection matters.

A red-lined version of the amendments to the regulation, model forms, and commentary is available from the Board's Freedom of Information Office or by calling 202–452–3684.

The Board received 64 comments to the proposed amendments from the following types of institutions:

Banks/thrifts	15
Bank holding companies	14
Credit unions	10
Trade associations	9
Federal Reserve Banks	7
Clearinghouses	3
Banking service companies	3
Credit card companies	2
Federal Home Loan Banks	1

II. Section-by-Section Analysis

Available for withdrawal (§ 229.2(d)). The regulation defines ''available for withdrawal'' to mean available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies. The commentary to this definition clarifies that funds are considered available for withdrawal even if they are being held to satisfy, among other things, the customer's liability arising from the certification, guaranty, or acceptance of a check or the sale of a cashier's or teller's check. The Board proposed to revise the commentary to clarify that funds held to meet contingent obligations of the customer related to the account are considered to be available for withdrawal. For example, a depositary bank might receive a notification that the customer has authorized a debit to the account at a point-of-sale terminal. Banks often ''memo-post'' these debits to the customer's account in advance of the settlement date.

The Board received eighteen comments on the proposal. Ten commenters favored the proposal. Eight commenters either opposed the proposal or requested clarification. Apparently, these commenters interpreted the proposal to prohibit ''memo-posting'' and to require a bank to allow a customer to withdraw funds on which the bank had placed a hold to satisfy a transaction to be debited from the customer's account. The Board intended the opposite, however. A bank may ''memo-post'' contingent account liabilities such as debit card transactions to a customer's account without violating its obligations under this subpart. The Board has adopted revised commentary language to clarify this point.

Definition of ''bank'' (Section 229.2(e)). The regulation stated that, for purposes of subpart C, the term ''bank'' includes any person engaged in the business of banking, including a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. The Board proposed to amend the regulation's definition of ''bank'' to clarify that the Federal Reserve Banks, the Federal Home Loan Banks, and state or units of general local government are not necessarily engaged in the business of banking, notwithstanding the fact that they are included in this definition. The Board received no comments on this change and has adopted the amendment as proposed.

Definition of ''traveler's check'' (Section 229.2(hh)). The commentary stated that ''[t]raveler's checks that are not issued by banks may not have any

[1] ''Bank'' in Regulation CC and in this document includes all depository institutions, such as commercial banks, savings institutions, and credit unions.

words on them identifying a bank as drawee or paying agent * * * .'' Some people had interpreted this provision to mean that traveler's checks were prohibited from having words on them identifying a bank. The Board proposed to revise the commentary to clarify that only a description of a possible situation, and not a prohibition, is intended. The Board received two comments in support of this change and has adopted a slightly revised version of the proposal.

Notice requirement to state amount of deposit (Sections 229.13(g) and 229.16(c)). Regulation CC required a notice of an exception hold (§ 229.13(g)(1)(i)(B)) or a case-by-case hold (§ 229.16(c)(2)(i)(B)) to include the amount of the deposit from which funds will be held. Some banks noted that when they learn that a check is being returned by the paying bank several days after the day of deposit, it is often difficult to trace the check back to a particular deposit, especially in cases where a corporate customer makes several multi-check deposits on a single day. The Expedited Funds Availability Act (the Act) does not require the notice to contain the amount of the deposit. The Board proposed to eliminate the ''amount of deposit'' requirement for both exception and case-by-case hold notices. The Board received thirty-one comments on this proposal, twenty-seven of which expressed support. Two commenters indicated that the requirement to state the amount of deposit was not burdensome, and two commenters indicated that it would be beneficial to retain the requirement ''to ensure the accuracy of the number of days being held versus the policy or regulation requirements'' or to ''aid the consumer in identifying which deposit the hold applies to.'' The Board believes that depositors can identify the holds that the bank has applied based on other information in the hold notice and has eliminated the ''amount of deposit'' requirement as proposed.

The Board also requested comment on the burdens to depositary banks and the benefits to customers of the requirement for hold notices to include the date of deposit. The Board received twenty-seven comments in response to this request. Eighteen commenters supported retention of the date requirement, cited consumer benefits of the requirement, or noted that the requirement imposed little or no burden for banks. In general, these commenters indicated that the date requirement is an important and necessary reference point for depositors in identifying a transaction and also helps banks track particular checks. Seven commenters favored eliminating the date requirement or stated that the requirement imposed burden on banks. Two commenters supported elimination of the date requirement as long as consumers could obtain the necessary information regarding a hold from the other information in the notice. The Board believes that the date requirement continues to provide useful information to depositors and imposes only a minor burden on banks. The Board, therefore, has retained the date requirement for exception hold and case-by-case hold notices.

Emergency exception notices and length of holds (Sections 229.13 (g) and (h)). The regulation allows a depositary bank to place an exception hold on funds deposited by check in the case of an emergency, such as a computer or communications interruption, suspension of payments by another bank, or war. The regulation required the depositary bank to provide a notice to the customer of the emergency hold in the same manner in which it provides notice under the other exception holds, except that no notice was necessary if the funds were made available before the notice had to be sent. (That is, the bank would have to mail or deliver the notice to the customer no later than the first business day following the day the facts upon which a determination to invoke the hold became known to the depositary bank.) Some banks argued that during a major disaster they would be unable to meet the timing deadline for emergency exception hold notices due to the time required to move to a backup processing site and the need for the bank to focus on other customer service priorities in the event of major disasters.

Section 604(f)(2)(C) of the Act requires depositary banks to send emergency exception hold notices ''in accordance with regulations of the Board.'' Therefore, the Board proposed to amend § 229.13(g) of Regulation CC to require a depositary bank to give reasonable notice of emergency exception holds and to make conforming revisions to the commentary. Reasonable notice in some situations might consist of individual notices mailed to customers as soon as practicable or, in other situations, may consist of general notices, such as postings at branches or ATMs, or newspaper, television, or radio notices. The Board also proposed clarifying amendments to § 229.13(h) regarding the length of exception holds and corresponding revisions to the commentary.

The Board received twenty-eight comments on this proposal, all in support. One commenter requested further guidance on the factors to consider when determining what form the notice should take. The Board believes that the factors as to what is reasonable will vary with the situation and that specifying factors may be overly restrictive. Another commenter recommended that a bank be permitted to provide notices by posting or publication in all situations warranting an emergency hold. The Board, however, believes that these methods may not necessarily be reasonable in all situations. The Board believes its proposal provides significant flexibility to banks under emergency conditions and has amended § 229.13(g) and revised the accompanying commentary as proposed.

Written notices (Sections 229.13(g) and 229.15(a)). Section 229.13(g) requires a depositary bank to provide written exception hold notices to customers. Section 229.15(a) requires banks to make availability policy and other disclosures in writing and requires that certain disclosures be in a form the customer may keep. The Board proposed to revise the commentary to both these sections to clarify that notices and disclosures delivered via fax or electronic media that display text on a monitor or screen, such as electronic mail, screenphone, or interactive television, are considered written notices and disclosures if the customer agrees to receive notices and disclosures through such means. The proposal also provided that a customer may request a paper copy of an electronic notice or disclosure. Twenty-one comments were received on the proposal, all in favor of the proposed revisions. One commenter recommended that a customer be allowed to request a paper copy of an exception notice only within a reasonable period of time after receiving electronic notice.

The Board has re-examined the need to allow the customer to request a paper copy of an electronic notice or disclosure, with an eye toward providing banks with more flexibility in servicing their customers, fostering innovation, and reducing costs while maintaining the level of customer protection contemplated by Congress. The Act specifies that certain notices and disclosures must be written but does not specify that they must be on paper or in another form that must be retained. Under the proposal, a bank may send electronic notices and disclosures only if the customer agrees. If a customer was not satisfied with its arrangement with its bank, it could rescind the agreement and request that the bank send all future notices and

disclosures on paper, or close its account. Customers interested in retaining a paper copy presumably would agree to receive notices and disclosures electronically only if they had the capability to print the electronic information that they receive. The final commentary language adopted by the Board states that the Regulation CC requirements would be satisfied by an electronic notice or disclosure that displays the text and is in a form that the customer may keep (for example, electronic information that can be downloaded or printed). The Board has dropped the proposed commentary provision stating that a consumer may request a paper copy of a notice delivered. The Board is conducting a comprehensive review of notice and disclosure requirements under consumer protection regulations and may, in the future, request comment on additional proposals regarding the use of electronic communications to meet the various regulatory requirements. Future proposals may affect Regulation CC as well as the other regulations.

Exception holds and the cash withdrawal rule (Section 229.13(h)). Section 229.12(d) permits a depositary bank to extend holds on deposits of local, nonlocal, and certain other checks by one business day for purposes of withdrawals by cash or similar means, with the exception of $400, which must be made available by 5:00 p.m. on the original availability day (the ''cash withdrawal rule''). The purpose of the cash withdrawal rule is to allow depositary banks an additional day to learn if a check is being returned before allowing irrevocable withdrawals from the customer's account. Some banks asked how the cash withdrawal rule works in conjunction with the exception holds. For example, when a large deposit exception hold is placed on a $7,000 local check, $100 must be made available for withdrawal on the next business day. For check-writing purposes, $4,900 must be available by the second business day after deposit. For withdrawal by cash or similar means, $400 out of the $4,900 must be available by 5:00 p.m. of the second day and the remainder of the $4,900 must be available by the third business day after deposit. The banks asked whether the five-day exception hold on the $2,000 excess over $5,000 is added to the second business day for all purposes, or whether the hold period may be added to the second day for check-writing withdrawals and to the third day for cash and similar withdrawals. The Board proposed to clarify that the exception hold periods should be added to the normal availability schedules (to the second business day in the previous example). The Board reasoned that it would not be necessary to extend the exception hold period for cash withdrawal purposes, as in almost every case the depositary bank should learn of a returned local check before the morning of the seventh business day after deposit.

The Board received four comments on this proposal. One commenter opposed the proposal, stating that it would require expensive and extensive reprogramming. Two other commenters stated that adopting the proposal would make regulatory compliance more difficult. One commenter stated that additional clearing time is beneficial and may help prevent losses. Upon consideration of these comments, the Board has decided that, to avoid costly systems changes for banks and in an effort to simplify the rule, the exception hold periods may be added to the availability period as applicable to unlimited cash withdrawals. Therefore, the Board has not adopted the proposed revision.

Disclosure of branch-specific policies (Section 229.16(a)). Section 229.16 requires banks to furnish notices of their specific availability policies. Some banks have established different availability policies at different branches (or for deposits accepted on behalf of the bank by affiliates or ''contractual branches''). These banks asked about the disclosure implications of different policies and whether such a bank must disclose to every customer what routing numbers are local to each location where deposits are accepted. The Board proposed to revise the commentary to § 229.16(a) to clarify that a bank may provide customers with a branch-specific disclosure. The Board proposed that banks, when determining which disclosure to provide, be allowed to allocate customers between branches through good faith use of a reasonable method, such as where the customer opened the account.

The Board received sixteen comments on this proposal. Some of the commenters expressed concern about identifying customers with specific branches, given the trends towards servicing accounts remotely or through contractual branches. Accordingly, the Board has revised the proposed commentary language to state that a bank may establish different availability policies for different groups of customers and may allocate customers for disclosure purposes by any reasonable method. The allocation need not be branch-based. The final commentary revision also states that a bank may establish different availability policies for deposits at different locations, such as at contractual branches. The Board also amended the commentary to § 229.16(b) to clarify that if a bank does not have a cut-off hour prior to its closing time, the bank need not disclose a cut-off hour.

Initial disclosures (Section 229.17). The regulation requires a bank to provide an availability policy disclosure to a potential customer before opening an account. The commentary states that, if a bank receives a written request by mail asking that an account be opened and including an initial deposit, the bank may open the account with the deposit but must mail the required disclosures not later than the business day following the banking day on which the bank receives the deposit. Although the Board proposed no changes to this section, one commenter asked that the period for mailing a disclosure after receiving an initial deposit through the mail be extended to ten days. The commenter stated that additional time is necessary for the bank to perform ''due diligence'' steps, such as conducting a credit check and verifying the information submitted by the customer. The commenter stated that, because a bank may ultimately decline an account and send back the initial deposit, sending a disclosure before final acceptance of the account could be confusing to the customer. As the Board did not seek comment on any changes to the initial disclosure rules in § 229.17, it is not adopting any changes to this section at this time. The Board will, however, consider seeking comment on this matter in the future.

Deposits at contractual branches (Sections 229.2(s), 229.10(c), 229.14(a), 229.19(a)). Due to easing of branching restrictions, the practice of one bank accepting deposits on behalf of another bank (''contractual branching'') is growing more prevalent. The Board proposed to clarify the commentary regarding treatment of deposits at contractual branches. The proposed revision to the commentary to the definition of local paying bank (§ 229.2(s)) stated that a branch of a bank that is acting as an agent of the depositary bank is considered a branch of the depositary bank. Therefore, a check would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

The Board also proposed to revise the commentary to §§ 229.10(c) and 229.19(a) to clarify that deposits at contractual branches would be treated similarly to deposits at proprietary ATMs; deposits at contractual branches

would be considered deposited when the funds are received by the contractual branch teller. However, deposits at contractual branches would not be considered deposited at a teller station staffed by an employee of the depositary bank within the meaning of § 229.10(c) (ii)–(v) and therefore would not be subject to next-day availability under those provisions. The Board also proposed to revise the commentary to § 229.19(a) to state that the depositary bank could set a noon cut-off hour for deposits at contractual branches, as these deposits are treated as received at ''off-premise'' facilities. Finally, the Board proposed to revise the commentary to § 229.14(a) to clarify that, in the case of a deposit at a contractual branch, interest must accrue when the account-holding bank receives credit for the deposit, not when the contractual branch receives credit.

The Board received twenty-two comments on the proposal. Fourteen commenters supported the proposal. Two commenters stated that deposits made at contractual branches should be treated similarly to deposits made at nonproprietary ATMs rather than at proprietary ATMs, as proposed. The Board believes that, on balance, deposits made over the counter to a teller at a branch, albeit a contractual branch, are more akin to deposits at proprietary ATMs than those at nonproprietary ATMs. The Board has retained the proposed treatment of contractual branch deposits.

One commenter stated that ''local paying bank'' under § 229.2(s) should include paying banks that are members of the same local clearinghouse as is the depositary bank. The Board notes that a bank is free under Regulation CC to treat as local checks those checks that are drawn on paying banks that are members of the same local clearinghouse and that can be collected on a local basis regardless of the paying bank's Federal Reserve check processing region. The Board has determined, however, not to require banks to do so, because such a requirement could make it extremely complicated for banks to assign availability for a given check based on its routing number.

Another commenter asked that the Board provide additional guidance on how to determine whether a check is local or nonlocal, particularly when the paying bank has interstate branches. The Board believes that the commentary to the definition of ''local check'' (§ 229.2(r)) already provides sufficient guidance on this issue. The commentary states that, generally, a depositary bank may rely on a check's routing number to determine whether the check is local or nonlocal. (The only instance when a bank may not be able to rely on the routing number is when the check is drawn on one bank and payable through another bank, in which case the check is local or nonlocal based on the location of the drawee bank rather than the location of the payable-through bank whose routing number is on the check.)

Several commenters requested clarifications of various kinds. One commenter asked whether a hold notice may be given by a contractual branch or whether it must be given by the account-holding bank. The Board believes that the regulation clearly places the responsibility for providing notices with the account-holding bank, but a contractual branch may agree to provide notices on behalf of the account-holding bank. Another commenter asked whether the Board would allow up to one year for banks to comply with the new contractual branching provisions. The Board does not believe that a one-year lead time is necessary, as the revisions represent a clarification of the existing rule rather than new requirements. One commenter asked whether a bank's lobby disclosure obligations under § 229.18 require disclosure of the availability of funds for all deposits at that location or only for accounts maintained at that location. The Board added a clarification to the commentary to § 229.18(b) to clarify that lobby notices need only describe the bank's availability policy, not the availability policy of the bank for which it is acting as a contractual branch.

The Board adopted the other commentary revisions to §§ 229.2(s), 229.10(c), 229.14(a), and 229.19(a) substantially as proposed. In addition, to provide a single reference point for the definition of ''contractual branch,'' the Board has added a definition of this term to § 229.2. The Board has also added references to contractual branches in §§ 229.2(s) and 229.19(a).

Holds on other funds—notices (section 229.19(e)). Section 229.19(e) provides that when a bank accepts a deposit to an account that is subject to the Regulation CC availability requirements, the bank may not place a hold on any other funds of the customer (such as a savings account) that exceeds those requirements. This section also provides that when a bank cashes a check over the counter (other than an ''on-us'' check), the bank may not place a hold on that customer's account that exceeds the Regulation CC schedules that would apply if the check were deposited. Section 229.19(e) does not explicitly address whether the depositary bank must provide a hold notice (case-by-case or safeguard exception) in these cases. The Board proposed to revise the commentary to § 229.19(e) to clarify that a hold notice would be required if an exception or case-by-case notice would have been required under §§ 229.13 or 229.16 had the hold been placed on funds deposited in an account subject to the regulation.

The Board received eight comments on this proposal. Four commenters expressed support for the proposal. One commenter requested clarification on whether notices are required when the hold is not associated with a deposit to an account. Two commenters opposed the imposition of additional regulatory burden with respect to accounts not covered by Regulation CC. The Board has adopted revised commentary language to clarify that a notice under this section is required only when the funds being held are funds in an account that is covered by Regulation CC. Another commenter observed that, if notice is required where, for example, a bank cashes a check over the counter, the wording of the notice should not refer to ''number of days following deposit,'' as no deposit is involved. The Board has revised the commentary to the model notices to clarify how to amend the notices in these circumstances. One commenter expressed concern that notices of such a policy must be incorporated into a bank's availability policy. The Board notes that model clauses C–6 (Holds on Other Funds (Check Cashing)) and C–7 (Holds on Other Funds (Other Accounts)) provide models for inclusion in a bank's availability policy.

Midnight deadline extension (section 229.30(c)). The regulation (§ 229.30(c)(1)) allows a bank to return a check after the midnight deadline, as long as it uses a means of delivery designed to get the returned check to the receiving bank by the end of that receiving bank's next banking day, or later if ''highly expeditious transportation'' is used. Section 229.30(c)(2) allows a paying bank to extend a Saturday midnight deadline if the checks get to a returning bank by the cut-off hour for the returning bank's next processing cycle or to a depositary bank by the end of the depositary bank's next banking day. The Board proposed to amend the regulation to clarify that § 229.30(c)(1) pertains to all midnight deadlines other than Saturday midnight deadlines, and that § 229.30(c)(2) pertains only to an extension of a Saturday midnight deadline. The Board received nine comments, all of which supported the proposal. The Board has adopted the amendment as proposed.

The Board also requested comment on whether further modifications to the regulation would be desirable in light of problems posed by nonstandard banking days other than Saturdays, such as mid-week holidays. The Board received thirteen comments in response to this request. Of these, nine commenters stated that further modifications to the regulation were not necessary, and four commenters stated that further modifications or clarification would be desirable. As none of the commenters stated that nonstandard banking days raise significant problems, the Board decided not to make any further modifications with respect to nonstandard holidays at this time.

The Board also requested comment on whether the regulation's conditions for extending a midnight deadline should require a determination of motive or whether the regulation should simply set forth a ''time-of-receipt'' test. Specifically, the Board asked whether § 229.30(c) should be available only ''in order to expedite delivery'' (and not, for example, to avoid a kite) or whether extension of the midnight deadline should be permitted for any reason so long as the returned check is received by the receiving bank by the end of that bank's next banking day (or later if ''highly expeditious transportation'' is used). The Board received twelve comments on this issue. All commenters expressed support for clarifying that no motive test is intended in this section. The Board agrees that § 229.30(c) should not require a determination of motive for midnight deadline extensions. To provide clarity on this point, the Board has deleted the words ''in an effort to expedite delivery of a returned check to a bank'' from § 229.30(c)(1).

Extra day to create qualified returned checks (section 229.31(a)). Section 229.31(a) allows a returning bank to convert a returned check to a qualified returned check (that is, to encode the returned check with the routing number of the depositary bank, the amount of the check, and a return identifier so that it can be handled in an automated manner). If the returning bank creates a qualified returned check, § 229.31(a) provides a one-day extension in the returning bank's time frame for meeting the ''forward-collection'' expeditious-return test in § 229.31(a)(2) (but not the ''two-day/four-day'' test) and the deadlines for return under Regulation J and the U.C.C. This extension does not apply if the returning bank returns the check directly to the depositary bank, because in that case the preparation of the qualified returned check will not expedite handling by other banks. Given the improvements in the check return system since Regulation CC was first implemented, the Board proposed to eliminate the extension and to amend § 229.31(a) of the regulation and revise the accompanying commentary accordingly. The Board requested comment on whether this extension is still necessary and, if so, a description of the operational problems that elimination of the extension would cause.

The Board received twenty-three comments in response to this proposal. Thirteen commenters supported eliminating the extra day to create qualified returned checks, and ten commenters opposed eliminating the extra day. One commenter stated that the extra day should be retained if, without it, the use of qualified returns would be likely to decrease. Similarly, another commenter stated that it did not oppose the elimination of the extra day so long as the extra day is no longer necessary as an incentive to create qualified returned checks. One Reserve Bank commented that the extra day should be retained, stating that it still receives more raw returns than it can process overnight. One commenter, a clearinghouse, stated that if the extra day were eliminated then paying banks would be likely to shift returns to the Federal Reserve Banks, benefitting the public sector at the expense of the private sector. As some returning banks may still use the extra day, and to avoid unintended shifts in volume from the private sector to the public sector, the Board has determined to retain the extra day for creating qualified returned checks.

Midnight deadline warranty and U.C.C. defenses (Section 229.34(a)(1)). Section 229.34(a)(1) requires a paying or returning bank that returns a check to warrant that the return is within its deadlines under Regulation CC, Regulation J, and the U.C.C. The commentary to § 229.30(a) clarifies that a paying bank is not responsible for failure to make expeditious return under that section to a party that has breached a presentment warranty under U.C.C. 4–208. This commentary is consistent with U.C.C. 4–302(b), which subjects the paying bank's liability for missing its midnight deadline to defenses based on a breach of a presentment warranty or fraud. The Board proposed to revise the commentary to § 229.34(a)(1) to clarify that a paying or returning bank's warranty of timely return within the U.C.C. deadline is subject to U.C.C. claims or defenses. The Board received six comments on this proposal, all of which supported the proposed commentary revision. The Board has adopted the revision as proposed.

Set-off rights (§ 229.34(c)(4)) and returning bank liability (§ 229.31(a)). Under § 229.34(c)(4), if a paying bank overpays a presenting bank for checks presented, the paying bank may set off the excess amount paid against subsequent settlements for checks presented by that bank. The Board proposed to amend that section (and revise the accompanying commentary) to give any bank in the collection or return chain the right to offset excess settlement made to a particular bank against settlement for subsequent checks or returned checks transferred by that bank. The Board received six comments in response to this proposal. Five commenters expressed support for the proposed revision, citing increased efficiency and decreased administrative costs. One commenter opposed the proposal, pointing out the potential for a confusing cycle of correcting debits and credits if one bank automatically sets off while the other bank affirmatively makes an adjusting settlement for the excess amount. In addition to considering the comments, the Board considered whether the proposal was necessary to protect banks in the collection and return chain. The current regulation allows set-off by the paying bank versus the presenting bank because the paying bank is obligated to accept and settle for (or return) checks presented to it even in the absence of a settlement agreement with the presenting bank. A bank has a similar obligation to accept returned checks for which it is the depositary bank. Intermediary collecting and returning banks, however, are free to agree with each other about the terms for handling checks, including provisions for offset. These banks could structure their agreements as netting contracts that are enforceable even in the event of a counterparty failure, under the terms of Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991.[2] The Board, therefore, has expanded the offset provisions of § 229.34(c)(4), but only to the depositary bank-returning bank relationship and not to the relationships between intermediary collecting and returning banks.

The Board also proposed to revise the commentary to § 229.31(a), which discusses the returning bank's liability if it makes an encoding error when creating a qualified returned check. The commentary pointed out that the returning bank could be liable under § 229.38 for losses caused by negligence. The Board proposed to add that the returning bank could also be liable for a breach of its encoding warranty under

[2] 12 U.S.C. 4401 *et seq.*

§ 229.34(c)(3). The Board received five comments on this proposal. Four commenters supported the proposed revision, while one commenter opposed it, stating that the depositary bank should be held liable for encoding errors instead of a returning bank in order to encourage depositary banks to provide legible endorsements. The Board notes that the regulation provides for a chain of encoding warranties whereby an intermediary bank could make a claim back against the encoding bank on a mis-encoded check. The Board has adopted the revision as proposed.

Time limit for notice of warranty breach (§ 229.34(f)). Sections 4–207(d) and 4–208(e) of the U.C.C. provide that a claimant on a breach of warranty must give notice to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, or else the warrantor is discharged to the extent of any loss caused by the delay in notice. The Board proposed to add this time limitation for notices of warranty claims to Regulation CC to ensure that the same time limitations apply for check-related warranty claims, regardless of whether the claim is under state or federal law. The Board received four comments in response to this proposal, all of them supporting the proposed amendment. The Board has adopted the amendment as proposed.

Electronic presentment (§ 229.36(c)). Section 229.36(c) allows a bank to present a check electronically under an agreement with the paying bank. That section and the accompanying commentary contained references to check ''truncation'' (generally a term used to describe a system in which the physical check is held at some point in the check collection process). An electronic presentment arrangement may, but does not necessarily, include truncation of the physical check. Therefore, the Board proposed to amend § 229.36(c) and revise the accompanying commentary to apply it to ''electronic presentment'' arrangements, not merely ''truncation'' arrangements. The Board also proposed to revise the commentary by adding an example of an electronic presentment arrangement.

The Board received thirteen comments on this proposal. Ten commenters opposed the proposed commentary example, most of them stating that the example would appear to include within the scope of ''electronic presentment'' arrangements where the paying bank receives presentment of the physical check after having previously received information electronically about the check. These commenters stated that the proposal should be limited to those check collection arrangements under which presentment occurs upon receipt by the paying bank of the information about the check rather than upon receipt of the physical check itself. The Board did not intend to cover check collection arrangements where presentment occurs upon receipt by the paying bank of the physical check itself. The Board has, therefore, adopted revised language to the regulation and the accompanying commentary.

Labelling requirements for payable-through checks (§ 229.36(e)). A bank that arranges for a check drawn on it to be payable through another bank must ensure that certain information is printed on the face of the check. Specifically, § 229.36(e) requires that these checks show (1) the name, location, and first four digits of the routing number of the bank by which the check is payable, and (2) the words ''payable through'' followed by the name and location of the payable-through bank. The Board adopted these labelling requirements to enable banks and their customers to identify payable-through checks and to determine whether they are local or nonlocal. The provisions regarding the ''payable through'' designation and the name and location of the payable-through bank are similar to provisions in U.C.C. 4–106. As these particular labelling requirements are covered by state law, the Board proposed to eliminate them from Regulation CC.

The Board received eight comments on this proposal. Two commenters supported the proposal. One commenter suggested that the commentary make reference to U.C.C. § 4–106 to avoid the misperception that ''payable through'' language is not required at all. Six commenters opposed the proposal. Two of these commenters desired a uniform standard in Regulation CC as opposed to various state law requirements. Two other commenters stated that U.C.C. § 4–106 does not by its terms require the location of a payable-through bank to be shown on a check, and, therefore the Board should continue to require payable-through information. One commenter suggested that the Board require all checks to show on their face the name and location of the bank whose routing number is used on the check.

The purpose of requiring conspicuous ''payable through'' labelling was to ensure the ability of depositary banks to identify payable-through checks visually. Accordingly, the Board has determined to continue to require the words ''payable through'' and the name of the bank on payable-through checks. However, there appears to be no continuing reason to require payable-through checks to identify the location of the payable-through bank. Accordingly, the Board has deleted this requirement. The Board notes, however, that removing the location of the payable-through bank from a payable-through check would require the payable-through bank to accept the check at any branch or head office under § 229.36(b)(3).

Measure of damages (§ 229.38(a)). The commentary states that the measure of damages provided in § 229.38(a) ''derives from U.C.C. 4–103(e) and 4–202(c).'' The Board proposed to revise the commentary to clarify the effect of U.C.C. 4–202(c) upon the measure of damages, as U.C.C. 4–202(c) does not state a measure of damages but rather limits liability by providing that a bank that has exercised ordinary care is not liable for the insolvency, neglect, misconduct, mistake, or default of others, or for the loss or destruction of an item by others. The Board received one comment on this change, in support, and has adopted the revision as proposed.

Correction to commentary (section 229.38(d)). In the 1995 technical amendments to Regulation CC (60 FR 51669, October 3, 1995), some words were inadvertently dropped from the commentary to § 229.38(d). The Board proposed to correct the commentary. The Board received no comments on this change and has adopted the revisions as proposed.

Preference against depositary bank (section 229.39(b)). Section 229.39(b) gives a bank a preferred claim against a closed paying or depositary bank that ''finally pays'' a check or returned check without settling for it. A paying bank ''finally pays'' (becomes accountable for) a check if it doesn't settle for or return the check by the applicable deadline. A depositary bank is obligated to ''pay'' for a returned check under § 229.32(b) but may not return the returned check. The depositary bank can meet its obligations under § 229.32(b) only by settling for the returned check. Therefore, the depositary bank cannot ''finally pay'' for a returned check without settling for it. The Board proposed to amend § 229.39(b) and revise the accompanying commentary to clarify this distinction. The Board did not receive any comments to this proposal. Accordingly, the Board has adopted the amendment and revision as proposed.

Preference against presenting bank (section 229.39(d)). Section 229.39(d) gives a paying bank a preferred claim against a closed presenting bank in the

event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(c) (1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

The Board added § 229.39(d) in 1992, as part of the ''same-day settlement'' amendments to Regulation CC (57 FR 46956, October 14, 1992). At that time, some commenters suggested that the preferred claim should extend to claims other than adjustments, such as breach of a U.C.C. presentment warranty (such as warranties against forged or missing indorsements and alterations). At that time, the Board noted that a preferred claim against a failed presenting bank for forgeries, missing indorsements, and alterations may reduce risk to the paying bank. That risk, however, was not directly related to the obligation to make same-day settlement and was not addressed in the original proposal; therefore, the Board did not adopt the commenters' suggestion at that time. The Board requested comment on whether § 229.39(d) should be expanded to cover the U.C.C. presentment warranties.

The Board received six comments in response to this proposal. Four of the commenters expressed support for the proposal. One commenter stated that the proposal should not be limited to the paying bank, but should be broadened to consider whether such a preference would be desirable for the benefit of collecting banks, returning banks, and depositary banks that receive U.C.C. and Regulation CC warranties. One commenter opposed the proposal, stating that although preferred claims against failed presenting banks may reduce risk to paying banks, that risk is not related to the obligation to make same-day settlement. For this latter reason, the Board determined that § 229.39(d) should be narrowly targeted to warranties related to same-day settlement situations (amount and encoding). Accordingly, the Board determined not to adopt the proposal.

Exclusions (section 229.42). The regulation exempts certain checks from the expeditious-return and notice-of-nonpayment requirements (such as a check drawn upon the United States Treasury, a U.S. Postal Service money order, or a check drawn on a state or a unit of general local government that is not payable through or at a bank). The Board proposed to amend the regulation to reflect that such checks are also exempt from the same-day settlement requirements of § 229.36(f). The Board received six comments on the proposal. Three commenters supported the proposal. Three commenters opposed the proposal, stating that no justification exists for the existing exclusion of these checks from the expeditious-return and notice-of-nonpayment requirements. The exclusion provision has been in effect since the regulation was adopted in 1988. At that time, the Board noted that handling of Treasury checks is governed by Treasury rules and that the Board's authority over state and local government checks is not clear. For these reasons, the Board has adopted the amendment as proposed.

Checks payable in Guam, American Samoa, and the Northern Mariana Islands (section 229.43). The Board has received inquiries as to the applicability of Regulation CC to checks drawn on depository institutions located in Guam, American Samoa, and the Northern Mariana Islands (''Pacific island banks''). For purposes of the Board's Regulation J, which governs collection of checks through Federal Reserve Banks, Pacific island banks are deemed to be in the Twelfth Federal Reserve District. Some checks drawn on these institutions (''Pacific island checks'') bear U.S. routing numbers and are generally handled by banks in the U.S. in the same manner as other checks.

Because the Act does not include Guam, American Samoa, or the Northern Mariana Islands in the definition of ''United States,'' Pacific island banks are not ''banks'' and Pacific island checks are not ''checks'' as defined in Regulation CC. Banks often handle Pacific island checks in the same manner as other checks, however. The Board believes that applying some of the provisions of subpart C to Pacific island checks would provide an appropriate legal framework for the handling of these checks. The Board proposed to add a new § 229.43 to the regulation and accompanying commentary to set forth the provisions of subpart C that apply to checks drawn on Pacific island banks.

The Board received five comments on this proposal, generally supporting the proposal. The Board had proposed that Pacific island checks not be subject to expeditious-return requirements and that depositary banks receiving notice of nonpayment of Pacific island checks not be subject to the requirements of § 229.33(d) for timely notice to customers. The Board specifically sought comment on these two issues. Two commenters agreed that the expeditious-return requirements should not be applied to returning banks returning Pacific Island checks. One commenter believed that § 229.33(d) should apply to Pacific island checks because these checks frequently take longer to be dishonored. The Board's purpose in adopting § 229.43, however, is to empower banks to handle Pacific island checks in the same manner as other checks (for example, to make direct returns of such checks) and not to add new requirements or liability with respect to these checks except insofar as is necessary to ensure the proper functioning of the check collection system. The Board, therefore, has not applied § 229.33(d) or the expeditious-return rules to Pacific island checks.

Another commenter expressed support for the proposal, but stated that the proposal should not be limited to ''negotiable'' checks since Subpart C of Regulation CC also applies to nonnegotiable checks pursuant to § 229.2(k). The Board adopted the changes generally as proposed but has modified the proposal to cover nonnegotiable checks.

Model Forms (Appendix C). The Board proposed to make technical and stylistic changes to facilitate use of the model forms and received several suggestions for additional improvements. One commenter suggested that the model availability policy disclosures would be clearer if the first sentence indicated that the policy applies to deposits of both cash and checks. The commenter also suggested that models C–4 and C–5 would be clearer if, in the section on deposits not made in person, the disclosure read ''the day we receive your deposit'' instead of ''the day of your deposit.'' Models C–1 through C–5 have been modified accordingly. The commenter further suggested that the Board insert the word ''generally'' before any statement of when funds will be available, if the statement is subject to exceptions. The Board believes that the heading ''longer delays may apply'' provides a sufficient warning and did not adopt this suggestion.

Another commenter suggested that the model disclosures indicate that a bank has the discretion to implement a new account exception hold under section 229.13. As indicated in the commentary to section 229.16(a), the disclosure provided by a bank must reflect the availability policy followed in most cases, and if a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability

periods. Thus, if a bank places new account holds just on particular classes of checks, such as checks over a certain amount, that policy should be reflected in the account disclosures. If a bank has a policy of placing new account holds on the accounts of certain customers, the disclosure provided to those customers should reflect that practice. The Board does not believe that additional model forms are necessary.

One commenter requested that the Board amend model notices C–17 and C–18 concerning notices at locations where employees accept consumer deposits. The commenter requested that the Board add language indicating that this notice applies only to deposits made at that location and to accounts maintained at that location. Although the Board has revised the commentary to section 229.18(b) to clarify that a lobby notice need only describe the bank's availability policy for that branch, the Board does not believe that the lobby notice needs to contain such a limitation. A bank may add such a limitation, however, if it chooses.

The Board also requested comment on whether any models in addition to those currently in Appendix C would be helpful. One commenter stated that additional models are not necessary, while another commenter stated that the models should include a model clause for inclusion in the availability policy disclosures of banks in contractual branch arrangements. If a bank's availability policy disclosure does not apply to deposits at other locations (deposits at contractual or other branches in different check processing regions, for example) the disclosure should note that fact, or if a bank follows a case-by-case hold policy, it could use the case-by-case hold provisions. The Board has adopted a new model clause C–11A (Availability of funds deposited at other locations), for banks that base the availability of funds on the location where the funds are deposited. The Board has also adopted commentary to that clause.

The Board proposed the following additional changes to the models.

Model C–3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions. The Board proposed to revise Model C–3 to clarify the availability of funds subject to a hold. Generally, the first $100 is available on the first business day after the day of deposit. The first $100 is not available, however, if the funds are subject to an exception hold under § 229.13 other than a large deposit exception. The Board received two comments on this proposal. One commenter supported the proposal. The other commenter suggested that the Board enumerate the circumstances in which the $100 would not be available. Because the availability of that $100 depends on the type of the hold, it is not possible to provide concise additional guidance, and the Board believes that a lengthy explanation would not be useful. Accordingly, the Board has adopted the model substantively as proposed.

Model C–5 Holds to statutory limits on all deposits. The Board proposed to revise Model C–5 to facilitate use of the form by banks that elect to impose the limitation on withdrawals by cash under § 229.12(d). One commenter suggested the Board include a cross-reference to the section on local checks the first time the phrase ''local check'' is used. Because the disclosure is relatively short, the Board does not believe that a cross reference is necessary and has adopted the model substantively as proposed.

Model C–10 Cash withdrawal limitation. The Board proposed to revise Model C–10 to facilitate the incorporation of the clause into the various model availability policy disclosures. The Board received no comments on this proposal and has adopted the model as proposed.

Model C–12 Exception hold notice. The Board proposed to revise Model C–12 to clarify that the optional provision concerning overdraft or returned check fees applies only to the last category of reasons, reasonable cause to doubt collectibility. In addition, to reflect the change to § 229.13(g)(1)(i)(B), the Board proposed to delete the reference to the amount of the deposit. One commenter requested that the Board add natural disasters to the examples of emergency conditions. The Board believes that additional examples are unnecessary and has adopted the model as proposed.

Model C–13 Reasonable cause hold notice. To reflect the change to § 229.13(g)(1)(i)(B), the Board proposed to delete the reference to the amount of the deposit. The Board received no comments on the model notice, and has adopted it as proposed.

Model C–16 Case-by-case hold notice. The Board proposed to revise the model notice to incorporate optional language for banks that elect to impose the cash withdrawal limitation. In addition, to reflect the change to § 229.16(c)(2)(i)(B), the Board proposed to delete the reference to the amount of the deposit. The Board received no comments on the model notice, and has adopted it as proposed.

Commentary to model forms. The Board proposed to make technical and stylistic changes to the Commentary to the model disclosures, clauses, and notices. For example, the Board proposed to clarify that the Act's protection from liability for banks that use the models properly applies to the model clauses and notices as well as to the model disclosures. The Board also proposed to revise the commentary to Models C–2 through C–5 to clarify that in disclosing that a longer delay may apply, a bank may disclose when funds will be generally available based on when the funds would be available if the deposit were of a nonlocal check. Finally, the Board proposed to revise the commentary to model notices C–12 through C–16 to clarify that a bank should modify the notices if it places a hold on other funds. One commenter requested additional guidance on how to modify the notices if it places a hold on other funds. The commentary to Model Notices C–12 through C–21 has been revised to provide specific wording a bank could use to modify the notices.

Another commenter recommended that the Board clarify that if a bank does not have a cut-off hour prior to its closing, it need not disclose a cut-off hour. The introductory commentary to the models has been modified accordingly, as has the commentary to § 229.16(b), as discussed above.

Civil liability. Banks that use earlier versions of the models are protected from civil liability under § 229.21(e), but are encouraged to use new versions when reordering or reprinting supplies.

III. Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The final amendments will apply to all depository institutions, regardless of size, and represent relatively small changes to the existing rule. The amendments should not have a negative economic impact on small institutions, and, therefore, there were no significant alternatives that would have minimized the economic impact on those institutions. The amendments will clarify rights and duties of depository

institutions and, in some cases, reduce economic burden on all affected entities.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements amended in this rule are found in 12 CFR 229.13, 229.16(c), 229.34(f), 229.36(e), and Appendix C. This information is intended to alert consumers about their financial institutions' checkhold policies and to help prevent unintentional (and costly) overdrafts. The respondents are for-profit financial institutions, including small businesses. The Board's Regulation CC applies to all types of depository institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Any estimates of paperwork burden for institutions other than state member banks that would be affected by the amendments would be provided by the federal agency or agencies that supervise those lenders.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0235.

The amendments are not expected to change the ongoing annual burden. The estimated burden per response ranges from 3 minutes (for a notice of exception, a case-by-case hold notice, or a notice to a potential new customer or to any person upon request) to 20 hours for notices of changes in policy. There are 1,042 state member banks and an average frequency of 3,314 responses per respondent each year. The total amount of annual burden is estimated to be 183,711 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,674,220. There is not estimated to be any annual cost burden over the annual hour burden.

Additionally, the Federal Reserve estimated that there would be associated capital or start up cost in the amount of $80 per bank for revising the notices to conform with the new model availability policy disclosures, clauses, and notices when a bank exhausts its current supply. The Board received one comment from a commercial bank which pointed out that ''many financial institutions deliver these disclosures to their customers either in pre-printed format, with other account rules or information, or in computer format. This commenter further stated that ''in terms of creation of documents, review and final drafting, printing and forms destruction, the costs of the revisions . . . will exceed $10,000 for large financial institutions.'' The notice of proposed rulemaking stated on page 27806 that ''banks that use earlier versions of the model forms would be protected from civil liability under § 229.21(e), but would be encouraged to use new versions when reordering or reprinting new supplies.'' This final rule makes the same statement in the ''Supplementary Information'' section, before the section-by-section analysis. The regulation does not require destruction or disposal of any notices currently in use. The $80 cost estimate is intended to represent only the costs associated with complying with the revisions to disclosure requirements in the regulation, not the cost of complying with the regulation on an on-going basis. Since, as the commenter pointed out, the Board's revision of twelve model disclosures will cause many financial institutions to revise more than twelve of its disclosures, forms, and computer programs, the Board is revising its estimate of the one-time cost of complying with the revisions to $400 per state member bank, for a total of $416,800.

Because the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises. The disclosure of information to consumers with regard to the availability of funds is available to the public. The account information regarding the availability of funds in an individual's account is confidential between the institution and the consumer.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0235), Washington, DC 20503.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 12 CFR Part 229 is amended as set forth below:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.2, the first sentence in paragraph (e) concluding text is revised, paragraph (s) is revised, paragraph (pp) is redesignated as paragraph (qq), and a new paragraph (pp) is added to read as follows:

§ 229.2 Definitions.

* * * * *

(e) * * *

For purposes of subpart C of this part and, in connection therewith, this subpart A, the term *bank* also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. * * *

* * * * *

(s) *Local paying bank* means a paying bank that is located in the same check-processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depositary bank in which that check was deposited.

* * * * *

(pp) *Contractual branch*, with respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

* * * * *

3. Section 229.13 is amended as follows:

a. In paragraphs (g)(1) introductory text and (g)(1)(ii)(A), the phrase ''paragraphs (b) through (f)'' is revised to read ''paragraphs (b) through (e)'';

b. Paragraphs (g)(1)(i)(B) and (g)(1)(i)(E) are revised;

c. Paragraph (g)(1)(ii)(B) is removed and the paragraph designation (g)(1)(ii)(A) is removed;

d. Paragraph (g)(4) is redesignated as paragraph (g)(5) and new paragraph (g)(4) is added; and

e. Paragraph (h)(4) is revised.

The addition and revisions read as follows:

§ 229.13 Exceptions.

* * * * *

(g) Notice of exception—(1) * * *

(i) * * *

(B) The date of the deposit;

* * * * *

(E) The time period within which the funds will be available for withdrawal.

* * * * *

(4) *Emergency conditions exception notice.* When a depositary bank extends the time when funds will be available for withdrawal based on the application of the emergency conditions exception contained in paragraph (f) of this section, it must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depositary bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depositary bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.

* * * * *

(h) *Availability of deposits subject to exceptions.* * * *

(4) For the purposes of this section, a ''reasonable period'' is an extension of up to one business day for checks described in § 229.10(c)(1)(vi), five business days for checks described in § 229.12(b) (1) through (4), and six business days for checks described in § 229.12(c) (1) and (2) or § 229.12(f). A longer extension may be reasonable, but the bank has the burden of so establishing.

4. Section § 229.16(c)(2)(i)(B) is revised to read as follows:

§ 229.16 Specific availability policy disclosure.

* * * * *

(c) *Longer delays on a case-by-case basis.* * * *

(2) * * * (i) * * *

(B) The date of the deposit;

* * * * *

5. In § 229.19, paragraph (a)(1) and the first sentence of paragraph (a)(5)(ii) are revised to read as follows:

§ 229.19 Miscellaneous.

(a) * * *

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

* * * * *

(5) * * *

(ii) After a cut-off hour set by the depositary bank for the receipt of deposits of 2:00 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12:00 noon or later. * * *

* * * * *

6. In § 229.30, paragraph (c) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

* * * * *

(c) *Extension of deadline.* The deadline for return or notice of nonpayment under the U.C.C. or Regulation J (12 CFR part 210), or § 229.36(f)(2) is extended to the time of dispatch of such return or notice of nonpayment where a paying bank uses a means of delivery that would ordinarily result in receipt by the bank to which it is sent—

(1) On or before the receiving bank's next banking day following the otherwise applicable deadline, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depositary bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable U.C.C.) for the paying bank.

* * * * *

7. In § 229.34, the section heading and paragraph (c)(4) are revised and a new paragraph (f) is added to read as follows:

§ 229.34 Warranties.

* * * * *

(c) *Warranty of settlement amount, encoding, and offset.* * * *

* * * * *

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depositary bank, in amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depositary bank, that it receives from the other bank.

* * * * *

(f) *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty under this section to the bank that made the warranty within 30 days after the claimant has reason to know of the breach and the identity of the warranting bank, the warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

8. In § 229.36, the heading and the last sentence of paragraph (c) and paragraph (e)(1)(ii) are revised to read as follows:

§ 229.36 Presentment and issuance of checks.

* * * * *

(c) *Electronic presentment.* * * * An electronic presentment agreement may not extend return times or otherwise vary the requirements of this part with respect to parties interested in the check that are not party to the agreement.

* * * * *

(e) Issuance of payable-through checks.

(1) * * *

(ii) The words ''payable through'' followed by the name of the payable-through bank.

* * * * *

9. In § 229.39, paragraph (b) is revised to read as follows:

§ 229.39 Insolvency of bank.

* * * * *

(b) *Preference against paying or depositary bank.* If a paying bank finally pays a check, or if a depositary bank becomes obligated to pay a returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a preferred claim against the paying bank or the depositary bank.

* * * * *

10. Section 229.42 is revised to read as follows:

§ 229.42 Exclusions.

The expeditious-return (§§ 229.30(a) and 229.31(a)), notice-of-nonpayment (§ 229.33), and same-day settlement (§ 229.36(f)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

11. A new § 229.43 is added to read as follows:

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) *Definitions.* The definitions in § 229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—

(1) *Pacific island bank* means an office of an institution that would be a bank as defined in § 229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;

(2) *Pacific island check* means a demand draft drawn on or payable

through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word ''check'' in each such section is construed to include a Pacific island check)—

(1) § 229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;

(2) § 229.32;

(3) § 229.34(c)(2), (c)(3), (d), and (e);

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) § 229.36(d);

(6) § 229.37;

(7) § 229.38(a) and (c) through (h);

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

12. Appendix C to Part 229 is amended as follows:

a. The appendix heading is revised;

b. The introductory text is revised;

c. The heading above the contents listing for models C–1 through C–5 is revised;

d. A new item is added to the end of the contents listing for Model Clauses;

e. The heading immediately above model policy disclosure ''C–1—Next-day availability'' is revised; and

f. Model Availability Policy Disclosures C–1 through C–5, Model Clauses C–9 and C–10, and Model Notices C–12 through C–16 are revised, and a new Model Clause C–11A is added.

The revisions and additions read as follows:

Appendix C to Part 229—Model Availability Policy Disclosures, Clauses, and Notices

This Appendix contains model availability policy disclosures, clauses, and notices to facilitate compliance with the disclosure requirements of Regulation CC (12 CFR Part 229). Although use of these models is not required, banks using them properly to make disclosures required by the Regulation CC are deemed to be in compliance.

Model Availability Policy Disclosures

* * * * *

Model Clauses

* * * * *

C–11A Availability of Funds Deposited at Other Locations

* * * * *

Model Availability Policy Disclosures

C–1—Next-Day Availability

Your Ability to Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

C–2—Next-day availability and § 229.13 exceptions

Your Ability to Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C–3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and § 229.13 Exceptions

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. The first $100 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.

• There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C–4—Holds to Statutory Limits On All Deposits (Includes Chart)

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

• U.S. Treasury checks that are payable to you.

• Wire transfers.

• Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

• Cash.

• State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

• Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].

• Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

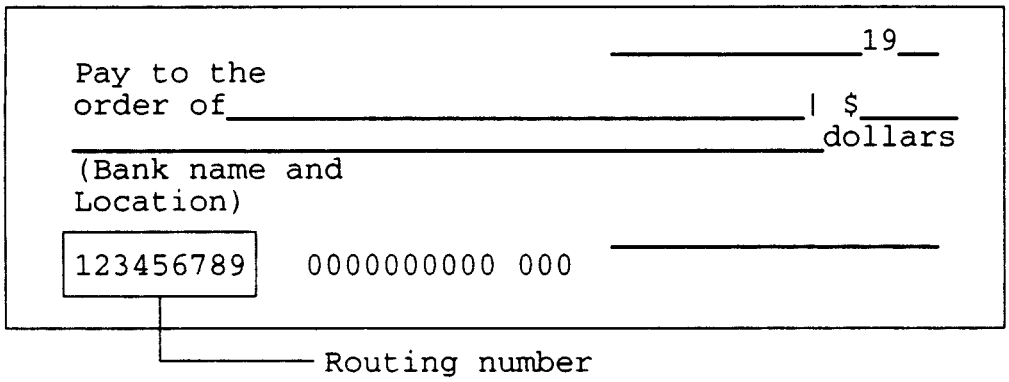
If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

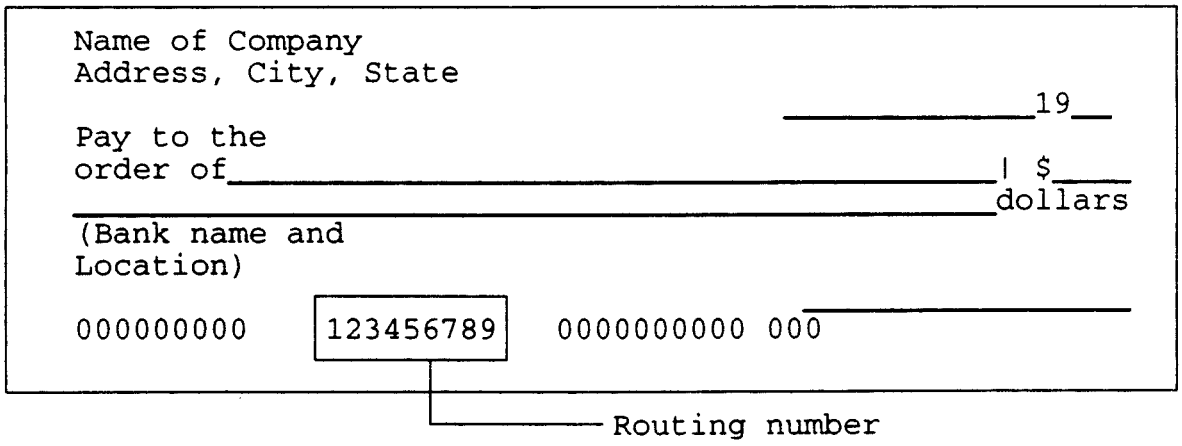
To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:

BILLING CODE 6210–01–P

Personal Check



Business Check



BILLING CODE 6210–01–C

Some checks are marked ''payable through'' and have a four-or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the following chart will show you when funds from the check will be available:

First four digits from routing number	When funds are available	When funds are available if a deposit is made on a Monday
[local numbers]	$100 on the first business day after the day of your deposit	Tuesday.
	Remaining funds on the second business day after the day of your deposit.	Wednesday.
All other numbers	$100 on the first business day after the day of your deposit	Tuesday.
	Remaining funds on the fifth business day after the day of your deposit	Monday of the following week.

If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be

available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

C–5—Holds to Statutory Limits on All Deposits

Your Ability To Withdraw Funds

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (*time of day*) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (*time of day*) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you.
- Wire transfers.
- Checks drawn on (*bank name*) [unless (*any limitations related to branches in different states or check processing regions*)].

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash.
- State and local government checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (*where deposit slip may be obtained*)].
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you.

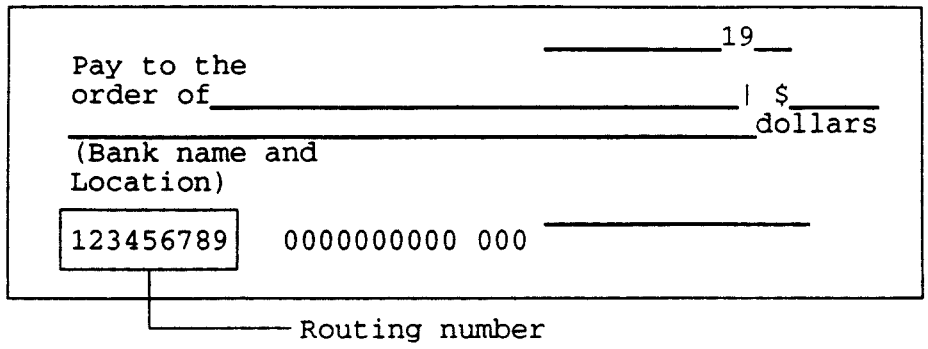
If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

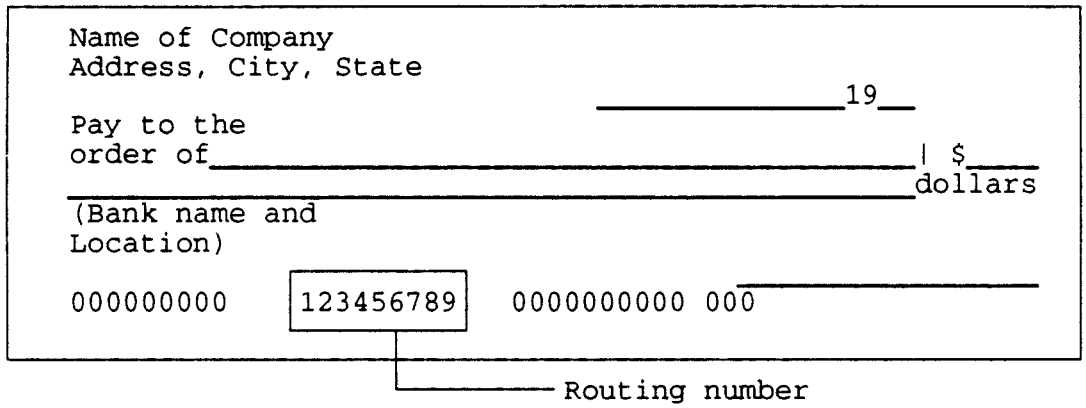
The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

BILLING CODE 6210–01–P

Personal Check



Business Check



BILLING CODE 6210–01–C

If the first four digits of the routing number (1234 in the examples above) are (*list of local numbers*), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked ''payable through'' and have a four-or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Wednesday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Monday of the following week.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (*number*) business day after the day of your deposit. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (*number*) business day after the day of your deposit.

Model Clauses

* * * * *

C–9—Automated Teller Machine Deposits (Extended Hold)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

(*A list of our ATMs is enclosed*. or *A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed*. or *All ATMs that we own or operate are identified as our machines.*)

C–10—Cash Withdrawal Limitation

Cash Withdrawal Limitation

We place certain limitations on withdrawals in cash. In general, $100 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of $400 of other funds becoming available on a given day is available for withdrawal in cash at or after (*time no later than 5:00 p.m.*) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.

* * * * *

C–11A—Availability of Funds Deposited at Other Locations

Deposits at Other Locations

This availability policy only applies to funds deposited at (*location*). Please inquire for information about the availability of funds deposited at other locations.

Model Notices

C–12—Exception Hold Notice

Notice of Hold

Account number: (*number*)
Date of deposit: (*date*)

We are delaying the availability of $(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit.

We are taking this action because:

—A check you deposited was previously returned unpaid.
—You have overdrawn your account repeatedly in the last six months.
—The checks you deposited on this day exceed $5,000.
—An emergency, such as failure of computer or communications equipment, has occurred.
—We believe a check you deposited will not be paid for the following reasons [*]:

_____

_____

_____

[*If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund).*]

C–13—Reasonable Cause Hold Notice

Notice of Hold

Account number: (*number*)
Date of deposit: (*date*)

We are delaying the availability of the funds you deposited by the following check: (*description of check, such as amount and drawer.*)

These funds will be available on the (*number*) business day after the day of your deposit. The reason for the delay is explained below:

—We received notice that the check is being returned unpaid.
—We have confidential information that indicates that the check may not be paid.
—The check is drawn on an account with repeated overdrafts.
—We are unable to verify the endorsement of a joint payee.
—Some information on the check is not consistent with other information on the check.
—There are erasures or other apparent alterations on the check.
—The routing number of the paying bank is not a current routing number.
—The check is postdated or has a stale date.
—Information from the paying bank indicates that the check may not be paid.
—We have been notified that the check has been lost or damaged in collection.
—Other:

_____

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

C–14—One-Time Notice for Large Deposit and Redeposited Check Exception Holds

Notice of Hold

If you deposit into your account:

- Checks totaling more than $5,000 on any one day, the first $5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of $5,000 will generally be available on the (*number*) business day after the day of deposit for checks drawn on (*bank name*), the (*number*) business day after the day of deposit for local checks and (*number*) business day after the day of deposit for nonlocal checks. If checks (not drawn on us) that otherwise would receive next-day availability exceed $5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding $5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on (*bank name*), or checks that generally receive next-day availability, the excess will be calculated by first adding together the (*type of check*), then the (*type of check*), then the (*type of check*), then the (*type of check*).
- A check that has been returned unpaid, the funds will generally be available on the (*number*) business day after the day of deposit for checks drawn on (*bank name*), the (*number*) business day after the day of deposit for local checks and the (*number*) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–15—One-Time Notice for Repeated Overdraft Exception Hold

Notice of Hold

Account Number: (*number*) Date of Notice: (*date*)

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (*number*) business day after the day of your deposit for checks drawn on (*bank name*), the (*number*) business day after the day of your deposit for local checks, and the (*number*) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–16—Case-by-Case Hold Notice

Notice of Hold

Account number: (*number*)
Date of deposit: (*date*)

We are delaying the availability of $(*amount being held*) from this deposit. These funds will be available on the (*number*) business day after the day of your deposit [(*subject to our cash withdrawal limitation policy*)].

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (*description of procedure for obtaining refund*).]

* * * * *

13. In appendix E to Part 229, under section II,

a. In paragraph E.2., the last sentence is revised;

b. Paragraph S.1. is revised;

c. In paragraph HH.2., the last sentence is revised; and

d. A new paragraph PP. is added.

The revisions and additions read as follows:

Appendix E to Part 229—Commentary

* * * * *

II. Section 229.2 Definitions

* * * * *

E. 229.2(d) Available for Withdrawal

* * * * *

2. * * * For example, a bank does not violate its obligations under this subpart by holding funds to satisfy a garnishment, tax levy, or court order restricting disbursements from the account; or to satisfy the customer's liability arising from the certification of a check, sale of a cashier's or teller's check, guaranty or acceptance of a check, or similar transaction to be debited from the customer's account.

* * * * *

S. 229.2(s) Local Paying Bank

1. ''Local paying bank'' is defined as a paying bank located in the same check-processing region as the branch, contractual branch, or proprietary ATM of the depositary bank. For example, a check deposited at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

* * * * *

HH. 229.2(hh) Traveler's Check

* * * * *

2. * * * Sometimes traveler's checks that are not issued by banks do not have any words on them identifying a bank as drawee or paying agent, but instead bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

* * * * *

PP. 229.2(pp) Contractual Branch

1. When one bank arranges for another bank to accept deposits on its behalf, the second bank is a contractual branch of the first bank. For further discussion of contractual branch deposits and related disclosures, see §§ 229.2(s) and 229.19(a) of the regulation and the commentary to §§ 229.2(s), 229.10(c), 229.14(a), 229.16(a), 229.18(b), and 229.19(a).

* * * * *

14. In appendix E, under section IV, in paragraph D.3.a., two new sentences are added to the end of the paragraph to read as follows:

* * * * *

IV. Section 229.10 Next-Day Availability

* * * * *

D. 229.10(c) Certain Check Deposits

* * * * *

3. * * *

a. * * * Employees of a contractual branch would not be considered employees of the depositary bank for the purposes of this regulation, and deposits at contractual branches would be treated the same as deposits to a proprietary ATM for the purposes of this regulation. (See also, Commentary to § 229.19(a).)

* * * * *

15. In appendix E, under section VII:

a. In paragraph H.1.a, the first sentence is revised and two new sentences are added to the end of the paragraph;

b. Paragraph H.1.e. is removed and paragraph H.1.f. is redesignated as paragraph H.1.e.;

c. Paragraph H.4. is redesignated as paragraph H.5. and new paragraph H.4. is added;

d. The second sentence in paragraph I.1. is revised; and e. The first sentence in paragraph I.4. is revised.

The additions and revisions read as follows:

* * * * *

VII. Section 229.13 Exceptions

* * * * *

H. 229.13(g) Notice of Exception

1. * * *

a. If a depositary bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account or emergency conditions exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10(c) and 229.12, it must provide a notice to its customer. * * * A depositary bank satisfies the written notice requirement by sending an electronic notice that displays the text and is in a form that the customer may keep, if the customer agrees to such means of notice. Information is in a form that the customer may keep if, for example, it can be downloaded or printed.

* * * * *

4. Emergency conditions exception notice.

a. If an account is subject to the emergency conditions exception under § 229.13(f), the depositary bank must provide notice in a reasonable form within a reasonable time, depending on the circumstances. For example, a depositary bank may learn of a weather emergency or a power outage that affects the paying bank's operations. Under these circumstances, it likely would be reasonable for the depositary bank to provide an emergency conditions exception notice in the same manner and within the same time as required for other exception notices. On the other hand, if a depositary bank experiences a weather or power outage emergency that affects its own operations, it may be reasonable for the depositary bank to provide a general notice to all depositors via postings at branches and ATMs, or through newspaper, television, or radio notices.

b. If the depositary bank extends the hold placed on a deposit due to an emergency condition, the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depositary bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

* * * * *

I. 229.13(h) Availability of Deposits Subject to Exceptions

1. * * * This provision establishes that an extension of up to one business day for ''on us'' checks, five business days for local checks, and six business days for nonlocal checks and checks deposited in a nonproprietary ATM is reasonable. * * *

* * * * *

4. One business day for ''on us'' checks, five business days for local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM, in addition to the time period provided in the schedule, should provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned. * * *

* * * * *

16. In appendix E, under section VIII, a new sentence is added to the end of paragraph A.1. to read as follows:

* * * * *

VIII. Section 229.14 Payment of Interest

A. 229.14(a) In General

1. * * * In the case of a deposit at a contractual branch, credit is received on the day the depositary bank receives credit for the amount of the deposit, which may be different from the day the contractual branch receives credit for the deposit.

* * * * *

17. In appendix E, under section IX, two new sentences are added immediately following the second sentence of paragraph A.1. to read as follows:

* * * * *

IX. Section 229.15 General Disclosure Requirements

A. 229.15(a) Form of Disclosures

1. * * * A depositary bank satisfies the written disclosure requirement by sending an electronic disclosure that displays the text and is in a form that the customer may keep, if the customer agrees to such means of disclosure. Information is in a form that the customer may keep if, for example, it can be downloaded or printed. * * *

* * * * *

18. In appendix E, under section X, three new sentences are added to the end of paragraph A.2., one new sentence is added to the end of paragraph B.6., and the last sentence of paragraph C.2.a. is revised to read as follows:

* * * * *

X. Section 229.16 Specific Availability Policy Disclosure

A. 229.16(a) General

* * * * *

2. * * * A bank may establish different availability policies for different groups of customers, such as customers in a particular geographic area or customers of a particular branch. For purposes of providing a specific availability policy, the bank may allocate customers among groups through good faith use of a reasonable method. A bank may also establish different availability policies for deposits at different locations, such as deposits at a contractual branch.

* * * * *

B. 229.16(b) Content of Specific Policy Disclosure

* * * * *

6. * * * If a bank does not have a cut-off time prior to its closing time, the bank need not disclose a cut-off time.

* * * * *

C. 229.16(c) Longer Delays on a Case-by-Case Basis

* * * * *

2. * * *

a. * * * In addition, the notice must include the account number, the date of the deposit, and the amount of the deposit being delayed.

* * * * *

19. In appendix E, under section XII, a sentence is added to the end of paragraph B.1. to read as follows:

XII. Section 229.18 Additional Disclosure Requirements

* * * * *

B. 229.18(b) Locations Where Employees Accept Consumer Deposits

1. * * * A bank that acts as a contractual branch at a particular location must include the availability policy that applies to its own customers but need not include the policy that applies to the customers of the bank for which it is acting as a contractual branch.

* * * * *

20. In appendix E, under section XIII, two new sentences are added immediately following the first sentence of paragraph A.2., the last four sentences of paragraph A.6.a. are revised, and a new sentence is added to the end of paragraph E.3. to read as follows:

XIII. Section 229.19 Miscellaneous

A. 229.19(a) When Funds Are Considered Deposited

* * * * *

2. * * * Funds received at a contractual branch are considered deposited when received by a teller at the contractual branch or deposited into a proprietary ATM of the contractual branch. (See also, Commentary to § 229.10(c) on deposits made to an employee of the depositary bank.) * * *

* * * * *

6. * * *

a. * * * For receipt of deposits at ATMs, contractual branches, or other off-premise facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12:00 noon or later (either local time of the branch or other location of the depositary bank at which the account is maintained or local time of the ATM, contractual branch, or other off-premise facility). The depositary bank must use the same timing method for establishing the cut-off hour for all ATMs, contractual branches, and other off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM, contractual branch, or other off-premise deposits is intended to provide greater flexibility in the servicing of these facilities.

* * * * *

E. 229.19(e) Holds on Other Funds

* * * * *

3. * * * When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under §§ 229.13 or 229.16 had the check been deposited in the account.

* * * * *

21. In appendix E, under section XVI, a new sentence is added to the end of paragraphs C.1.a. and C.1.b. to read as follows:

* * * * *

XVI. Section 229.30 Paying Bank's Responsibility for Return of Checks

* * * * *

C. 229.30(c) Extension of Deadline

1. * * *

a. * * * This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see paragraph C.1.b. of this appendix).

b. * * * This paragraph applies exclusively to the extension of Saturday midnight deadlines.

* * * * *

22. In appendix E, under section XVII, the second sentence of paragraph A.7.b. is revised to read as follows:

* * * * *

XVII. Section 229.31 Returning Bank's Responsibility for Return of Checks

A. 229.31(a) Return of Checks

* * * * *

7. * * *

b. * * * If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(c)(3) for breach of an encoding warranty. * * *

* * * * *

23. In appendix E, under section XX, the first sentence of paragraph A.1. and paragraph C.5. are revised, and a new paragraph F. is added as follows:

* * * * *

XX. Section 229.34 Warranties

A. 229.34(a) Warranty of Returned Check

1. This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C. (subject to any claims or defenses under the U.C.C., such as breach of a presentment warranty), Regulation J (12 CFR part 210), or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment. * * *

* * * * *

C. 229.34(c) Warranty of Settlement Amount, Encoding, and Offset

* * * * *

5. Paragraph (c)(4) provides that a paying bank or a depositary bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depositary bank) subsequent to the excess settlement.

* * * * *

F. 229.34(f) Notice of Claim

1. This paragraph adopts the notice provisions of U.C.C. sections 4–207(d) and 4–208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches only. As provided in § 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

* * * * *

24. In appendix E, section XXII is amended as follows:

a. Paragraph C. is revised; and

b. In paragraph E., the first sentence of paragraph E.1. is revised to read as follows:

* * * * *

XXII. Section 229.36 Presentment and Issuance of Checks

* * * * *

C. 229.36(c) Electronic Presentment

1. Under an electronic presentment agreement, presentment takes place when the paying bank receives an electronic transmission of information describing the check rather than upon delivery of the physical check. Electronic presentment agreements may include a variety of procedures in which the physical check is held (truncated) or delayed by the depositary or collecting bank. U.C.C. 4–110 and 4–406(b) make express provision for truncation and electronic presentment.

2. This paragraph allows electronic presentment by agreement with the paying bank; however, such agreement may not prejudice the interests of other parties to the check. For example, an electronic presentment agreement may not extend the paying bank's time for return. Such an extension could damage the depositary bank, which must make funds available to its customers under mandatory availability schedules.

* * * * *

E. 229.36(e) Issuance of Payable Through Checks

1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend ''payable through'' followed by the name of the payable-through bank. * * *

* * * * *

25. In appendix E, section XXIV is amended as follows:

a. In paragraph A.2., the third sentence is revised; and

b. In paragraph D.2.b., the second sentence is removed and two new sentences are added immediately following the first sentence to read as follows:

* * * * *

XXIV. Section 229.38 Liability

A. 229.38(a) Standard of Care; Liability; Measure of Damages

* * * * *

2. * * * The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on U.C.C. 4–103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4–202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). * * *

* * * * *

D. 229.38(d) Responsibility for Certain Aspects of Checks

* * * * *

2. * * *

b. * * * Under § 229.33(a), a paying bank that returns a check in the amount of $2,500 or more must provide notice of nonpayment to the depositary bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of $2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. * * *

* * * * *

26. In appendix E, under section XXV, the first sentence in paragraph C.1. is revised to read as follows:

XXV. Section 229.39 Insolvency of Bank

* * * * *

C. 229.39(b) Preference Against Paying or Depositary Bank

1. This paragraph gives a bank a preferred claim against a closed paying bank that finally pays a check without settling for it or a closed depositary bank that becomes obligated to pay a returned check without settling for it. * * *

* * * * *

27. In appendix E, under section XXVIII, the first sentence of paragraph A. is revised to read as follows:

XXVIII. Section 229.42 Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious-return, notice-of-nonpayment, and same-day settlement requirements of subpart C of this part. * * *

* * * * *

28. In appendix E, section XXIX is redesignated as section XXX, a new section XXIX is added, and newly designated section XXX is revised to read as follows:

* * * * *

XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

A. 229.43(a) Definitions

1. Bank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in § 229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), the bank is subject to certain provisions of Regulation CC, as provided in this section. Because the Pacific island bank is not a bank as defined in § 229.2(e), it is not a paying bank as defined in § 229.2(z) (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of Regulation CC.

2. A bank may agree to handle a Pacific island check as a returned check under § 229.31 and may convert the returned Pacific island check to a qualified returned check. The returning bank is not, however, subject to the expeditious-return requirements of § 229.31. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank under Regulation CC, § 229.31(c) does not apply to a returning bank settling with the Pacific island bank.

3. A depositary bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank is subject to the provisions of § 229.32, including the provisions regarding time and manner of settlement for returned checks in § 229.32(b), in the event the Pacific island check is returned by a returning bank. If the depositary bank receives the returned Pacific island check directly from the Pacific island bank, however, the provisions of § 229.32(b) do not apply, because the Pacific island bank is not a paying bank under Regulation CC. The depositary bank is not subject to the notice of nonpayment provisions in § 229.33 for Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement ''pay any bank.'' For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(c)(2)

regarding accurate cash letter totals and the encoding warranty in § 229.34(c)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the warranties in § 229.34(a). Similarly, because the Pacific island bank is not a ''bank'' or a ''paying bank'' under Regulation CC, § 229.34(b), (c)(1), and (c)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36(d), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. Appendix C—Model Availability Policy Disclosures, Clauses, and Notices

A. Introduction

1. Appendix C contains model disclosures, clauses, and notices that may be used by banks to meet their disclosure responsibilities under the regulation. Banks using the models properly will be in compliance with the regulation's disclosure requirements.

2. Information that must be inserted by a bank using the models is italicized within parentheses in the text of the models. Optional information is enclosed in brackets.

3. Banks may make certain changes to the format or content of the models, including deleting material that is inapplicable, without losing the Act's protection from liability for banks that use the models properly. For example, if a bank does not have a cut-off hour prior to it's closing time, or if a bank does not take advantage of the § 229.13 exceptions, it may delete the references to those provisions. Changes to the models may not be so extensive as to affect the substance, clarity, or meaningful sequence of the models. Acceptable changes include, for example:

a. Using ''customer'' and ''bank'' instead of pronouns.

b. Changing the typeface or size.

c. Incorporating certain state law ''plain English'' requirements.

4. Shorter time periods for availability may always be substituted for time periods used in the models.

5. Banks may also add related information. For example, a bank may indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could include a telephone number to be used if a customer has an inquiry regarding a deposit.

6. Banks are cautioned against using the models without reviewing their own policies and practices, as well as state and federal laws regarding the time periods for availability of specific types of checks. A bank using the models will be in compliance with the Act and the regulation only if the bank's disclosures correspond to its availability policy.

7. Banks that have used earlier versions of the models (such as those models that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit, or that did not address the cash withdrawal limitation) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the models when reordering or reprinting supplies.

B. Model Availability Policy Disclosures, Models C–1 Through C–5

1. *Models C–1 through C–5 generally.*

a. Models C–1 through C–5 are models for the availability policy disclosures described in § 229.16. The models accommodate a variety of availability policies, ranging from next-day availability to holds to statutory limits on all deposits. Model C–3 reflects the additional disclosures discussed in §§ 229.16 (b) and (c) for banks that have a policy of extending availability times on a case-by-case basis.

b. As already noted, there are several places in the models where information must be inserted. This information includes the bank's cut-off times, limitations relating to next-day availability, and the first four digits of routing numbers for local banks. In disclosing when funds will be available for withdrawal, the bank must insert the ordinal number (such as first, second, etc.) of the business day after deposit that the funds will become available.

c. Models C–1 through C–5 generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks. Instead, disclosures for these provisions are included in Models C–6 through C–11A. A bank using one of the model availability policy disclosures should also consider whether it must incorporate one or more of Models C–6 through C–11A.

d. While § 229.10(b) requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits (''direct deposits'') be made available on the day the bank receives the funds. Models C–1 through C–5 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for wire transfers.

2. *Model C–1 Next-day availability.* A bank may use this model when its policy is to make funds from all deposits available on the first business day after a deposit is made. This model may also be used by banks that provide immediate availability by substituting the word ''immediately'' in place of ''on the first business day after the day we receive your deposit.''

3. *Model C–2 Next-day availability and § 229.13 exceptions.* A bank may use this model when its policy is to make funds from all deposits available to its customers on the first business day after the deposit is made, and to reserve the right to invoke the new account and other exceptions in § 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

4. *Model C–3 Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions.* A bank may use this model when its policy, in most cases, is to make funds from all types of deposits available the day after the deposit is made, but to delay availability on some deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using this model also reserves the right to invoke the exceptions listed in § 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

5. *Model C–4 Holds to statutory limits on all deposits.* A bank may use this model when its policy is to impose delays to the full extent allowed under § 229.12 and to reserve the right to invoke the § 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check. Model C–4 uses a chart to show the bank's availability policy for local and nonlocal checks and Model C–5 uses a narrative description.

6. *Model C–5 Holds to statutory limits on all deposits.* A bank may use this model when its policy is to impose delays to the full extent allowed under § 229.12 and to reserve the right to invoke the § 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.

C. Model Clauses, Models C–6 Through C–11A

1. *Models C–6 through C–11A generally.* Certain clauses like those in the models must be incorporated into a bank's availability policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required.

2. *Model C–6 Holds on other funds (check cashing).* A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in § 229.19(e), must incorporate this type of clause in its availability policy disclosure.

3. *Model C–7 Holds on other funds (other account).* A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in § 229.19(e), must incorporate this type of clause in its availability policy disclosure.

4. *Model C–8 Appendix B availability (nonlocal checks).* A bank in a check processing region where the availability schedules for certain nonlocal checks have been reduced, as described in Appendix B of Regulation CC, must incorporate this type of clause in its availability policy disclosure. Banks using Model C–5 may insert this

clause at the conclusion of the discussion titled ''Nonlocal checks.''

5. *Model C–9 Automated teller machine deposits (extended holds).* A bank that reserves the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by § 229.12(f), must incorporate this type of clause in its availability policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under § 229.16(b)(5).

6. *Model C–10 Cash withdrawal limitation.* A bank that imposes cash withdrawal limitations under § 229.12 must incorporate this type of clause in its availability policy disclosure. Banks reserving the right to impose the cash withdrawal limitation and using Model C–3 should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading ''Longer Delays May Apply.''

7. *Model C–11 Credit union interest payment policy.* A credit union subject to the notice requirement of § 229.14(b)(2) must incorporate this type of clause in its availability policy disclosure. This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

8. *Model C–11A Availability of funds deposited at other locations.* A clause similar to Model C–11A should be used if a bank bases the availability of funds on the location where the funds are deposited (for example, at a contractual or other branch located in a different check processing region). Similarly, a clause similar to Model C–11A should be used if a bank distinguishes between local and non-local checks (for example, a bank using model availability policy disclosure C–4 or C–5), and accepts deposits in more than one check processing region.

D. Model Notices, Models C–12 Through C–21

1. *Model Notices C–12 through C–21 generally.* Models C–12 through C–21 provide models for the various notices required by the regulation. A bank that cashes a check and places a hold on funds in an account of the customer (see § 229.19(e)) should modify the model hold notice accordingly. For example, the bank could replace the word ''deposit'' with the word ''transaction'' and could add the phrase ''or cashed'' after the word ''deposited.''

2. *Model C–12 Exception hold notice.* This model satisfies the written notice required under § 229.13(g) when a bank places a hold based on a § 229.13 exception. If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after invoking the reasonable cause exception under § 229.13(e).

3. *Model C–13 Reasonable cause hold notice.* This notice satisfies the written notice required under § 229.13(g) when a bank invokes the reasonable cause exception under § 229.13(e). The notice provides the bank with a list of specific reasons that may be given for invoking the exception. If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. A bank may disclose its reason for doubting collectibility by checking the appropriate reason on the model. If the ''Other'' category is checked, the reason must be given. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft or returned check fees after invoking the reasonable cause exception under § 229.13(e).

4. *Model C–14 One-time notice for large deposit and redeposited check exception holds.* This model satisfies the notice requirements of § 229.13(g)(2) concerning nonconsumer accounts.

5. *Model C–15 One-time notice for repeated overdraft exception hold.* This model satisfies the notice requirements of § 229.13(g)(3).

6. *Model C–16 Case-by-case hold notice.* This model satisfies the notice required under § 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. This notice does not require a statement of the specific reason for the hold, as is the case when a § 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

7. *Model C–17 Notice at locations where employees accept consumer deposits and Model C–18 Notice at locations where employees accept consumer deposits (case-by-case holds).* These models satisfy the notice requirement of § 229.18(b). Model C–17 reflects an availability policy of holds to statutory limits on all deposits, and Model C–18 reflects a case-by-case availability policy.

8. *Model C–19 Notice at automated teller machines.* This model satisfies the ATM notice requirement of § 229.18(c)(1).

9. *Model C–20 Notice at automated teller machines (delayed receipt).* This model satisfies the ATM notice requirement of § 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under § 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

10. *Model C–21 Deposit slip notice.* This model satisfies the notice requirements of § 229.18(a) for deposit slips.

By order of the Board of Governors of the Federal Reserve System, March 17, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–7156 Filed 3–21–97; 8:45 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7405; 34–38419; 35–26688; 39–2348; IC–22571]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual; Correction and Delay of Implementation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction and delay of implementation.

SUMMARY: The Commission is correcting an amendment to Regulation S–T to conform to the Office of Federal Register's requirements for incorporation by reference and postponing the implementation of an updated edition of the EDGAR Filer Manual which was published in the **Federal Register** on February 27, 1997 [62 FR 8877] in order to resolve technical issues that delayed system implementation from March 10, 197 to March 24, 1997. The incorporation by reference into the Code of Federal Regulations remains March 10, 1997.

DATES: The correction to § 232.301 is effective March 10, 1997. The implementation of the new edition of the EDGAR Filer Manual is delayed until March 24, 1997. The incorporation by reference of the EDGAR Filer Manual approved by the Director of the Federal Register as of March 10, 1997 remains unchanged.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0591; and for questions with respect to documents subject to review by the Division of Corporation Finance, Margaret R. Black at (202) 942–2940.

SUPPLEMENTARY INFORMATION: On February 27, 1997, the Commission announced the adoption of an updated EDGAR Filer Manual (''Filer Manual''), which sets forth the technical formatting requirements governing the preparation and submission of electronic filings

through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.[1] Compliance with the provisions of the Filer Manual is required in order to assure the timely acceptance and processing of filings made in electronic format. Filers should consult the Filer Manual in conjunction with the Commission's rules governing mandated electronic filing when preparing documents for electronic submission.[2]

In this update, several submission types have been added to accommodate electronic submission of certain investment company filings. Specifically, new EDGAR submission types ''40–17F1'' and ''40–17F2'' have been added to accommodate the filing of Forms N–17F–1[3] and N–17F–2;[4] submission type ''N–23C–2,'' to accommodate filings under Rule 23c–2(b);[5] and submission types ''N–23C3A,'' ''N–23C3B,'' and ''N–23C3C,'' to accommodate the filing of Form N–23C–3,[6] pursuant to Rule 23c–3.[7]

With respect to documents subject to review by the Division of Corporation Finance, two additional submission types have been added to accommodate more completely the electronic submission of filings made pursuant to Rule 462(b)[8] under the Securities Act of 1933.[9]

Rule 301 of Regulation S–T was amended to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which 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. The effective date of the amendment to Rule 301 will remain March 10, 1997. A minor correction is being made to conform to the Office of Federal Register's requirements for incorporation by reference.

Technical issues surfaced on the afternoon of March 7, 1997 that prevented system implementation on March 10, 1997. The Commission, therefore, is postponing the implementation of the Manual from March 10, 1997 to March 24, 1997.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on February 27, 1997 of the final regulations, which were the subject of FR Doc. 97–4797, is corrected as follows:

§ 232.301 [Corrected]

On page 8876, second column, in § 232.301, last line, add a sentence to the end of the section to read as follows:

* * * Copies may be inspected at the Office of the Federal Register, Suite 700, 800 North Capitol Street, N.W., Washington, D.C.

Dated: March 19, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7340 Filed 3–21–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. The most recent update to the Filer Manual was adopted in Release No. 33–7394 (February 21, 1997) [61 FR 8877], and became effective on March 10, 1997.

[2] See Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14848], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993 [58 FR 15009] for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. See also Release No. 33–7122 (December 19, 1994) [59 FR 67752], in which the Commission made the EDGAR rules final and applicable to all domestic registrants and adopted minor amendments to the EDGAR rules; Release No. 33–7394, in which the Commission adopted the most recent update to the Filer Manual; and Release No. 33–7369 (December 5, 1996) [61 FR 65440], in which the Commission proposed additional minor technical amendments to the EDGAR rules.

[3] 17 CFR 274.21 (certificate of accounting of securities and similar investments in the custody of management investment companies filed pursuant to Rule 17f–1).

[4] 17 CFR 274.220 (certificate of accounting of securities and similar investments in the custody of management investment companies filed pursuant to Rule 7f–2).

[5] 17 CFR 240.23c–2(b) (notice by closed-end investment companies of intention to call or redeem their own securities).

[6] 17 CFR 274.221 (notification of periodic repurchase offer).

[7] 17 CFR 240.23c–3. Submission type ''N–23C3A'' is to be used for filings made pursuant to Rule 23c–3(a) only; ''N–23C3B,'' Rule 23c–3(b) only; and ''N–23C3C,'' Rule 23c–3(a) and (b).

[8] 17 CFR 230.462(b).

[9] 15 U.S.C. 77a **et seq.** The new submission types are: S–4MEF (for use in connection with registration statements filed on Form S–4 [17 CFR 239.25]) and F–4MEF (for use in connection with registration statements on Form F–4 [17 CFR 239.34]). All other submission types used for Rule 462(b) filings were added to the EDGAR system in November 1995. See Release No. 33–7241 (November 13, 1995) [60 FR 57682]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to set forth the current organizational structure of the agency as well as the current addresses for headquarters and field offices. The agency is also redesignating certain sections of the regulations to allow for expansion in the delegation of authority section. This action is necessary to ensure the continued accuracy of the regulations.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: L'Tonya J. Barnes, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4807.

SUPPLEMENTARY INFORMATION: The regulations are being amended in subpart C of part 5 (21 CFR part 5) to reflect the central organization of the agency and to provide current addresses for headquarters and field offices. The regulations are also being amended by redesignating §§ 5.100, 5.105, 5.110, and 5.115 as §§ 5.200, 5.205, 5.210, and 5.215, respectively, to permit the expansion of subpart B to allow for added delegations.

Notice and comment on these amendments are not necessary under the Administrative Procedure Act because this is a rule of agency organization (5 U.S.C. 553(b)).

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging

and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

§ 5.100 [Redesignated as § 5.200]

2. Section 5.100 is redesignated as § 5.200 and revised to read as follows:

§ 5.200 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner.[1]
Office of the Administrative Law Judge.
Office of Executive Secretariat.
Office of Equal Employment and Civil Rights.
Office of the Chief Counsel.
Office of Internal Affairs.
Office of External Affairs.
Industry and Small Business Liaison Staff.
Office of Special Health Issues.
Office of Consumer Affairs.
Office of Health Affairs.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Women's Health.
Office of International Affairs.
Office of Management and Systems.
Office of Planning and Evaluation.
Office of Human Resources and Management Services.
Office of Facilities, Acquisitions, and Central Services.
Office of Information Resources Management.
Office of Financial Management.
Office of Policy.
Regulations Policy and Management Staff.
Policy Development and Coordination Staff.
Policy Research Staff.
International Policy Staff.
Office of Operations.
Office of Science.
Office of Orphan Products Development.
National Center for Toxicological Research.[2]
Office of the Center Director
Environmental Health and Program Assurance Staff.
Equal Employment Opportunity Staff.
Scientific Coordination Staff.
Technology Advancement Staff.
Office of Planning and Resource Management
Planning Staff.
Financial Management Staff.
Evaluation Staff.
Office of Research
Research Coordination Staff.
Biomarkers Laboratory Staff.
Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Nutritional Toxicology.
Division of Biometry and Risk Assessment.
Division of Chemistry.
Division of Microbiology.
Division of Neurotoxicology.
Office of Research Support
Veterinary Services Staff.
Information Technology Staff.
Division of Administrative Services.
Division of Facilities Engineering and Maintenance.
Office of Regulatory Affairs.[3]
Office of the Associate Commissioner
Contaminants Policy Coordination Staff.
Equal Employment Opportunity Staff.
Strategic Initiatives Staff.
Office of Resource Management
Division of Planning, Evaluation, and Management.
Division of Information Systems.
Division of Human Resource Development.
Division of Management Operations.
Office of Enforcement
Medical Products Quality Assurance Staff.
Division of Compliance Management and Operations.
Division of Compliance Policy.
Office of Regional Operations
Division of Federal-State Relations.
Division of Field Science.
Division of Emergency and Investigational Operations.
Division of Import Operations and Policy.
Office of Criminal Investigations[4]
Northeast Regional Office.[5]
Mid-Atlantic Regional Office.[6]
Southeast Regional Office.[7]
Midwest Regional Office.[8]
Southwest Regional Office.[9]
Pacific Area Office.[10]
Center for Biologics Evaluation and Research.[11]
Office of the Center Director
Equal Employment Opportunity Staff.
Scientific Advisors and Consultants Staff.
Quality Assurance Staff.
Congressional and Public Affairs Staff.
Office of Communication, Training and Manufacturers Assistance
Division of Congressional and Public Affairs.
Division of Manufacturers Assistance and Training.
Office of Management
Division of Management Services.
Division of Applied Information Technology.
Division of Planning, Evaluation, and Budget.
Office of Compliance
Division of Case Management.
Division of Regulations and Policy.
Division of Inspections and Surveillance.
Office of Therapeutics Research and Review
Division of Cytokine Biology.
Division of Cellular and Gene Therapies.
Division of Hematologic Products.
Division of Monoclonal Antibodies.
Division of Clinical Trial Design and Analysis.
Division of Application Review and Policy.
Office of Vaccines Research and Review
Division of Allergenic Products and Parasitology.
Division of Bacterial Products.
Division of Viral Products.
Division of Vaccines and Related Products Applications.
Office of Establishment Licensing and Product Surveillance
Division of Product Quality Control.
Division of Veterinary Services.
Division of Biostatistics and Epidemiology.
Division of Establishment Licensing.
Division of Congressional Public Affairs.
Office of Blood Research and Review
Division of Blood Applications.
Division of Transfusion Transmitted Diseases.
Division of Hematology.
Division of Blood Establishment & Products.
Center for Drug Evaluation and Research.[12]
Office of the Center Director
Advisors and Consultants Staff.
Pilot Drug Evaluation Staff.
Executive Operations Staff.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: Jefferson, AR 72079–9502.

[3] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[4] Mailing address: 7500 Standish Pl., rm. 250N, Rockville, MD 20855.

[5] Mailing address: 850 Third Ave., Brooklyn, NY 11232.

[6] Mailing address: 900 U. S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.

[7] Mailing address: 60 Eighth St. NE., Atlanta, GA 30309.

[8] Mailing address: 20 North Michigan Ave., Chicago, IL 60606.

[9] Mailing address: 7920 Elmbrook Dr., Dallas, TX 75247.

[10] Mailing address: 13301 Clay St., Oakland, CA 94512.

[11] Mailing address: 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

[12] Mailing address: 1451 Rockville Pike, rm. 6027, Rockville, MD 20850.

Equal Employment Opportunity Staff.
Regulatory Policy Staff.
Office of Management
Administrative Staff.
Division of Planning, Evaluation, and Resource Management.
Division of Management Services.
Division of Information Systems Design.
Division of Database Management.
Office of Training and Communications
Freedom of Information Staff.
Division of Training and Development.
Division of Communications Management.
Division of the Medical Library.
Office of Compliance
Division of Labeling and Nonprescription Drug Compliance.
Division of Prescription Drug Compliance and Surveillance.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Office of Pharmaceutical Science
Office of the Director
Product Quality Support Staff.
Operations Staff.
Office of New Drug Chemistry
Division of New Drug Chemistry I.
Division of New Drug Chemistry II.
Division of New Drug Chemistry III.
Office of Generic Drugs[13]
Division of Chemistry I.
Division of Chemistry II.
Division of Bioequivalence.
Division of Labeling and Program Support.
Office of Clinical Pharmacology and Biopharmaceutics
Division of Pharmaceutical Evaluation I.
Division of Pharmaceutical Evaluation II.
Division of Pharmaceutical Evaluation III.
Office of Testing and Research
Laboratory of Clinical Pharmacology.
Regulatory Research and Analysis Staff.
Division of Product Quality Research.
Division of Applied Pharmacology Research.
Division of Testing and Applied Analytical Development.
Office of Review Management
Office of the Director
Advisors and Consultants Staff.
Office of Drug Evaluation I
Division of Neuropharmacological Drug Products.
Division of Oncology Drug Products.
Division of Cardio-Renal Drug Products.
Division of Drug Marketing, Advertising and Communication.
Office of Drug Evaluation II
Division of Metabolic and Endocrine Drug Products.
Division of Pulmonary Drug Products.
Office of Drug Evaluation III
Division of Gastrointestinal and Coagulation Drug Products.
Division of Anesthetic, Critical Care, and Addiction Drug Products.
Division of Medical Imaging and Radiopharmaceutical Drug Products.
Office of Drug Evaluation IV
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.
Office of Drug Evaluation V
Division of Anti-Inflammatory, Analgesic, and Ophthalmologic Drug Products.
Division of Dermatologic and Dental Drug Products.
Division of Over-The-Counter Drug Products.
Office of Epidemiology and Biostatistics
Quantitative Methods and Research Staff.
Division of Pharmacovigilance and Epidemiology.
Division of Biometrics I.
Division of Biometrics II.
Division of Biometrics III.
Division of Biometrics IV.

Center for Devices and Radiological Health.[14]

Office of the Center Director
Equal Employment Opportunity Staff.
Office of Systems and Management
Integrity, Committee and Conference Management Staff.
Division of Management Operations.
Division of Information Dissemination.
Division of Information Technology Management.
Division of Planning, Analysis and Finance
Office of Health and Industry Programs[15]
Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.
Program Operations Staff.
Office of Compliance[16]
Promotion and Advertising Policy Staff.
Division of Program Operations.
Division of Bioresearch Monitoring.
Division of Enforcement I.
Division of Enforcement II.
Division of Enforcement III.
Office of Device Evaluation[17]
Program Operations Staff.
Program Management Staff.
Division of Cardiovascular, Respiratory, and Neurological Devices.
Division of Reproductive, Abdominal, Ear, Nose, and Throat, and Radiological Devices.
Division of General and Restorative Devices.
Division of Clinical Laboratory Devices.[18]
Division of Ophthalmic Devices.
Division of Dental, Infection Control, and General Hospital Devices.
Office of Science and Technology[19]
Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Electronics and Computer Sciences.
Division of Management, Information, and Support Services.
Office of Surveillance and Biometrics[20]
Division of Biostatistics.
Division of Postmarket Surveillance.
Division of Surveillance Systems.
Office of Health and Industry Programs
Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.

Center for Food Safety and Applied Nutrition.[21]

Office of the Center Director
Equal Employment Opportunity Staff.
Office of Beltsville Technical Operations
Office of Policy, Planning and Strategic Initiatives
Executive Operations Staff.
Office of Programs
Beltsville Technical Operations Staff.
Office of Cosmetics and Colors
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.
Office of Food Labeling
Division of Programs and Enforcement Policy.
Division of Technical Evaluation.
Division of Science and Applied Technology.
Office of Premarket Approval
Division of Product Policy.
Division of Petition Control.
Division of Health Effects Evaluation.
Division of Molecular Biological Research and Evaluation.
Division of Product Manufacture and Use.

[13] Mailing address: 7500 Standish Pl., rm. 286, Rockville, MD 20855.

[14] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.

[15] Mailing address: 1350 Piccard Dr., Rockville, MD 20850.

[16] Mailing address: 2098 Gaither Rd., Oak Grove Corporate Park, Rockville, MD 20850.

[17] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.

[18] Mailing address: 2098 Gaither Rd., Rockville, MD 20850.

[19] Mailing address: 12720 Twinbrook Pkwy., Bldg. 1, Rockville, MD 20857.

[20] Mailing address: 1350 Piccard Dr., Rockville, MD 20850.

[21] Mailing address: 200 C St. SW., Washington, DC 20204.

Office of Plant and Dairy Foods and Beverages
Division of Programs and Enforcement Policy.
Division of Virulence Assessment.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.
Office of Seafood
Division of Special Programs.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.
Office of Special Nutritionals
Clinical Research and Review Staff.
Division of Programs and Enforcement Policy.
Division of Science and Applied Technology.
Office of Special Research Skills
Division of Toxicology Research.
Division of Microbiological Studies.
Office of Systems and Support
Quality Assurance Staff.
Office of Constituent Operations
Consumer Education Staff.
Legislative Activities Staff.
Industry Activities Staff.
International Activities Staff.
Office of Field Programs
Division of Enforcement.
Division of HACCP Programs.
Division of Cooperative Programs.
Division of Field Program Planning and Evaluation.
Office of Management Systems
Safety Management Staff.
Division of Information Resources Management.
Division of Planning and Resources Management.
Office of Scientific Analysis and Support
Division of Mathematics.
Division of General Scientific Support.
Division of Market Studies.

Center for Veterinary Medicine.[22]
Office of the Center Director
Office of Management and Communications
Administrative Staff.
Communications Staff.
Program Planning and Evaluation Staff.
Information Resources Management Staff.
Office of Surveillance and Compliance
Division of Compliance.
Division of Animal Feeds.
Division of Epidemiology and Surveillance.
Office of New Animal Drug Evaluation
Division of Biometrics and Production Drugs.
Division of Manufacturing Technologies.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food Safety.
Office of Research
Administrative Staff.
Division of Residue Chemistry.
Division of Animal Research.

[22] Mailing address: 7500 Standish Pl., MPN–2, Rockville MD 20855.

§ 5.105 [Redesignated as § 5.205]

3. Section 5.105 is redesignated as § 5.205.

4. Section 5.110 is redesignated as § 5.210 and revised to read as follows:

§ 5.210 FDA Public Information Offices.

(a) *Dockets Management Branch (HFA–305).* The Dockets Management Branch Public Room is located in rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Telephone: 301–443–1753.

(b) *Freedom of Information Staff (HFI–35).* The Freedom of Information Public Room is located in rm. 12A–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–443–6310.

(c) *Press Relations Staff (HFI–40).* The Press Offices are located in rm. 15–05, Parklawn Bldg., 5600 Fisher Lane, Rockville, MD 20857. Telephone: 301–443–3285; and in rm. 3807, FB–8, 200 C St. SW., Washington, DC 20204. Telephone 202–205–4144.

5. Section 5.115 is redesignated as § 5.215 and revised to read as follows:

§ 5.215 Field structure.

NORTHEAST REGION

Regional Field Office: 850 Third Ave., Brooklyn, NY 11232.
Northeast Regional Laboratory: 850 Third Ave., Brooklyn , NY 11232–1593.
New York District Office: 850 Third Ave., Brooklyn, NY 11232–1593.
New England District Office: One Montvale Ave., Stoneham, MA 02180.
Buffalo District Office: 599 Delaware Ave., Buffalo, NY 14202.

MID–ATLANTIC REGION

Regional Field Office: 900 U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
Philadelphia District Office: 900 U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
Baltimore District Office: 900 Madison Ave., Baltimore, MD 21201–2199.
Cincinnati District Office: 1141 Central Pkwy., Cincinnati, OH 45202–1097.
New Jersey District Office: Waterview Corporate Center, 10 Waterview Blvd., 3d Floor, Parsippany, NJ 07054.

SOUTHEAST REGION

Regional Field Office: 60 Eighth St. NE., Atlanta, GA 30309.
Southeast Regional Laboratory: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St. NE., Atlanta, GA 30309.
Nashville District Office: 297 Plus Park Blvd., Nashville, TN 37217.
New Orleans District Office: 4298 Elysian Fields Ave., New Orleans, LA 70122.
Florida District Office: 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809.
San Juan District Office: 466 Fernandez Juncos Ave., San Juan, PR 00901–3223.

MIDWEST REGION

Regional Field Office: 20 North Michigan Ave., rm. 510, Chicago, IL 60602.
Chicago District Office: 300 South Riverside Plaza, suite 550, South Chicago, IL 60606.
Detroit District Office: 1560 East Jefferson Ave., Detroit, MI 48207–3179.
Minneapolis District Office: 240 Hennepin Ave., Minneapolis, MN 55401–1912.

SOUTHWEST REGION

Regional Field Office: 7920 Elmbrook Dr., Dallas, TX 75247–4982.
Dallas District Office: 3310 Live Oak St., Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225–0087.
Kansas City District Office: 11630 West 80th St., Lenexa, KS 66214.
St. Louis Branch: 12 Sunnen Dr., St. Louis, MO 63143.

PACIFIC REGION

Regional Field Office: 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217.*San Francisco District Office:* 1431 Harbor Bay Parkway, Alameda, CA 94502–7070.
Los Angeles District Office: 19900 MacArthur Blvd., suite 300, Irvine, CA 92715–2445.
Seattle District Office: 22201 23d Dr. SE., Bothell, WA 98021–4421.

Dated: March 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–7278 Filed 3–21–97; 8:45 am]
BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that was published in the **Federal Register** of July 10, 1996 (61 FR 36290), that amended the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) held by Boehringer Ingelheim Animal Health, Inc. The regulation inadvertently failed to specify that only Boehringer Ingelheim's oxytetracycline injection is approved for subcutaneous use in cattle. In addition, the preamble failed to provide that the supplemental approval was granted 3 years marketing exclusivity for the new use. This document corrects these errors.

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 10, 1996 (61 FR 36290), FDA published the approval of Boehringer Ingelheim Animal Health, Inc.'s supplemental ANADA 200–008 that provides for subcutaneous use of oxytetracycline injection in addition to the approved intravenous and intramuscular use in beef and nonlactating dairy cattle. The approval document inadvertently failed to specify that only Boehringer Ingelheim's oxytetracycline injection is approved for subcutaneous use in cattle. Accordingly, the agency is correcting 21 CFR 522.1660(c)(1)(iii) as set forth below.

In addition, the document did not state that under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), as in effect on May 22, 1996, the date of approval, this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning May 22, 1996, because the supplement contains reports of new clinical or field investigations other than bioequivalence, or residue studies, and in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the applicant.

§ 522.1660 [Corrected]

2. In FR Doc. 96–17541, appearing on page 36290 in the **Federal Register** of Wednesday, July 10, 1996, the following correction is made. On page 36291, in the first column, in line 2, amendment ''2.'' is corrected to read as follows:

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (c)(1)(iii) by removing the first sentence and adding two sentences in its place, to read as follows:

§ 522.1660 Oxytetracycline injection.

* * * * *

(c) * * *

(1) * * *

(iii) Administer intramuscularly or intravenously at the 3 to 5 milligrams level, intramuscularly at the 9 milligrams level. Sponsor 000010, may also administer subcutaneously at the 3 to 5 milligrams and 9 milligrams levels. * * *

* * * * *

Dated: March 13, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine

[FR Doc. 97–7277 Filed 3–21–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

RIN 1120–AA53

[BOP–1058–F]

Transfer of Inmates to State Agents for Production on State Writs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is making various editorial or procedural changes in order to update its regulations on transfer of inmates to state agents for production on state writs.

EFFECTIVE DATE: March 24, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on transfer of inmates to state agents for production on state writs (28 CFR part 527, subpart D). A final rule on this subject was published in the **Federal Register** July 1, 1981 (46 FR 34549) and was amended October 1, 1985 (50 FR 40105).

The Bureau is making various editorial or procedural changes in order to update § 527.31. Specifically, paragraph (a) is amended for the purpose of removing the instruction that the provisions of the rule may not be used to avoid the use, or to circumvent the intent, of the Interstate Agreement on Detainers. This requirement is more suitable for inclusion in implementing instructions to staff rather than in the regulatory text. Paragraph (c) is amended by revising the provisions governing how requests are to be made. These provisions previously had read that the request may be made by letter, or in urgent cases by wire or phone. The Bureau is revising this to require the request to be made by letter. Implementing instructions to staff further address how the letter may be received (for example, via facsimile transmission). Consequently, the regulation would not need to be further amended in order to recognize technological changes in accepting requests. Paragraph (d) is amended for editorial consistency (that is, in order to use the phrase ''institution staff'' rather than ''institutional staff''). Finally, paragraph (h) is amended by removing the phrase ''in either the Regional or Central Office'' and redundant regulatory information. Because the provisions in paragraph (h) serve as a cross-reference to the controlling regulations for Central Inmate Monitoring Cases, the inclusion of such specific information is unnecessary.

Because these changes are either administrative or editorial in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have

a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 527

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 527 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100–4115, 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 4201–4218, 5003, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 527.31, paragraph (a) is amended by removing the second sentence, paragraph (c) is amended by revising the second sentence, paragraph (d) is amended by revising the second sentence, and paragraph (h) is revised to read as follows:

§ 527.31 Procedures.

* * * * *

(c) * * * The request shall be made by letter. * * *

(d) * * * Institution staff shall verify the authenticity of the writ.

* * * * *

(h) Release of inmates classified as Central Inmate Monitoring Cases requires review with and/or coordination by appropriate authorities in accordance with the provisions of 28 CFR part 524, subpart F.

[FR Doc. 97–7292 Filed 3–21–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Small Business Timber Sale Set-Aside Program; Appeal Procedures on Recomputation of Shares

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for comment.

SUMMARY: This interim rule provides an opportunity for timber purchasers to appeal the recomputation of the small business share of National Forest System Timber sales. The rule is necessary to implement a legislative requirement to provide timber purchasers the opportunity to comment on and appeal recomputation of shares and related decisions made under the Small Business Timber Sale Set-Aside Program.

DATES: *Effective Dates:* This rule is effective March 24, 1997, except for § 223.18 paragraph (f) which contains information collection requirements that have not been approved by the Office of Management and Budget. The Forest Service will publish a subsequent notice in the **Federal Register** announcing the effective date of the information collection requirements.

Comment Date: Comments on this interim rule must be received by May 23, 1997.

ADDRESSES: Send written comments to Director, Timber Management, MAIL STOP 1105, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. Comments received, including name and address where provided, shall be placed in the record of the rulemaking and made available for copying and public inspection.

FOR FURTHER INFORMATION CONTACT: Rod Sallee, Timber Management Staff, (202) 205–1766.

SUPPLEMENTARY INFORMATION:

Background

Developed in cooperation with the Small Business Administration, the Forest Service Small Business Timber Sale Set-Aside Program is designed to ensure that qualifying small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale. The current set-aside program was adopted July 26, 1990 (55 FR 30485).

Under the program, the Forest Service must recompute the shares of timber sales to be set-aside for qualifying small businesses every five years based on the actual volume of sawtimber that has been purchased and/or harvested by small businesses. Also, shares must be recomputed if there is a change in manufacturing capability, if the purchaser size class changes, or if certain purchasers discontinue operations. Direction to guide employees in administering the Small Business Timber Sale Set-Aside Program is issued in the Forest Service Manual, Chapter 2430, and Chapter 90 of the Forest Service Timber Sale Preparation Handbook (FSH) 2409.18.

In 1992, the agency adopted new administrative appeal procedures at 36 CFR part 215 in response to new statutory direction. These rules apply to all National Forest System project-level decisions for which an environmental assessment (EA) or impact statement (EIS) has been prepared. Because the recomputation of shares under the Small Business Set-Aside Program is not subject to documentation in an EA or EIS, the decisions on the 1996–2000 Forest Service recomputation of small business shares were not subject to the appeal procedures. However, since the agency had accepted appeals of recomputation decisions under 36 CFR part 217 prior to adoption of part 215, the agency decided to establish procedures for providing notice to affected purchasers with opportunity to comment on the recomputation of shares. Notice of these procedures was published in the **Federal Register** on February 28, 1996 (61 FR 7468).

The Conference Report accompanying the 1997 Omnibus Appropriation Act (Public Law 104–208) found the Forest Service decision to eliminate an administrative appeals opportunity for the Small Business Timber Sale Set-Aside Program ''unacceptable'' and directed the Forest Service to reinstate an appeals process before December 31, 1996. The Conference Report requires that the agency establish a process by which purchasers may appeal decisions concerning recomputations of SBA shares, structural recomputations of SBA shares, or changes in policies impacting the timber sale set-aside program. It also provides that, as in the past, decisions related to the designation of the sales to be set aside will not be open for appeal.

Good Cause Exemption

The Conference Report accompanying the FY 1997 Omnibus Appropriation Act directed reinstatement of the appeals process by December 31, 1996. The Department has determined that such reinstatement can occur only through informal rulemaking (5 U.S.C. 552). Regrettably, the Department was not able to meet the December deadline

because of the press of other business, but it is trying to implement the direction as expeditiously as possible. Given that the congressional intent can be met only through rulemaking, that in the conference report Congress set a specific date, and that it would be impracticable to give notice and obtain comment, good cause exists to adopt an interim rule without prior public comment. However, while the rule is immediately effective to comply with congressional intent, the Department is requesting comment on the provisions set out in this interim rule for consideration in adoption of a final rule.

Provisions of the Rule

The appeal process at issue is limited to the Timber Sale Set-Aside Program; therefore, the interim rule is issued to 36 CFR part 223—Sale and Disposal of National Forest System Timber, under Subpart B rules dealing with contract administration. The Set-Aside Program appeal procedures are set out at a new § 223.118. To the extent possible, the Department has modeled this very specific appeal procedure on the other appeal processes administered by the Forest Service in order to foster common interpretation, consistent processing, and public and employee understanding.

Paragraph (a) of § 223.118 specifies that the decisions subject to appeal are the various recomputations of small business shares of timber sales, namely structural, special, and market change as well as the scheduled five-year recomputations.

Paragraph (b) addresses the manner of giving notice of proposed and actual recomputation decisions. Paragraph (b)(1) of the interim rule requires the agency to give predecisional notice and opportunity to comment on ''draft'' recomputation decisions. Timber sale purchasers in the affected area will have 30 days to review the draft decision and supporting data and to provide comments. The Responsible Official has 15 days to review and consider the comments and to make and give notice of the recomputation decision. This approach is consistent with the predecisional notice and comment procedures of the agency's principal appeal rules at 36 CFR part 215.

Paragraph (b)(2) of the interim rule requires the Responsible Official to give written notice of the final decision to all purchasers on the timer sale bidders list for the affected area and to advise them of appeal rights and filing procedures. This decision notice must identify the name of the Appeal Deciding Officer to whom a appeal of the decision may be filed, the address, and the deadline for filing.

Paragraph (c) of § 223.118 specifies that only timber sale purchasers on the bidders list for the affected area who have submitted predecisional comments pursuant to paragraph (b) may appeal. This approach is consistent with that at 36 CFR 215.11, which provides that prior participation in the decisionmaking process is a condition of appeal. However, unlike the rules at 36 CFR 215.11, this interim rule does not permit interested parties (parties other than affected purchasers of their representative) to submit views for consideration in the appeal process. Since only purchasers are directly affected by the recomputation of the small business share of the local timber sale program, there is no apparent need to provide for participation of interested parties.

Paragraph (d) of the interim rule provides for one level of appeal and notes that generally appeals are conducted by the Regional Forester. Consistent with the approach under 36 CFR part 215, only one level of appeal is provided.

Paragraph (e) provides 20 days to file a notice of appeal with the Appeal Deciding Officer.

Paragraph (f) sets out the minimums information that must be included in a notice of appeal. The requirements in paragraph (f)(2) constitute an information collection as defined by the Paperwork Reduction Act and are described in detail later in the preamble under the heading ''Controlling Paperwork Burden on the Public.'' This provision of the rule is not effective until the Office of Management and Budget approves the information requirement. Emergency approval of the information required in a notice of appeal has been requested from the Office of Management and Budget. The agency will give notice of the number assigned to the information required by paragraph (f) along with the effective date which will be published in the **Federal Register.** In the meantime, the public is invited to submit comments on this collection.

Paragraph (g) addresses the filing periods, how time periods are calculated, and how timeliness is determined. These procedures are basically the same as those already in use with other Forest Service appeal procedures under 36 CFR parts 215, 217, and 251, subpart C.

Paragraph (h) sets out the three circumstances under which an appeal will be dismissed without a decision. These are consistent with dismissal of appeals under part 215.

Paragraph (i) defines the record on which the Appeal Deciding Officer must base the appeal decision. In the interest of an efficient and timely appeal process, the record is limited to the written decision, supporting documentation, the notice of appeal, and the responsive statement, if any. Also, the Responsible Official is given only seven days to gather and assemble the record and to transmit it to the Appeal Deciding Officer.

Paragraph (j) requires the Appeal Deciding Officer to issue the appeal decision in writing within 30 days of the cost of the appeal period.

Paragraph (k) addresses implementation of recomputation decisions during pendency of appeals. It provides that if an appeal is not resolved by April 1 following the end of the 5-year recomputation period, the Responsible Official will proceed to implement the decision. If the appeal decision changes the shares, the necessary adjustments will be made in the remaining portion of the 5-year period.

Paragraph (l) requires that timber purchasers be given an opportunity to review and comment on significant changes in the Small Business Timber Sale Set-Aside program or policy prior to adoption and implementation. This opportunity will be given through **Federal Register** notice and is consistent with the agency's treatment of all other major policy decisions.

The sequence and content of the rules of § 223.118 are modeled on those of 36 CFR part 215. The interim rule adopts the same rules of procedure with regard to the content of the notice of appeal, timely filing, appeal record, dismissal, and timeframe for decisions. These rules are well understood by those who have participated in Forest Service administrative appeals, including many timber sale purchasers or their representatives, and, therefore, should facilitate appellant understanding and use of these appeal procedures.

Environmental Impact

This interim rule would establish uniform procedures for providing qualifying timber purchasers the opportunity to review, comment, and appeal decisions on recomputed shares of the small business timber sale set-aside program. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's assessment

is that this interim rule falls within this category of actions and has no direct or indirect environmental impact, and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

However, comments are invited and will be considered in making a final determination upon adoption of the final rule.

Controlling Paperwork Burdens on the Public

The information that would be collected from timber sale purchasers who appeal recomputation of shares under the Small Business Timber Sale Set-Aside Program is the minimum needed for an Appeal Deciding Officer to reach informed conclusions about decisions appealed under this rule.

Description of Information Collection

Title: Small Business Timber Sale Set-Aside Program; Appeal Procedures on Recomputations of Shares.

OMB Number: New.

Expiraiton Date of Approval: New.

Type of Request: The following collection requirements are new and have not received approval by the Office of Management and Budget.

Abstract: This collection would consist of information provided by purchasers who object to a recomputation decision of timber sales to be set aside for small timber purchasers. The information to be provided shows why the appellant believes the recomputation decision should be overturned.

Estimate of Burden: The public reporting burden to provide comments or prepare a notice of appeal pursuant to the interim rule is estimated to average 4 hours per response.

Respondents: Large and small businesses purchasing National Forest System timber sales or their agents.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 320 hours.

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 this 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 respondents; including the use of automated collection techniques or other forms of information technology.

Use of Comments

All comments received on the information requirements in response to this rulemaking notice will be summarized and included in the subsequent routine request for OMB approval of the information collection. All comments, including names and addresses where provided, will also become a matter of public record.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This interim rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, pubic health or safety, nor State or local governments. This interim rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients of such programs. Accordingly, this interim rule is not subject to OMB review under Executive Order 12866.

Pursuant to 5 U.S.C. 605(b), it is hereby certified that this interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The interim rule imposes no additional requirements on small business timber sale purchasers or other small entities. It merely implements legislative intent to provide small purchasers a new administrative appeal opportunity. To facilitate preparation and conduct of timber sale set-aside appeals, the agency has kept the appeal procedures as streamlined and simple as possible.

No Takings Implications

This interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. This interim rule gives opportunity to qualifying timber sale purchasers to ensure that small businesses have the opportunity to purchase a fair proportion of National Forest System timber offered for sale.

Civil Justice Reform Act

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this interim rule were adopted, (1) all state and local laws and regulations that are in conflict with this interim rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this interim rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Summary

This interim rule complies with the congressional intent of the conference report on the Fiscal Year 1997 Omnibus Appropriations Act by reinstating an administrative appeal opportunity for timber sale purchasers of small business timber sale share recomputation decisions in a manner consistent with previous appeal procedures and subsequent statutory predecisional notice and comment provisions. To enhance both employee and purchaser understanding, this interim rule models the provisions of other administrative appeal rules already in place (36 CFR part 215, 217, and 251) to the extent possible. The Department invites written comment on this interim final rule. Notice of the final rule, including discussion of comments received, will be published in the **Federal Register**.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 223 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

2. Add a new § 223.118 to subpart B to read as follows:

§ 223.118 Appeal process for small business timber sale set-aside program share recomputations.

(a) *Decisions subject to appeal.* The rules of this section govern appeal of decisions about structural, special, market change, or the scheduled five-year recomputations of the small business share of timber sales. Only those timber sale purchasers who have submitted written comments to the Responsible Official on the draft recomputed share decision, or their representatives, are eligible to appeal a decision.

(b) *Manner of giving notice*—(1) *Predecisional notice and comment.* Qualifying timber sale purchasers that may be affected by recomputations shall be given 30 days for predecisional review and comment on any draft decision to reallocate shares, including the data used in making the proposed recomputation decision.

(2) *Notice of Decision.* Upon close of the 30-day review period, the Responsible Official shall consider any comments reviewed. Within 15 days following the end of the comment period, the Responsible Official shall make the decision on the small business shares and shall give prompt written notice to all parties on the national forest timber sale bidders list for the affected area. The notice shall identify the name of the Appeal Deciding Officer to whom an appeal of the decision may be filed, the address, the date by which an appeal must be filed, and where the purchaser may obtain the appeal procedure and requirements.

(c) *Who may appeal.* Only timber sale purchasers affected by recomputations of the small business share of timber sales, or their representatives, who have submitted predecisional comments pursuant to paragraph (b)(1) of this section may appeal recomputation decisions under this section. Intervenors are not allowed in appeals under this section.

(d) *Level of appeal.* Only one level of review is available for appeal of decisions pertaining to recomputations under the Small Business Timber Set-Aside Program. The Appeal Deciding Officer is the official one level above the level of the Responsible Official who made the recomputation of shares decision. The Responsible Official is normally the Forest Supervisor; thus, the Appeal Deciding Officer is normally the Regional Forester. However, when the Regional Forester makes recomputation decisions, the Appeal Deciding Officer is the Chief or such officer at the National headquarters level as the Chief may designate.

(e) *Filing procedures.* In order to file an appeal under this section, an appellant must file a notice of appeal, as specified in the notice of decision, with the Appeal Deciding Officer within 20 days of the date on the notice of the decision. This date shall be specified in the notice of decision given pursuant to paragraph (b)(2) of this section.

(f) *Content of notice of appeal.* (1) It is the responsibility of the appellant to provide sufficient narrative evidence and argument to show why a recomputation decision by the Responsible Official should be reversed or changed.

(2) An appellant must include the following information in a notice of appeal:

(i) The appellant's name, mailing address, and daytime telephone number;

(ii) The title or type of recomputation decision involved, the date of the decision, and the name of the Responsible Official;

(iii) A brief description and date of the decision being appealed;

(iv) A statement of how the appellant is adversely affected by the decision being appealed;

(v) A statement of the facts in dispute in the issue(s) raised by the appeal;

(iv) Specific references to any law, regulation, or policy that the appellant believes to have been violated and the basis for such as allegation;

(vii) A statement as to whether and how the appellant has tried to resolve with the Responsible Official the issue(s) being appealed, including evidence of submission of written comments at the predecisional stage as provided by paragraph (a) of this section, the date of any discussion, and the outcome of that meeting or contact; and

(viii) A statement of the relief the appellant seeks.

(g) *Time periods and timeliness.* (1) All time periods applicable to this section will begin on the first day following a decision or action related to the appeal.

(2) Time periods applicable to this section are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is automatically extended to the end of the next Federal working day.

(3) It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks on a mailed appeal or the time and date imprint on a facsimile appeal will be considered evidence of timely filing. Where postmarks or facsimile imprints are illegible, the Appeal Deciding Officer shall rule on the timeliness of the notice of appeal.

(4) Time for filing a notice of appeal is not extendable.

(h) *Dismissal without decision.* The Appeal Deciding Officer shall dismiss an appeal and close the record without a decision in any of the following circumstances:

(1) The appellant is not on the timber sale bidders list for the area affected by the recomputation decision;

(2) Appellant's notice of appeal is not filed within the required time period; or

(3) The appellant did not submit written comments on the proposed decision of the new recomputed shares as required by paragraph (c) of this section.

(i) *Appeal record.* The appeal record consists of the written decision being appealed, any predecisional comments received, any other supporting data used to make the decision, the notice of appeal, and if prepared, a responsive statement by the Responsible Official which addresses the issues raised in the notice of appeal. The Responsible Official must forward the record within 7 days of the date the notice of appeal is received. A copy of the appeal record will be simultaneously submitted to the appellant.

(j) *Appeal decision.* The Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period. The Appeal Officer may affirm or reverse the Responsible Official's decision, in whole or in part. There is no extension of the time period for the appeal decision. If the decision is not rendered within the required 30 days, the existing decision is automatically affirmed. The Appeal Deciding Officer's decision or the failure of the Appeal Deciding Officer to decide within the required 30 days constitutes the final administrative decision of the Department of Agriculture.

(k) *Implementation of decisions during pendency of appeal.* Recomputation of shares arising from a scheduled five-year recomputation are effective on April 1 following the end of the five-year period being considered. If an appeal that may affect the shares for the next five-year period is not resolved by the April 1 date, the share decision

announced by the Responsible Official shall be implemented. If an appeal decision results in a change in the shares, the revised total share of the Small Business Timber Sale Set-Aside Program shall be accomplished during the remaining portion of the five-year period.

(l) *Timber sale set-aside policy changes.* Timber purchasers shall receive an opportunity, in accordance with all applicable laws and regulations, to review and comment on significant changes in the Small Business Timber Sale Set-Aside program or policy prior to adoption and implementation.

Dated: March 17, 1997.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 97–7274 Filed 3–21–97; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5702–5]

Clean Air Act Final Interim Approval of Operating Permits Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

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

EFFECTIVE DATE: April 23, 1997.

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

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–4298.

SUPPLEMENTARY INFORMATION:

I. Background

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

On December 6, 1996, EPA proposed interim approval of the operating permits program for the State of Connecticut. See 61 FR 64651. The EPA received comments from the Society of the Plastics Industry, Inc. on the proposal. In this document, EPA is taking final action to promulgate interim approval of the operating permits program for the State of Connecticut.

II. Response to Comments

The comments received on EPA's December 6, 1996 proposal to grant interim approval to the Connecticut Program and EPA's response to those comments are as follows:

Comment No. 1: Permit fees for the Connecticut program should be no higher than the amount specified by the Clean Air Act.

Response: The amount in the Act of $25 per ton of emissions on an annual basis, adjusted by the consumer price index, was never intended to be the ceiling on the money a State could collect to operate a title V program. Instead, the Act is clear that a State is required to charge sufficient fees to cover the costs of implementing a title V program. Connecticut has analyzed its needs to fully implement a title V program and has concluded that it would need 3.6 million dollars per year. EPA has determined that this amount meets the requirements of 40 CFR 70.9 regarding the permit fees and disagrees that the State may be collecting excess fees. More importantly, EPA has no authority to require Connecticut to limit its fees to the $25 per ton of emissions.

Comment No. 2: Commenter disagreed with EPA's position to require Connecticut to amend its rule in order to allow EPA to object to a permit at any time after receiving a citizen's petition that requests EPA to veto a permit.

Response: In interim approval condition No. 4, EPA is requiring Connecticut to remove the 45 day limit the State regulations attempt to impose on EPA's ability to object to a permit following receipt of a citizen petition. Section 505(b)(2) of the Act imposes a 60 day deadline on EPA to act on a citizen petition, but it does not disable EPA from objecting to a permit or moving to reopen the permit if EPA should miss the 60 day deadline when responding to a meritorious citizen petition. Section 505(e) of the Act and 40 CFR 70.7(g) make it clear that EPA can initiate the process to modify or revoke and reissue a permit at any time if the permit is inconsistent with the applicable requirements of the Act. Therefore, Connecticut has no authority to impose a 45 day limit on EPA's opportunity to respond to a citizen petition.

Comment No. 3: Connecticut should be allowed to extend the permit shield to Administrative Amendments, especially because administrative amendments have no environmental impact.

Response: Part 70 limits a permit shield to only those permit modifications that receive full EPA, affected states, and public review. Connecticut's administrative amendments do not receive any EPA, affected state, or public review. Therefore, EPA disagrees with the commenter and still requires Connecticut to remove the permit shield from administrative amendments.

While it is true that properly executed administrative amendments should have no environmental impact, this is not a justification for extending the permit shield to such changes. Indeed, the shield is probably irrelevant to the vast majority of administrative amendments because, by definition, they will not effect how the facility demonstrates compliance with the Act (except perhaps to enhance the compliance demonstration through more frequent reporting). Moreover, if a permit change that does effect compliance terms in the permit is mistakenly made using an administrative amendment, Connecticut's rule should not create the risk that this change will shield a facility from direct enforcement of the Act.

Comment No. 4: Title V should only apply to major sources and Connecticut should remove its requirement that non-major sources obtain a title V permit within five years of the implementation date.

Response: At this time, EPA has deferred its decision on whether non-major sources will have to obtain title V permits. 40 CFR 70.3(b) allows

Connecticut the discretion of either following EPA's deferral or requiring that non-major sources obtain a title V permit. So if Connecticut does choose to require non-major sources to obtain a title V permit, EPA would have no basis for objecting to a state program that is more comprehensive than required by federal law.

The commenter appears to have misunderstood EPA's interim approval condition on this point. The issue with Connecticut's rule is not that the State requires minor sources to obtain a title V permit, rather it is the failure of Connecticut's rule to require that non-major sources come into the program when EPA determines that non-majors must get title V permits. The State defers minor sources for five years from the effective date of Connecticut's rule unless the Commissioner notifies a source of an earlier date. The State's rule is not consistent with 40 CFR 70.3(b) because it does not require the State to issue title V permits to non-major sources if the Administrator decides to include non-major sources in the title V program; instead the rule leaves it to the discretion of the Commissioner to bring non-majors into the program prior to expiration of the five year deferral. Connecticut must amend its rule to be consistent with part 70.

Comment No. 5: Connecticut should streamline its permit modification procedures.

Response: EPA agrees with the commenter that Connecticut's program needs a streamlined permit modification process and has stated as much in 61 FR 64651, Proposed Action, section II.B.25. The commenter suggests Connecticut should use the process outlined in EPA's August 31, 1995 proposed changes to part 70. Connecticut should base any new permit modification procedures on final EPA regulations, not a proposal.

III. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Connecticut on September 28, 1995. The State must make the changes specified in the proposed rulemaking, under II.B., Proposed Action, in order to be granted full approval. See 61 FR 64651–64658 (December 6, 1996) for a complete discussion of those conditions. In brief, the State must: (1) Require sources to explain exemptions from applicable rules. (2) Require applicants to state they will comply with future requirements that become effective during the permit term. (3) Require that compliance schedules must be as least as stringent as any judicial consent decree or administrative order. (4) Remove time limitation on the Administrator responding to a citizen petition. (5) Insert a permit condition requiring that permit fees be paid on an annual basis. (6) Require a source to submit additional or corrected information whenever that source becomes aware that the original application was either incorrect or incomplete. (7) Make available a statement of legal and factual basis for each permit and insert in the permit the origin and authority for permit terms. (8) Clarify reporting requirements for permit deviations and affirmative defense. (9) Change the definition of ''technology-based emission limitations'' to be consistent with part 70. (10) Adequately address ''Section 502(b)(10) changes.'' (11) Clarify that EPA does not derive its hearing authority from State law. (12) Complete all elements of the definition for ''applicable requirements.'' (13) Clarify that all emission units have to be addressed in a title V permit. (14) Remove the permit shield from administrative amendments. (15) Allow EPA 45 days to review a tentative determination no matter when the State makes changes to a tentative determination. (16) Delete the ''cut-off'' date in the definition for ''Code of Federal Regulations.'' (17) Include all elements in the definition for ''regulated air pollutants.'' (18) Adopt regulations that implement section 112(g) of the Act. (19) Allow a permit to continue in effect if a complete renewal application had been filed. (20) Require non-major sources to obtain a title V permit if required by the Administrator. (21) Require that an applicant cannot omit any information needed to determine the applicability of, or to impose, any applicable requirement. (22) Clarify that EPA derives its reopening authority from the Act, not from State regulations. (23) State that a source that fails to comply with a general permit is operating without a title V permit. (24) Require minor new source review actions to be processed in a manner at least equivalent to 40 CFR 70.7(e)(2). (25) Provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications. (26) Align the time frames between the due date for renewal applications and when the State can process those applications to ensure that the applications are acted upon prior to the permit expiring. (27) Clarify who is the responsible party when a source's ownership is transferred. (28) Require all permits to address periodic monitoring. (29) Revise the definition of responsible official to be consistent with part 70.

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

This interim approval extends until April 26, 1999. During this interim approval period, the State of Connecticut is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Connecticut. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the State of Connecticut fails to submit a complete corrective program for full approval by October 26, 1998 EPA will start an 18-month clock for mandatory sanctions. If the State of Connecticut then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of Connecticut has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of Connecticut still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Connecticut's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Connecticut has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA

applies the first sanction, the State of Connecticut has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

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

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. However, at this time Connecticut does not have the authority to include most of the section 112 standards in title V permits or in state-only permits, including sections 112 (g) and (j). The lack of authority is due to the effect the definition of ''code of federal regulations'' has on the definition of ''applicable requirements.'' Given the State's current rule, Connecticut is unable to write any permit conditions that incorporate section 112 standards promulgated after September 16, 1994. See 61 FR 64651, Proposed Action, section II.B.16 (December 6, 1996), for further detail. Therefore, EPA is not promulgating approval of the State's program under section 112(l)(5) and 40 CFR 63.91 for receiving delegation of section 112 standards at this time.

In addition, Connecticut's current new source review (NSR) program is unable to fully address section 112(g) requirements. One of the main reasons for the State's lack of authority is due to the requirement that a NSR permit is only needed for new or modified sources that have a net emission increase of a single pollutant greater than 15 tons per year. Section 112(g) can be triggered for new sources that emit 10 tons per year of a single hazardous air pollutant or 25 tons per year of total hazardous air pollutants.

IV. Administrative Requirements

A. Docket

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

B. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

C. Executive Order 12866

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

D. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to conduct a regulatory flexibility analyses of any rule subject to notice and comment rulemaking requirements unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements. I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

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

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

F. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 70

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

Dated: February 20, 1997.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 70—[AMENDED]

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

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

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

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

* * * * *

Connecticut

(a) *Department of Environmental Protection:* submitted on September 28, 1995; interim approval effective on April 23, 1997; interim approval expires April 26, 1999.

(b) [Reserved]

* * * * *

[FR Doc. 97–7349 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants

CFR Correction

In title 40 of the Code of Federal Regulations, parts 136 to 149, revised as of July 1, 1996, on page 26 § 136.3 (e), table II, under metals, the third entry should read as follows:

TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
* * * * *	*	*	*
Metals:[7]			
* * * * *	*	*	*
3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals, except boron, chromium VI and mercury.	P, G	.....do	6 months.
* * * * *	*	*	*

BILLING CODE 1505-01-D

40 CFR Part 180, 185 and 186

[OPP–300465; FRL–5597–7]

RIN No. 2070–AB78

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document establishes time-limited tolerances for residues of the insecticide avermectin and its delta-8,9-isomers in or on the following raw agricultural commodities: cottonseed, citrus, dried hops, potatoes, meat and meat byproducts, milk and processed food/feed commodities. Merck Co., Inc. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerances.

DATES: This regulation becomes effective March 24, 1997. The entries in the table expire on September 1, 1999. Objections and requests for hearings must be received by May 23, 1997.

ADDRESSES: Written objections and hearing requests identified by the docket control number [OPP–300465/PP 7F3500; 8F3592; 5F4508; 4E4419 and FAP 8H5660], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm 1132, CM#2, 1921 Jefferson-Davis Hwy, Arlington, VA. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP(Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300465/PP 7F3500; 8F3592; 5F4508; 4E4419 and FAP 8H5660]]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St, SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 204, CM #2, 1921 Jefferson-Davis Hwy, Arlington, VA 22202, (703) 305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** dated May 8, 1996 (61 FR 20745), EPA proposed to renew time-limited tolerances for the insecticide avermectin and its delta-8,9-isomer (avermectin) in or on cottonseed at 0.005 parts per million (ppm); citrus, whole fruit, at 0.02 ppm; citrus oil, at 0.1 ppm; citrus dried pulp, at 0.1 ppm; cattle, meat, at 0.02 ppm; cattle, meat byproducts, at 0.02 ppm; cattle, fat, at 0.015 ppm; milk, at 0.005 ppm; and hops, dried, at 0.5 ppm. These tolerances were originally established in response to pesticide petitions 7F3500, 8F3592, 4E4419, and food additive petition 8H5550 and have since expired. They were time-limited due to aquatic pesticide exposure issues. The Agency was unable to publish a final rule prior to the enactment of Food Quality Protection Act of 1996. Because of new procedures under FQPA, Merck was required to submit a new notice of filing requesting reissuance of these tolerances in compliance with FQPA.

In the **Federal Register** dated December 10, 1996 (61 FR 65043), EPA issued a notice of filing which announced that Merck had filed a request to amend 40 CFR 180.449 by

reissuing the regulations that established tolerances for residues in or on the raw agricultural commodities cottonseed at 0.005 ppm; citrus, whole fruit at 0.02 ppm; citrus oil at 0.1 ppm; citrus dried pulp at 0.1 ppm; cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; cattle fat at 0.015 ppm; milk at 0.005 ppm and hops, dried at 0.5 ppm and bring them into compliance with the FQPA. The notice contained a summary of the petitions and conclusions and argument in support of the petitioner's conclusion that the petition complied with FQPA. Also included in the notice was a request to establish permanent tolerance in/on the raw agricultural commodity potatoes at 0.005 ppm.

Based on review of new residue data for dried hops (PP 5E4566), EPA concluded that 0.2 ppm, rather than 0.05 ppm, is the more appropriate tolerance level and therefore the subject petition is amended accordingly.

There were no comments received in response to the notices of filing.

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. 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.

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 for 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 aggregated exposure to the pesticide chemical. Section 408 (b)(2)(D) specified factors EPA is to consider in establishing a tolerance. Section 408 (b)(3) requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. Section 408 (b)(4) requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. If so, and EPA does not propose to adopt that level, EPA must publish for public comment a notice explaining the reasons for departing from the Codex level.

II. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregated exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies may address 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 (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 aggregated exposure over a lifetime will not pose an appreciable risk 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) calculations 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 aggregated exposure, FQPA 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 residues 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 crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Consistent with sections 408(b)(2)(C) and (D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has also assessed the toxicology data base for avermectin and its delta-8,9-isomers in its evaluation of applications for registration on cotton, citrus, hops, and potatoes. EPA has sufficient data to assess the hazards of avermectin and its delta-8,9-isomers and to make a determination on aggregate exposure, consistent with section 408(b)(2), for granting time-limited tolerances for residues of avermectin

and its delta-8,9-isomers on cottonseed at 0.005 ppm; citrus, whole fruit at 0.02 ppm; citrus oil at 0.1 ppm; citrus dried pulp at 0.1 ppm; cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; cattle fat at 0.015 ppm; milk at 0.005 ppm, potatoes at 0.005 ppm and hops at 0.2 ppm.

The data submitted in the petitions and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

A. Toxicology Data Base

1. *Acute studies.* A battery of acute toxicity studies placing technical avermectin in Toxicity Categories I and III.

2. *Subchronic studies*. i. A rat 8–week feeding study with a NOEL of 1.4 milligrams per kilograms per day (mg/kg/day) based upon tremors.

ii. A rat 14–week oral toxicity study with a NOEL of 0.4 mg/kg/day, the highest dose tested.

iii. A dog 12–week feeding study with a NOEL of 0.5 mg/kg/day based upon mydriasis.

iv. A dog 18–week oral study with a NOEL of 0.25 mg/kg/day based upon mortality.

v. A CD-1 mouse 84–day feeding study with a NOEL of 4 mg/kg/day based upon decreased body weights.

3. *Chronic studies.* i. A rat 105–week oncogenicity feeding study, negative for oncogenicity with dose levels up to and including 2.0 mg/kg/day, the highest dose tested (HDT), with a NOEL of 1.5 mg/kg/day based upon tremors.

ii. A CD-1 mouse 94–week oncogenicity feeding study, negative for oncogenicity at dose levels up to and including 8 mg/kg/day (HDT), with a NOEL of 4 mg/kg/day based upon decreased body weights.

iii. A dog 53–week chronic feeding study, with a NOEL of 0.25 mg/kg/day based upon mydriasis.

4. *Developmental toxicity studies.* i. An oral teratology study in the CF-1 mouse with a maternal NOEL of 0.05 mg/kg/day based upon decreased body weights and tremors. The fetal NOEL was 0.20 mg/kg/day based upon cleft palates.

ii. An oral teratology study with the delta 8,9-isomer in CF-1 mice with a maternal NOEL of 0.10 mg/kg/day based upon decreased body weights. The fetal NOEL was 0.06 mg/kg/day based upon cleft palate.

iii. An oral teratology study in rabbits with a maternal NOEL of 1.0 mg/kg/day based upon decreased body weights and tremors at the lowest observed effect level (LOEL) of 2.0 mg/kg/day. The fetal NOEL was 1.0 mg/kg/day based upon clubbed feet and delayed ossification of sternebrae, metacarpels and phalanges at the lowest effect level (LEL) of 2.0 mg/kg/day.

iv. An oral teratology study in rats with a maternal and fetal NOEL at 1.6 mg/kg/day (HDT).

5. *Reproductive effects study.* i. A 2-generation study in rats with a NOEL of 0.12 mg/kg/day in pups based upon retinal folds, decreased body weight, and mortality at the LEL of 0.4 mg/kg/day. The NOELs for systemic and reproductive toxicity were 0.4 mg/kg/day (HDT).

6. *Mutagenicity studies.* i. The Ames assays conducted with and without metabolic activation were both negative.

ii. The V-79 mammalian cell mutagenesis assays conducted with and without metabolic activation did not produce mutations. In an alkaline elution/rat hepatocyte assay, abamectin was found to induce single strand DNA breaks without significant toxicity in rat hepatocytes treated *in vitro* at doses greater than 0.2 millimole (mM). This *in vitro* dose of 0.2 mM is biologically unobtainable *in vivo*, due to the toxicity of the compound. However, at these potentially lethal doses, *in vivo* treatment did not induce DNA single strand breaks in hepatocytes. In the mouse bone marrow assay, abamectin was not found to induce chromosomal damage.

B. Toxicological Profile

1. *Dietary risks*—i. *Acute toxicity.* Because of the developmental effects seen in animal studies, EPA used the mouse developmental toxicity study (with a pup NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9-isomer) to assess acute dietary exposure and determine a MOE for the overall U.S. population and certain subgroups. Since the toxicological endpoints pertain to developmental toxicity, the risk assessment evaluated acute dietary risk to females 13+ years old, the subgroup which most closely approximates women of child bearing ages. For purposes of these time-limited tolerances, an MOE of 300 is considered necessary to be adequately protective for dietary exposure.

(Note: EPA notes that the petitioner has used a NOEL of 0.05 mg/kg/day in its assessment. EPA currently considers the appropriate NOEL to be 0.06 mg/kg/day; therefore the petitioner's MOE values have been corrected to reflect this higher NOEL.)

ii. *Chronic risk*. Based on the available chronic toxicity data, EPA has established the Reference Dose (RfD) for avermectin and its delta-8,9-isomer at 0.0004 mg/kg/day based on a 2-generation rat reproduction study with a NOEL of 0.12 mg/kg/day and an uncertainty factor of 300. In addition to the uncertainty factor of 100 for inter- and intra-species variations, a modifying factor (MF) of 3 was used for a total uncertainty factor of 300. The MF was used because of the effects (pup deaths) and the steep dose-response curve. At the LEL of 0.40 mg/kg/day, there was decreased pup body weight and viability during lactation as well as an increase of incidence of retinal rosettes in F2b weanlings.

iii. *Carcinogenicity.* Using EPA Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 3392), EPA has classified avermectin as Group ''E'' for carcinogenicity (no evidence of carcinogenicity) based on the results of a carcinogenicity studies in two species. Infants and Children: EPA has concluded that avermectin and related compounds induce developmental toxicity in several species. To assess the potential for additional sensitivity of infants and children to residues of avermectin, EPA used the rat 2-generation reproduction study NOEL of 0.12 mg/kg/day based upon toxicity observed in nursing pups and the mouse oral teratology study NOEL of 0.06 mg/kg/day based upon cleft palate in developing fetuses.

2. *Non-dietary risks*— i. *Short-and intermediate term occupational or residential dermal or inhalation risks.* EPA used the developmental NOEL of 0.2 mg/kg/day from the oral developmental toxicity study of CF-1 mice. At the LEL of 0.4 mg/kg/day, there was an increased incidence of cleft palate.

ii. *Chronic occupational or residential risk.* For chronic MOE calculations, EPA used the developmental NOEL of 0.12 mg/kg/day from a 2-generation rat reproduction study. At a LEL of 0.4 mg/kg/day, there was increased pup deaths during lactation decreased pup body weight and increased incidence of retinal rosettes.

iii. *Dermal absorption.* EPA used a value of 1% based on a monkey dermal absorption study.

C. Aggregate Exposure

1. *From food and feed uses.* The primary source for human exposure to avermectin will be from ingestion of both raw and processed agricultural commodities proposed in the December 10, 1996 Notice of Filing cited above and from the commodities in 40 CFR 180.449, 185.300 and 186.300.

Any secondary residues occurring in cattle meat, meat byproduct, milk and fat from the addition of the feed items potato culls and processed potato waste

will be covered by the existing tolerances for these commodities. There is no reasonable expectation of finite residues in poultry and swine, therefore no tolerances are necessary at this time. Although data indicates avermectin residues accumulate in some rotational crops at levels up to 10 to 12 ppb, the residue was due to polar degradates that are of little toxicological concern. Thus, it is unlikely that residues will accumulate in rotational crops.

The dietary risk assessment will be reevaluated with respect to secondary residues in ruminant tissues and milk upon submission and review of field trail data for cotton gin-byproducts.

2. *From potable (drinking) water use.* There is no established Maximum Concentration Level for residues of avermectin in drinking water. No Health Advisory Levels for avermectin in drinking water have been established. Because the Agency lacks specific water related exposure data for most pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. EPA then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregated risk contributed by consumption of contaminated water. This analysis can be found in the Special Record for the FQPA. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges EPA is continuing to examine are all below the level that would cause avermectin to exceed the RfD, if the tolerances being considered in this document are granted. EPA has therefore concluded that the potential exposure associated with avermectin in water, even at the higher levels EPA is considering as a conservative upper bound, would not prevent EPA from determining that there is a reasonable certainty of no harm if the proposed tolerances are granted.

3. *From non-dietary uses.* Avermectin is registered for various uses including use on ornamentals (herbaceous and woody), household dwellings (indoor and outdoor), and non-food areas of food handling establishments. The exposure from these uses are expected to be oral, dermal and respiratory in nature. Based on the nature of the outdoor residential uses (spot treatment), EPA has concluded that residential exposure resulting from outdoor uses will not be significant. Likewise, based upon the nature of the indoor and outdoor residential uses, EPA has concluded that a chronic residential exposure study is not necessary. The indoor residential exposure assessment to determine risk from exposure to children and adults was based on a California EPA (Medical Toxicology and Worker Health and Safety Branches) review of an avermectin residential exposure study.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically and structurally dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether avermectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, avermectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that avermectin has a common mechanism of toxicity with other substances.

D. Safety Determinations

1. *U.S. population and non-nursing infants.* A chronic dietary exposure/risk assessment was conducted for avermectin using a RfD of 0.0004 mg/kg/day based on a NOEL of 0.12 mg/kg/day from a 2–year generation rat reproduction study and an uncertainty factor of 300. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues. The cumulative total of established and proposed uses will result in exposure estimates of 0.000020 mg/kg/day for the overall U.S. population and utilize 5% of the RfD. For the most highly exposed population subgroup, non-nursing infants less than 1 year old, the ARC for established and current uses is estimated at 0.00043 mg/kg/day utilizing 11% of RfD. EPA generally has no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregated dietary exposure over a life time will not pose an appreciable risk to human health. EPA therefore concludes that there is reasonable certainty that no harm will result from dietary exposure to avermectin residues.

Due to developmental toxicity concerns, an acute dietary exposure/risk assessment for these tolerances and pending tolerances have been performed. The acute dietary risk assessment used Monte Carlo modeling incorporating anticipated residues and percent of crop treated refinement. The subgroup of concern in this analysis is

women aged 13 and above which is the subgroup most closely approximating women of child bearing age. At the calculated high-end exposure of 0.00078 mg/kg/day, the acute dietary MOE is 769 for females 13+ years old. Based on these results, EPA has no acute dietary concerns since EPA considers an MOE of greater than 300 adequately protective.

EPA notes that the acute dietary risk assessment used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 ''Acute Dietary Exposure Assessment'' guidance document) incorporating anticipated residues and percent of crop treated refinements. For the purpose of these time limited tolerances, EPA concludes that this analysis is adequate to assess acute dietary exposure, but prior to establishment of permanent tolerances a full review of this analysis will be required.

Section 408 (b)(2)(E) requires that, if EPA relies upon anticipated residue levels in setting a tolerance, EPA must require that data be submitted 5 years after approval of the tolerance on whether the anticipated residue level remains accurate. Because this tolerance is limited to approximately 2 1/2 years, data are not being required at this time.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. EPA believes that reliable data support using the standard margin of exposure (usually 100x for combined inter-and intra-species variability) and not the additional tenfold margin of exposure when EPA has a complete data base under existing guidelines and when the severity of the effect in infants and children, and the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin of exposure.

In assessing the potential for additional sensitivity of infants and children to residues of avermectin, EPA considered data from developmental toxicity studies in the rat, mouse and rabbit and a 2-year 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 the mothers. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

3. *Prenatal effects.* The developmental and maternal NOELs for avermectin in rats are both > 1.6 mg/kg/day, highest dose tested. For rabbits, the developmental and maternal NOELs and LOELs are both 1.0 and 2.0 mg/kg/day, respectively. These studies suggest that avermectin does not exhibit any special prenatal sensitivity. However, both avermectin and its delta-8,9-isomer exhibit cleft palate in the CF-1 mouse developmental studies. For avermectin and its delta,-8,9-isomer, the NOEL for cleft palate is 0.2 mg/kg/day with the LOEL at 0.4 mg/kg/day and NOEL 0.06 mg/kg/day with the LOEL at 0.10 mg/kg/day, respectively. Therefore, prenatal sensitivity to the regulated residue for avermectin is demonstrated when considering these effects in the CF-1 mouse. To evaluate the prenatal risk, the acute dietary MOE calculation for women 13+ years old has been conducted, resulting in a MOE of 769, which is considered adequate to protect prenatal exposure.

4. *Post-natal effects.* Post-natal effects were determined by a 2-year generation rat reproduction study with a NOEL of 0.12 mg/kg/day and LOEL of 0.4 mg/kg/day, where effects in the pups included death, decreased body weight and retinal folds. In contrast, the NOEL for parental toxicity is 0.4 mg/kg/day. This suggests post-natal sensitivity for infants and children. However, with respect to the post-natal sensitivity for the delta-8,9-isomer, a 1-generation rat reproduction study at doses up to 0.4 mg/kg/day did not produce any parental or pup toxicity. The established RfD is 0.0004 mg/kg/day based on the 2–year generation rat reproduction study with a NOEL of 0.12 mg/kg/day and an uncertainty factor of 300. The post-natal sensitivity for infants and children has been considered by employing a 300-fold uncertainty factor in the calculation of the RfD. The highest calculated aggregate percentage of the RfD is 11% for non-nursing infants. At this level, risk to infants and children due to post-natal exposure do not raise concerns.

Therefore, EPA concludes the reliable data support use of a 300-fold safety factor, which incorporates an additional modifying factor (MF) for the effect and dose response curve, and thus no additional safety factor is not needed to protect the safety of infants and children. (EPA notes that the petitioner, in their Notice of Filing, indicated that some of the studies EPA used in its risk assessments are not appropriate for assessing the risk potential of avermectin and/or overstate the risk and that an additional MF is unnecessary and submitted additional data in this regard. EPA has not yet completed its review of these data, but will take it into account in later reassessment of the tolerances.)

E. Aggregate Risk Assessment

1. *Acute risk assessment.* The acute aggregate risk assessment takes into account exposure from food only. As indicated above, although EPA has not identified a water exposure figure based upon available environmental data, avermectin is not expected to be mobile in soil or water environments and poses relatively little threat to drinking water. The combined exposure to avermectin from food and residential uses is considered in the short-and intermediate-term risk assessment. An acute dietary MOE of greater than 300 would not be of concern to EPA. As indicated earlier, the MOE for females 13+ years was calculated to be 769. Under any bounding assumption EPA is considering for exposure from drinking water, this MOE would not be significantly reduced. Therefore, EPA has no acute aggregate concern due to exposure to avermectin through food and drinking water.

2. *Short-and intermediate risk assessment.* The short-and intermediate term aggregate risk takes into account exposure from chronic dietary food and indoor/outdoor residential exposure. Based on the nature of the outdoor residential uses (spot treatment), residential outdoor exposure for avermectin is insignificant. The residential indoor exposure was based on the California EPA review of an indoor residential exposure study. A total indoor MOE of 800 was calculated for short-and intermediate-term risk, taking into account and residential exposures. For the most highly exposed population subgroup (non-nursing infants less than 1 year old), an aggregate short-and intermediate-term MOE of 733 was calculated. Under any bounding assumption EPA is considering for exposure from drinking water, this MOE would not be significantly reduced. As indicated earlier, an MOE of greater than 300 would not be of concern to EPA, therefore current uses of avermectin is below the level of concern.

For the purposes of these time-limited tolerances, EPA has concluded that the California EPA assessment is adequate to estimate residential exposure from registered non-dietary uses of avermectin but prior to establishment of

permanent tolerances, a full review of the indoor residential risk assessment will be required.

3. *Chronic risk assessment.* The aggregated chronic risk is equal to the sum of the chronic risk from food, drinking water, and indoor and outdoor residential exposures. For avermectin, the residential uses are not of the type that would be expected to produce a long-term exposure. Therefore, residential exposure was aggregated with dietary exposure only in the short- and intermediate-term risk assessment. The aggregated chronic risk (food only) is 5% of the RfD for the U.S. population and 11% of the RfD for the population subgroup non-nursing infants less than 1 year old. Under any bounding assumptions EPA is considering for exposure from drinking water, exposure to avermectin would not exceed the RfD. EPA therefore concludes that there is reasonable certainty that no harm will result to consumers, including infants and children from aggregate exposure to avermectin residues.

F. Other Considerations

1. *Endocrine effects.* No evidence of effects on the endocrine systems of mammals were reported in the toxicology studies described above. There is no evidence at this time that avermectin causes endocrine effects.

2. *Metabolism and nature of residues.* The metabolism of avermectin and nature of residues in plants and animals is adequately understood for the purpose of these tolerances. The residues of concern are avermectin B1 and its delta-8,9-isomer.

3. *International tolerances.* There are no Codex maximum residue levels established for residues of avermectin on citrus, cotton, potato and hop commodities.

4. *Analytical method.* There is a practical analytical method for detecting and measuring the levels of avermectin and its delta-8,9-isomer in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (high performance liquid chromatography with fluorescence detection, with crop specific clean up methods). EPA has provided information on this method to the Food and Drug Administration. The method is available to anyone who is interested in pesticide residue enforcement from: Calvin Furlow, Public Response and Program Resources Branch, 401 M St. SW., Washington, DC 20460. Office location and telephone number: CM #2, Rm 1128, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5805.

III. Summary of Findings

Tolerances are time-limited to allow for development and review of residue field trials on cotton gin byproducts and to complete full review of the Monte Carlo acute dietary and indoor residential risk assessments. These tolerances will expire and be revoked without any further action by EPA (other than publishing a notice in the **Federal Register** so that the CFR can be corrected) on September 1, 1999

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

EPA concludes that the proposed time-limited tolerances will be safe. Therefore it is proposed that the tolerances be established as set forth below.

IV. 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 section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period of filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulation will require some modification to reflect the new law. However, until these modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may by May 23, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the 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 a 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 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 with prior notice.

V. Public Docket

A record has been established for this rulemaking under docket number [OPP–300465/PP 7F3500; 8F3592; 5F4508; 4E4419 and FAP 8H5660]. A public version of this record, which does not include any information claimed as CBI, is available for inspection form 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of the 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. The official rulemaking record is the paper record maintained at the address in ''ADDRESSEE'' at the beginning of this document.

VI. 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 tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemaking as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950) (May 4, 1981).

Pursuant to 5 U.S.C. 801(a)(1)(A) of 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).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: March 14, 1997.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

1. In part 180:

PART 180—[AMENDED]

a. The authority citation of part 180 continues to read:

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

b. In § 180.449 by revising paragraph (a) to read as follows:

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

(a) Tolerances are established for the combined residues of the insecticide avermectin (a mixture of avermectins containing greater that or equal to 80% avermectin B_{1a}(5-*O*-dimethyl avermectin A_{1a}) and less than or equal to 20% avermectin b(5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})) and its delta-8, 9-isomer in or on the following commodities:

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	0.015 ppm	September 1, 1999
Cattle, mbyp	0.02 ppm	September 1, 1999
Cattle, meat	0.02 ppm	September 1, 1999
Citrus, dried pulp	0.10 ppm	September 1, 1999
Citrus, oil	0.10 ppm	September 1, 1999
Citrus, whole fruit	0.02 ppm	September 1, 1999
Cottonseed	0.005 ppm	September 1, 1999
Hops, dried	0.2 ppm	September 1, 1999
Milk	0.005 ppm	September 1, 1999
Potatoes	0.005 ppm	September 1, 1999

* * * * *

2. In part 185:

PART 185—[AMENDED]

a. The authority citation for part 185 is revised to read as follows:

Authority: 21 U.S.C. 348.

§ 185.300 [Removed]

b. By removing § 185.300 in its entirety.

3. In part 186:

PART 186—[AMENDED]

a. The authority citation for part 186 is revised to read as follows:

Authority: 21 U.S.C. 348.

§ 186.300 [Removed]

b. By removing § 186.300 in its entirety.

[FR 97–7352 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961217360–7052–02; I.D. 112596C]

RIN 0648–AI62

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limits for Tanner Crab

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

ACTION: Final rule and technical amendment.

SUMMARY: NMFS implements Amendment 41 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) as recommended by the North Pacific Fishery Management Council (Council). The implementing regulations of Amendment 41 adjust the prohibited species catch (PSC) limits for Tanner crab (*Chionoecetes bairdi*) in Zones 1 and 2 of the Bering Sea and change the 1997 *C. bairdi* PSC allowances for the Bering Sea and Aleutian Islands management area (BSAI) trawl fisheries to reflect the adjustment to the *C. bairdi* PSC limits. These measures are necessary to protect the *C. bairdi* stock in the Bering Sea, which has declined to a level that presents a serious conservation problem. They are intended to accomplish the objectives of the FMP with respect to the management of the BSAI groundfish fishery.

EFFECTIVE DATE: April 23, 1997.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*; Magnuson-Stevens Act) and is implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Recruitment and exploitable biomass of Bering Sea *C. bairdi* stocks are at relatively low levels based on recent NMFS bottom trawl survey data. The 1995 *C. bairdi* season produced only 4.5 million lb (2,017 mt) for the 196 vessels participating. This amount is the lowest catch since the fishery reopened in 1988. Survey data from 1996 indicate that the stock decline will continue.

The groundfish fisheries incidentally catch crab. An objective of the FMP is to minimize the impact of groundfish fisheries on crab and other prohibited species, while providing for rational and optimal use of the region's fishery resources. All gear types used to catch groundfish have some potential to catch crab incidentally, but the large majority of crab bycatch occurs in trawl fisheries.

In June 1996, the Council formed an industry work group to review proposed PSC limits for *C. bairdi.* This work group consisted of three crab fishery representatives, three trawl fishery representatives, and one shoreside processing representative. The group met August 29–30, 1996, and came to a consensus on PSC limits for *C. bairdi* crab. The agreement negotiated by affected industry groups resulted in a proposal for an annual specification of PSC limits for *C. bairdi* based on the total abundance of *C. bairdi* as indicated by the most recent NMFS bottom trawl survey.

At its September 1996 meeting, the Council endorsed the industry work group agreement and recommended that NMFS proceed to implement a revision to the *C. bairdi* PSC limits under Amendment 41 to the FMP.

NMFS published a proposed rule in the **Federal Register** on January 2, 1997 (62 FR 85). Public comment on the FMP amendment was invited through January 31, 1997, and on the proposed regulations through February 18, 1997. No comments were received.

Changes From the Proposed Rule

The final rule reflects two minor changes from the proposed rule: minor adjustments to the *C. bairdi* PSC allowances for the BSAI trawl fisheries and a technical amendment described below.

The proposed rule reflected *C. bairdi* PSC allowances for the BSAI trawl fisheries that were recommended by the Council at its September 1996 meeting as part of the annual BSAI groundfish specification process. The Council recommended minor adjustments to the *C. bairdi* PSC allowances for the BSAI trawl fisheries at its December 1996 meeting. The adjustments are to the fishery apportionments, not to the total PSC limit. Table 7 of the final 1997 BSAI groundfish harvest specifications (62 FR 7168, February 18, 1997) is amended to reflect the adjustments to the *C. bairdi* PSC apportionments as in the proposed rule (62 FR 85, January 2, 1997) and the minor adjustments to these fishery apportionments as recommended by the Council at its December 1996 meeting.

Technical Amendment

A proposed regulation at § 679.21(e)(1)(ii) referred to the annual notification of PSC limits at § 679.21(e)(6). Inadvertently, revisions to paragraph (e)(6) of that section to indicate that NMFS is to provide notification to the public of the annual *C. bairdi* PSC limit were not proposed. The final rule revises the regulation at § 679.21(e)(6) to provide for public notification of the annual *C. bairdi* PSC limit.

Based on the abundance of *C. bairdi* estimated from the 1996 NMFS trawl survey (185 million crabs), the PSC limit for *C. bairdi* for 1997 is 750,000 crabs in Zone 1 and 2,100,000 crabs in Zone 2.

2. The *C. bairdi* PSC allowances for the BSAI trawl fisheries are adjusted to be as follows:

TABLE 7.—FINAL 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Trawl fisheries	Zone 1	Zone 2
C. bairdi Tanner crab, number of animals:		
Yellowfin sole	276,316	1,071,000
Rocksole/flathead sole/otherflat	296,052	357,000
Turbot/arrowtooth/sablefish	0	0
Rockfish	0	7,000
Pacific cod	133,224	195,000
Pollock/Atka mackerel/other	44,408	470,000
Total	750,000	2,100,000

Classification

The Regional Administrator determined that Amendment 41 is necessary for the conservation and management of the BSAI fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Council prepared an FRFA as part of the RIR, which describes the impact this rule would have on small entities. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this action. Most catcher vessels harvesting groundfish off Alaska are considered small entities and would be affected by the reduced *C. bairdi* PSC limits. The 132 trawl catcher vessels that harvested BSAI groundfish in 1993 are considered small entities. Reduced PSC limits could reduce annual gross revenues by more than 5 percent. NMFS has taken steps to minimize economic impacts on small entities by structuring the annual specification process of the PSC *C. bairdi* limit to be responsive to the total *C. bairdi* abundance as estimated annually. Alternative 1, the status quo, was rejected as more burdensome on small entities because status quo bycatch limits for *C. bairdi* established for Bering Sea fisheries may be too high given current status of crab stocks, and bycatch may impact crab rebuilding and future crab harvests by pot fisheries. Alternative 2 was rejected because the major assumption regarding assessment of impacts for Alternative 2 is that crab stock abundance will remain relatively stable, or that the trawl fishery will adapt to changes in crab abundance. If crab stocks continue to decline, bycatch will account for a higher proportion of the total annual mortality.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: March 17, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.21, paragraph (e)(1)(iii) is removed, paragraphs (e)(1)(iv) through (vii) are redesignated as paragraphs (e)(1)(iii) through (vi), respectively, and paragraphs (e)(1)(ii) and (e)(6) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * * (1) * * *

(ii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(ii)(A) and (B) of this section.

(A) *Zone 1.* When the total abundance of *C. bairdi* crabs is:

(*1*) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance.

(*2*) Over 150 million to 270 million animals, the PSC limit will be 750,000 animals.

(*3*) Over 270 million to 400 million animals, the PSC limit will be 850,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 1,000,000 animals.

(B) *Zone 2.* When the total abundance of *C. bairdi crabs* is:

(*1*) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance.

(*2*) Over 175 million to 290 million animals, the PSC limit will be 2,100,000 animals.

(*3*) Over 290 million to 400 million animals, the PSC limit will be 2,550,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 3,000,000 animals.

* * * * *

(6) *Notification*—(i) *General.* NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the **Federal Register**.

* * * * *

[FR Doc. 97–7367 Filed 3–21–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 56
Monday, March 24, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–600]

RIN 1904–AA71

Energy Conservation Program for Consumer Products: Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; change of date for public hearing.

SUMMARY: On February 20, 1997 (62 FR 7834), the Department of Energy (DOE or Department) proposed regulations to codify water conservation standards and test procedures for plumbing products established in the Energy Policy and Conservation Act, as amended, incorporate by reference the revised American Society of Mechanical Engineers/American National Standards Institute water conservation standard and test procedures for faucets and test procedures for showerheads, and provide for certification of compliance with plumbing product standards. In the same notice of proposed rulemaking, the Department also proposed to clarify the certification requirements applicable to all residential appliances.

The public hearing to provide comments and/or additional information on issues being considered by DOE, in its development of the Final Rule, was originally scheduled for March 31, 1997. To accommodate travel schedules and ensure the public has ample opportunity to attend, today's notice changes the date of the public hearing from March 31 to April 1, 1997. The location and time of the hearing remain unchanged (U.S. Department of Energy, Forrestal Building, Room No. 1E–245, 9:00 a.m.–5:00 p.m.).

DATES: The public hearing will be held on April 1, 1997 in Washington, DC. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., March 21, 1997. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., March 21, 1997.

ADDRESSES: Written comments and requests to speak at the public hearing should be labeled Test Procedures and Certification Requirements for Plumbing Products; and Certification Requirements for Residential Appliances, Docket No. EE–RM/TP–97–600'' and submitted or hand-delivered to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–7574, Fax: (202) 586–4617.

FOR FURTHER INFORMATION CONTACT:

Mr. Bill Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Mail Stop EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–9145, Fax: (202) 586–4617, E-Mail: WILLIAM.HUI@HQ.DOE.GOV or;

Mr. Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103. Telephone: (202) 586–9507, Fax: (202) 586–4116, E-Mail: EUGENE.MARGOLIS@HQ.DOE.GOV.

Issued in Washington, DC, on March 17, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–7314 Filed 3–21–97; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 627

RIN 3502–AB09

Loan Policies and Operations; Title IV Conservators, Receivers, and Voluntary Liquidation

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) through the Farm Credit Administration Board (Board) proposes to amend the current regulation in part 614 that governs the funding relationship between a Farm Credit Bank (FCB) or agricultural credit bank (ACB) and a direct lender association or other financing institution (OFI). This proposal would repeal the existing requirement for FCA prior approval of the General Financing Agreement (GFA) between an FCB or ACB and a direct lender association or OFI and eliminate a specific regulatory direct loan limitation. The proposed rule would also amend part 627 to authorize the voluntary liquidation of Farm Credit institutions by means of an FCA-approved liquidation plan.

DATES: Comments should be received on or before May 23, 1997.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 or by facsimile at (703) 734–5784. Comments may also be submitted via electronic mail to ''reg-comm@fca.gov.'' Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

James M. Morris, Senior Attorney, Legal Counsel Division, Office of General Counsel, Farm Credit Administration,

McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The FCA proposes to amend the regulation in subpart C of part 614 that governs the funding relationship between FCBs and ACBs that operate under title I of the Farm Credit Act of 1971, as amended, (Act) and direct lender associations. The amendment of this regulation is a part of FCA's continuing effort to streamline its regulations. The GFA establishes the lending relationship between an FCB or ACB and a direct lender association or OFI. The GFAs were initially developed in the late 1960s and early 1970s when Federal intermediate credit banks (FICBs) and production credit associations (PCAs) converted their lending relationship from individual loan discounting to the direct loan method for funding short- and intermediate-term credit.

The GFAs developed in the 1970s gave FICBs extensive authority over most aspects of PCA operations. The Farm Credit Amendments Act of 1985 [1] changed the FCA's role to that of an arms-length regulator and provisions of the Agricultural Credit Act of 1987 [2] changed the structure of Farm Credit banks and direct lender associations and modified their relationship. The FCA believes that regulatory modifications are appropriate because direct lender associations now are more directly responsible for their own activities.

II. Repealing the Prior Approval Requirement

The proposed rule would repeal the requirement in existing § 614.4130(b) for FCA prior approval of all GFAs between FCBs or ACBs and direct lender associations or OFIs. During the past decade, the Farm Credit System (FCS) has been recapitalized and its risk management and loan underwriting practices have improved. Additionally, new methods of peer discipline such as the Market Access Agreement and Contractual Interbank Performance Agreement have been put into place. In contrast to the standardized GFA format of the past, the GFAs that govern the lending relationships between FCBs or ACBs and direct lender associations or OFIs are now more similar to commercial lending agreements. In light of the changes that have occurred, FCA prior approval is no longer deemed necessary to control risk. The FCA also believes and imposing minimum regulatory requirements is more efficient and allows greater flexibility to address specific issues.

Although the proposed rule outlines minimum regulatory criteria for GFAs, the FCA will continue to rely on its ongoing examination process and enforcement powers to ensure that GFAs properly preserve the interests of the parties and do not pose safety and soundness risks. In order to facilitate the monitoring process, the amended regulation would require all FCBs and ACBs to deliver a copy of the executed GFA, and all related documentation, such as a promissory note or security agreement, and all amendments of any of these documents, to the Chief Examiner in the Office of Examination, or to such other FCA office as the Chief Examiner designates.

III. Basic Objectives for the Proposed Regulation

The proposed regulation provides FCBs, ACBs, direct lender associations, and OFIs broad flexibility to address issues that pertain to their funding relationship. Issues such as loan pricing, dispute resolution, performance standards, and other terms of the GFA and related documentation are ultimately business decisions that the parties should address when they negotiate the terms and conditions of their GFA. It is the FCA's intent to allow the funding or discount relationship to be governed by objective performance standards negotiated between the parties. Accordingly, this proposed regulation does not prescribe specific regulatory guidelines to address these issues, but instead encourages the parties to incorporate objective standards in the GFAs that are measurable and clear in their meaning. The proposed regulation requires FCBs and ACBs to adopt policies that govern the extension of direct loans to, and the discounting of loans for, direct lender associations and OFIs. These policies would require an evaluation of the direct lender association's creditworthiness on the basis of credit factors or lending policies and loan underwriting standards [3] set forth in part 614, subpart D, prior to any credit extension from the FCB or ACB. The proposal would require FCBs and ACBs to adhere to sound credit practices to ensure that each direct lender association and OFI repays the bank. This will help to ensure that the FCS will continue to have access to favorable interest rates in the capital markets, that the Farm Credit Insurance Fund will remain solvent, and that joint and several liability will not be triggered. The FCBs and ACBs must apply these performance standards equitably to direct lender associations and must not use them to place limitations in areas that do not affect the funding relationship. While the proposed regulation addresses requirements concerning GFAs used by OFIs, other issues concerning OFIs will be addressed in a separate rulemaking.

Preserving flexibility in the regulation enables the checks and balances that the Act creates between the FCBs or ACBs and direct lender associations to function. Although direct lender associations may be viewed as being at a competitive disadvantage in negotiations with an FCB or ACB because they have virtually no other source of funds,[4] direct lender associations are stockholders in the FCBs or ACBs and elect the bank's board of directors. The FCA invites comments on what specific regulations, if any, are needed to protect the interests of FCS institutions when the terms and conditions of the GFA are negotiated.

IV. GFA Content

Under the proposed regulation, the GFA would focus on the funding and discount relationships between the FCBs or ACBs and the direct lender associations. The proposed regulation would prohibit advancing funds to, or discounting loans for, any direct lender association or OFI except pursuant to a GFA. The proposed regulation would also establish a maximum term limit of 35 years for all GFAs. While the proposed regulation could permit unsecured lending from an FCB or ACB to a direct lender association, the FCA is proposing a maximum term of 1 year for any GFA that provides for unsecured lending. The FCA specifically seeks comments concerning the circumstances under which unsecured lending may be appropriate and what additional limitations or restrictions, if any, should be placed on such lending activity. The proposed regulation requires sound credit practices to preserve investor confidence in Systemwide obligations. At a minimum, it is imperative that FCBs and ACBs consider the risks involved with any unsecured lending when developing their lending policies and loan underwriting standards.

[1] Pub. L. No. 99–205, 99 Stat. 1678, (Dec. 23, 1985).

[2] Pub. L. No. 100–233, 101 Stat. 1568, (January 6, 1988).

[3] FCA published a proposed revision to its loan underwriting standards at 61 FR 16403 (April 15, 1996).

[4] Approval of the Farm Credit Bank or agricultural credit bank is required for a direct lender association to borrow from any other source.

Although an FCB or ACB has a legitimate need to include provisions in the GFA bearing on its ability to protect itself as a creditor, it must also be recognized that a direct lender association has the right to exercise its statutory authorities. To prevent an FCB or ACB from restricting a direct lender association from exercising its statutory authorities under the Act, FCA regulations, other Federal laws, or State laws, the proposed regulation would limit the contents of the GFA to topics that are reasonably related to the debtor/creditor relationship. In order to be reasonably related to the debtor/creditor relationship, the provisions of the GFA must be designed to protect the FCB's or ACB's rights as a creditor.

V. Maximum Credit Limit

The FCA proposes to eliminate the direct loan limitation formula outlined in existing § 614.4130(a). The existing direct loan formula is used to determine the maximum amount of funding that an FCB or ACB can extend to a direct lender association based on certain performance criteria. This regulation enabled the FCA to control the quality of an FCB's or ACB's bond collateral and to supervise the bank's administration of its direct loan to an association.

The proposed regulation would replace the direct loan formula with minimum criteria that the FCA deems necessary to control risks. These minimum criteria would require the FCB or ACB to set a maximum credit limit consistent with the creditworthiness of the institution, as determined by the FCB's or ACB's analysis of capital, asset quality, management, earnings, and liquidity, or other similar factors. To ensure the availability of all the FCBs' and ACBs' bond collateral, the proposed regulation would limit the amount that a direct lender association could borrow to the value of the direct lender association's assets that are free from any lien or other pledge as described in section 4.3(c) of the Act. This more flexible approach will allow an FCB or ACB to establish a direct lender association's credit limit in accordance with the bank's lending policies and loan underwriting standards.

VI. Default Remedies

Pursuant to section 4.12 of the Act, the FCA has the sole authority to approve a voluntary or involuntary liquidation of a Farm Credit institution. In order to ensure that this authority is preserved, the proposed regulation states that an FCB or ACB must obtain the prior written consent of the FCA before it takes any action that leads to or could lead to the liquidation of a direct lender association. In certain circumstances, accelerating repayment of the debt, canceling existing loan commitments, or foreclosing upon collateral might lead to the liquidation of the direct lender association. In that event, the FCA's prior written consent would be required. Although this provision may result in delays before a bank can exercise its ultimate rights as a creditor, the FCA believes it is necessary to ensure that a receiver can be appointed to protect the rights of all parties.

The proposed regulation would require that an FCB or ACB provide written notice to the FCA and the Farm Credit System Insurance Corporation (FCSIC) at the same time that it provides notice to a direct lender association that the direct lender association is in material default of any covenant, term, or condition of the GFA, promissory note, security agreement, or other related documents. This notification requirement would include, but is not limited to, notice from the FCB or ACB about the imposition of any monetary penalties on the direct lender association, including penalty interest, additional fees, or other service charges imposed based on a default by the direct lender association. The proposed regulation would also require the direct lender association to notify the FCA and FCSIC by facsimile, express mail, or certified mail no later than the following business day after receiving a notice that a material default has occurred in any covenant, term, or condition of the GFA, loan agreement, promissory note, security agreement, or other related documents from an FCB, ACB, or non-Farm Credit institution. This separate notification provides a reporting mechanism for notices of default received from non-Farm Credit institution creditors, as well as a secondary method of notification for notices received from FCBs or ACBs.

VII. Voluntary Liquidation

Section 4.12(a) of the Act prohibits the voluntary liquidation of any Farm Credit institution without the FCA's consent and permits voluntary liquidation with such consent only in accordance with FCA regulations. Section 4.12(b) of the Act grants the FCA ''exclusive power and jurisdiction'' to place a Farm Credit institution in conservatorship or receivership. Unlike section 4.12(b) of the Act, which governs involuntary liquidations, section 4.12(a) of the Act does not require the appointment of a receiver for a voluntary liquidation. Therefore, the proposed regulation would allow any Farm Credit institution, as defined in § 627.2705(b), including service corporations chartered under title IV of the Act, to voluntarily liquidate with the consent of, and in accordance with a plan approved by the FCA.

Upon adoption of a resolution to liquidate, the proposed regulation would require the Farm Credit institution to submit the resolution to liquidate and proposed voluntary liquidation plan to the FCA. The proposed voluntary liquidation plan must receive preliminary approval from the FCA. If the FCA gives preliminary approval of the liquidation plan, the board of directors of the Farm Credit institution would submit the resolution to liquidate to the stockholders for approval. The resolution to liquidate and the liquidation plan would require the approval of the stockholders by at least a majority of the voting stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting. Following an affirmative stockholder vote, the FCA would consider final approval of the liquidation plan. Any subsequent amendments, modifications, revisions, or adjustments to the liquidation plan would also require the approval of the FCA.

The FCA also proposes conforming changes to the regulation in part 627 concerning the voluntary liquidation of a Farm Credit institution by means of an FCA-approved liquidation plan. The FCA also reserves the right to terminate or modify the liquidation plan at any time, and if necessary, may appoint a receiver pursuant section 4.12 of the Act at any time.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 627

Agriculture, Banks, banking, Claims, Rural areas.

For the reasons stated in the preamble, parts 614 and 627 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4014a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13,

2.15, 3.0. 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2219b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart C—Bank/Association Lending Relationship

2. Section 614.4120 is revised to read as follows:

§ 614.4120 Policies governing extensions of credit to direct lender associations and other financing institutions.

The board of directors of each Farm Credit Bank and agricultural credit bank shall adopt policies and procedures governing the making of direct loans to, and the discounting of loans for, direct lender associations and other financing institutions. The policies and procedures shall prescribe lending policies and loan underwriting standards that are consistent with sound financial and credit practices. The policies shall require an evaluation of the creditworthiness of the direct lender associations on the basis of credit factors or lending policies and loan underwriting standards set forth in part 614, subpart D, and may permit lending to such institutions on an unsecured basis only if the overall condition of the institutions warrant. The term of a general financing agreement shall not exceed 35 years. The term of any general financing agreement that provides for unsecured lending to direct lender associations shall not exceed 1 year.

3. Section 614.4125 is added as follows:

§ 614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, any direct lender association except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 105 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to such other Farm Credit Administration office as the Chief Examiner designates.

(c) The general financing agreement shall address only those matters that are reasonably related to the debtor/creditor relationship between the Farm Credit Bank or agricultural credit bank and the direct lender association.

(d) The total credit extended to a direct lender association, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the direct lender association. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank. In no case shall the direct lender association's maximum credit limit exceed the value of the direct lender association's assets available to the Farm Credit Bank or agricultural credit bank to support outstanding obligations under section 4.3(c) of the Farm Credit Act of 1971, as amended.

(e) A Farm Credit Bank or agricultural credit bank that provides notice to a direct lender association that it is in material default of any covenant, term, or condition of the general financing agreement, promissory note, security agreement, or other related documents simultaneously shall provide written notification to the Farm Credit Administration and the Farm Credit System Insurance Corporation.

(f) A direct lender association shall provide written notification to the Farm Credit Administration and the Farm Credit System Insurance Corporation immediately upon receipt of a notice that it is in material default under any general financing agreement, loan agreement, promissory note, security agreement, or other related documents with a Farm Credit Bank, agricultural credit bank or non-Farm Credit institution.

(g) A Farm Credit Bank or agricultural credit bank shall obtain prior written consent of the Farm Credit Administration before it takes any action that leads to or could lead to the liquidation of a direct lender association.

(h) No direct lender association shall obtain a loan from any party unless the parties agree to the requirements of this paragraph. No Farm Credit Bank, agricultural credit bank, or other party shall petition any Federal or State court to appoint a conservator, receiver, liquidation agent, or other administrator to manage the affairs of or liquidate a direct lender association.

4. Section 614.4130 is revised to read as follows:

§ 614.4130 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and other financing institutions.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, an other financing institution, as defined in § 614.4540(e), except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to such other Farm Credit Administration office as the Chief Examiner designates.

(c) The total credit extended to the other financing institution, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the other financing institution. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank. In no case shall the other financing institution's maximum credit limit exceed the value of the other financing institution's underlying assets available to the Farm Credit Bank or agricultural credit bank to support outstanding obligations under section 4.3(c) of the Farm Credit Act of 1971, as amended.

5. The heading for part 627 is revised to read as follows:

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

6. The authority citation for part 627 is revised to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7).

7. Section 627.2700 is revised to read as follows:

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships, receiverships, and voluntary liquidations.

Subpart B—Receivers and Receiverships

8. Section 627.2720 is amended by removing paragraph (a); redesignating paragraphs (b), (c), (d), (e), and (f) as new paragraphs (a), (b), (c), (d), and (e); and revising newly designated paragraph (b) to read as follows:

§ 627.2720 Appointment of receiver.

* * * * *

(b) The receiver appointed for a Farm Credit institution shall be the Insurance Corporation.

* * * * *

9. Section 627.2730 is amended by removing paragraph (b); redesignating paragraph (c) as new paragraph (b); and revising newly designated paragraph (b) to read as follows:

§ 627.2730 Preservation of equity.

* * * * *

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

* * * * *

10. Part 627 is amended by adding a new subpart D to read as follows:

Subpart D—Voluntary Liquidation

§ 627.2795 Voluntary liquidation.

(a) A Farm Credit institution may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution to liquidate, the Farm Credit institution shall submit the proposed voluntary liquidation plan to the Farm Credit Administration for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Farm Credit institution as part of a voluntary liquidation, the receivership shall be conducted pursuant to subpart B of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Farm Credit institution shall submit the resolution to liquidate and the liquidation plan to the stockholders for approval.

(c) The resolution to liquidate and the liquidation plan shall be approved by the stockholders if agreed to by at least a majority of the voting stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting.

(d) The Farm Credit Administration Board will consider final approval of the liquidation plan after an affirmative stockholder vote on the resolution to liquidate.

(e) Any subsequent amendments, modifications, revisions, or adjustments to the liquidation plan shall require Farm Credit Administration Board approval.

(f) The Farm Credit Administration Board, in its discretion, reserves the right to terminate or modify the liquidation plan at any time.

§ 627.2797 Preservation of equity.

(a) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate a Farm Credit institution, the capital stock, participation certificates, equity reserves, and allocated equities of the Farm Credit institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. Such activities could resume if the stockholders of the Farm Credit institution disapprove the resolution to liquidate or the Farm Credit Administration Board disapproves the liquidation plan. In the event the resolution to liquidate is approved by the stockholders of the Farm Credit institution and the liquidation plan is approved by the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Farm Credit institution, except that if the Farm Credit institution is placed in receivership, the provisions of § 627.2730(a) shall govern further disposition of the equities of the Farm Credit institution.

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

Dated: March 19, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–7355 Filed 3–21–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–024–1024; FRL–5800–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision concerning Missouri Rule 10 CSR 10–2.330, submitted by the Missouri Department of Natural Resources (MDNR). This revision would set a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.2 pounds per square inch (psi), and 8.2 pounds per square inch for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol, for gasoline distributed in Clay, Jackson, and Platte Counties as part of the state plan to maintain its clean air quality.

DATES: Comments must be received on or before April 23, 1997.

ADDRESSES: Comments may be mailed to Stan Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA, or the Act) requires states which have areas failing to meet the National Ambient Air Quality Standard (NAAQS) for ozone to develop SIPs with sufficient control measures to attain and maintain the standard. The EPA designated the Kansas City Metropolitan Area (KCMA) as an area failing to meet the NAAQS on March 3, 1978. The area designated as nonattainment included five counties: Platte, Clay, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas. In spite of a series of SIP revisions, the area continued to experience violations of the ozone NAAQS throughout the 1980s. Each time violations occurred beyond an attainment date, the EPA notified the Governor and called for a revision to the Missouri SIP. In response to the last of these SIP calls, MDNR submitted a SIP revision which demonstrated attainment of the ozone NAAQS by December 31, 1987. Although the area experienced a number of violations in 1988, no

violations were experienced during the subsequent three-year period.

In an effort to comply with the 1990 Amendments to the CAA, and to ensure continued attainment of the ozone NAAQS with an adequate margin of safety, the state submitted an ozone maintenance SIP for the Missouri portion of the KCMA on October 23, 1991. Accompanying the maintenance SIP were several new rules to control volatile organic compound (VOC) emissions from certain categories, the state's request to redesignate the KCMA as an attainment area with respect to the ozone NAAQS, and a commitment to implement certain contingency measures should the area exceed certain emission levels or experience additional violations. The EPA approved the maintenance SIP and redesignated the KCMA to attainment on June 23, 1992.

During the three-year period following approval of the maintenance SIP, a number of exceedances of the ozone standard were recorded in the KCMA. As a result, the KCMA was once again in violation of the ozone NAAQS. The EPA notified the state of the violation on January 31, 1996, and requested that the contingency measures in the approved plan be implemented. Due to various problems associated with implementation of contingency measures in the approved contingency plan, the local community undertook an evaluation of substitute measures which could be implemented. After an extensive evaluation of available options, the Mid-America Regional Council (MARC), in conjunction with the Kansas City Air Quality Forum, recommended a package of measures to Kansas and Missouri. This recommendation contained a number of measures for implementation as contingency measures, including lower volatility gasoline. This notice and the accompanying technical support document (TSD) provide an analysis of the lower volatility gasoline portion of the package of substitute measures.

II. Regulatory Objective

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOCs; RVP is directly proportional to the rate of evaporation. Consequently, the lower the RVP, the lower the rate of evaporation. Lowering the RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOCs. VOC is an important component in the production of ground level ozone in the hot summer months. Reduction of RVP will help the state's effort to attain and maintain compliance with the NAAQS for ozone.

III. State Submittal

On January 29, 1997, MDNR submitted to EPA Region VII a request for authorization to regulate fuel volatility. This plan was submitted as part of a host of contingency measures necessary for the KCMA to maintain clean air quality. Included in the submittal was a letter from Roger D. Randolph, Director, MDNR, to William A. Spratlin, EPA Region VII Director, Air, RCRA, and Toxics Division, requesting authorization to implement a lower RVP requirement in the Kansas City area; Emergency Rule 10 CSR 10–2.330, Control of Gasoline Reid Vapor Pressure; Draft Permanent rule 10 CSR 10–2.330; a request for an exemption under Section 211(c)(4)(C) of the Clean Air Act; and a letter requesting the EPA to parellel process the rule to provide adequate time for gasoline facilities to prepare for the change in fuel volatility. The state will hold a public hearing on April 24, 1997.

The EPA is parallel processing this SIP revision concurrently with the state's proposal and adoption procedures for amending its SIP. Parallel processing is being done pursuant to the December 19, 1996, request from the state.

This revision is being proposed under a procedure called parallel processing, whereby the EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, the EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, the EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by the EPA will occur only after the SIP revision has been adopted by Missouri and submitted formally to the EPA for incorporation into the SIP.

IV. Analysis of the SIP

A. Necessity Finding

Under sections 211(c) and 211(h) of the CAA, the EPA has promulgated nationally applicable Federal standards for RVP levels in motor vehicle gasoline. Because a Federal control promulgated under section 211(c)(1) applies to the fuel characteristic RVP, nonidentical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the Act prohibits state regulation respecting a fuel characteristic or component for which the EPA has adopted a control or prohibition, unless the state control is identical to the Federal control. Under section 211(c)(4)(C), the EPA may approve a nonidentical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the national primary or secondary ambient air quality standard that the plan implements. The EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. While the Missouri low RVP requirement is preempted by the Federal RVP requirements, the state can implement the low RVP requirement if the EPA finds it necessary and approves it as a revision to the SIP.

In its submittal, Missouri showed that additional VOC reductions are needed to address Kansas City's recent history of nonattainment problems and to ensure continued attainment of the ozone NAAQS in the KCMA. While the area is designated as attainment for the ozone NAAQS, the KCMA is currently in danger of violating the standard due to exceedances occurring in the 1995–1996 period. Missouri estimates that the area needs to achieve approximately 8.5 tons per day of VOC reductions to continue to achieve attainment of the ozone NAAQS. Because emission trends continue to increase, the state believes it is important that control measures producing a significant portion of the needed reductions be implemented in time to reduce emissions beginning in the 1997 ozone season. Otherwise, there is a significant risk of exceedances and violations in 1997, and this risk will increase over time. The EPA agrees that an important criteria in evaluating the reasonableness of each control measure is whether it will achieve significant emission reductions in the near term, beginning in the 1997 and 1998 ozone seasons.

Missouri evaluated a broad range of available control measures to determine whether there are sufficient reasonable and practicable measures available to produce the needed emissions reductions without requiring low RVP gasoline. In addition to assessing the quantity of emission reductions attributable to each control measure, the state also considered the time needed for implementation and cost-effectiveness of each measure in evaluating the reasonableness and practicability of the other control measures in comparison to low RVP gasoline requirements. The cost-effectiveness ratio is based on the cost expected to be incurred from 1997

through 2006, resulting from implementing the control measure, divided by the 10-year sum of the daily VOC reductions. Missouri found that a 7.2 psi low RVP requirement could be implemented in time for the 1997 ozone season, would produce an estimated 4.1 tons per day of VOC emissions reductions, and has an estimated cost-effectiveness ratio of 1.1. The state also evaluated the following other measures: Stage II vapor recovery, reformulated gasoline, vehicle I/M programs, clean fueled fleets (CFF) program, light rail transit, free transit, and parking surcharge. Based on the state's evaluation, the EPA finds that there are not sufficient other reasonable and practicable measures available to produce the quantity of emissions reductions needed to continue to achieve the NAAQS, and thus a low RVP requirement is necessary.

Missouri found that free transit on red sky-cast days can be implemented in time for the 1997 ozone season and has a very favorable cost-effectiveness ratio, but would generate only 0.3 tons per day reductions, which is a very small fraction of the goal of 8.5 tons per day total reductions. Free transit throughout the ozone season could be implemented on the same time frame, is less cost-effective, and would generate an additional 0.3 tons per day reductions. A parking surcharge could also be implemented promptly, but has a very high cost-effectiveness ratio and would add only 0.6 tons per day reductions. Thus, even if the state were to implement all of these measures they would not produce a significant quantity of emissions reductions in the next few ozone seasons, and hence would not be sufficient to ensure that the state will continue to achieve the ozone NAAQS.

While a number of other measures would achieve substantially greater reductions than free transit and a parking surcharge, the state found that all of these measures would take considerably longer to implement than low RVP, and none would produce emission reductions beginning in the 1997 and 1998 ozone seasons. One option the state considered is Stage II vapor recovery, which would reduce emissions an estimated 6.9 tons per day. However, Stage II would take approximately 18 months to implement, which means it would not reduce emissions before the 1999 ozone season. Moreover, installation of the Stage II equipment would require additional underground piping as well as new hose and nozzle sets at each affected station. Stage II would require substantial compliance efforts by a larger number of entities than would a low RVP requirement, and it would mainly affect smaller entities, which may have more difficulty absorbing compliance costs.

Another potential option is either a centralized or decentralized I/M program, with emissions reductions estimated ranging between 2.4 tons per day (basic decentralized I/M) and 25 tons per day (the EPA recommended centralized enhanced I/M), depending upon the type of I/M program selected. Missouri estimated that an I/M program would take four to six years to fully implement and three to four years before producing any emissions reductions benefits. An I/M program would require legislative as well as regulatory action in both Missouri and Kansas. Additionally, an I/M program would require development of substantial infrastructure (e.g., testing facilities) in the Kansas City area, and would require participation by every motor vehicle owner.

Missouri also considered light rail transit as a potential control measure, with estimated emissions reductions of 0.1 tons per day. The state considers light rail transit as an option only for the long term because it would require substantial lead time for implementation. Both Kansas and Missouri would have to pass authorizing legislation and secure funding sources. The states would also have to acquire land and undertake a large-scale construction project. Moreover, the state estimated that this option has a high cost-effectiveness ratio (compared to low RVP).

Finally, Missouri has been working to develop a CFF program by forming a workgroup to help developed an intrastructure for the program. Currently this program is in the planning stages and could take approximately two to three years to implement. Since this program is in the planning stages, exact emission reduction credits have not yet been identified. The expected reductions from the CFF program would produce only a portion of the identified goal of 8.5 tons per day, leaving a need for additional significant reductions to continue to achieve attainment.

Given that low RVP is the only option that would produce substantial emissions reductions in the near term, and given its comparative ease of implementation (as well as superior cost-effectiveness to some of these options), the EPA finds that each of the measures discussed above is unreasonable in comparison to a low RVP requirement. This finding does not imply that these measures would be unreasonable if additional reductions were needed beyond those that would be produced by low RVP, or that these measures would be unreasonable given a longer time frame to reduce emissions. In addition to the measures discussed above, the state also evaluated opt into Federal RFG as another option. The EPA finds that opt-in to RFG is impracticable at this time because the area is a designated attainment area, and under current the EPA regulations, only designated nonattainment areas can opt in to RFG.

B. Emission Impact of the Fuel Volatility Control

The fuel volatility control was identified by MARC as a control measure that could be implemented by the 1997 ozone season and will contribute significantly toward the established emission control. Reducing the fuel volatility limit from 7.8 to 7.2 psi will reduce VOC emissions by an expected 4.1 tons per day. Most of the emission reductions will occur from vehicle emissions (4.0 tons per day), and 0.1 ton per day will come from nonroad emissions, including storage and refueling emission.

C. Economic Impacts of the Fuel Volatility Control

The fuel volatility control will affect the cost of producing the gasoline. It is estimated that it will cost refineries an additional 1.5 cents per gallon to produce 7.2 psi RVP gasolines. Some cost will be passed on to the consumer; therefore, consumers in the KCMA may experience a gasoline price increase of about 1.5 cents per gasoline.

V. Analysis of the Rule

The Missouri rule specifies that no person shall dispense, supply, exchange in trade, offer for sale or supply, and sell or store gasoline used as a fuel for motor vehicles and that has an RVP greater than 7.2 psi, or 8.2 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol. This rule applies beginning June 1 through September 15 of each year.

In addition, facilities other than a gasoline dispensing facility shall keep and maintain at the facility, for two years following the date of the RVP test, records of the information regarding the RVP of gasoline that is to be used as a fuel for motor vehicles.

Gasoline used exclusively for fueling implements of agriculture and gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less are exempt from this regulation.

The sampling procedures and test methods are consistent with the EPA

recommendations as described in 40 CFR Part 80, Appendices D, E, and F.

Proposed Action

The EPA is proposing to approve this revision to the Missouri SIP concerning Missouri rule 10 CSR 10–2.330. At the state's request, the EPA is parallel processing this action.

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

VI. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

This Federal action authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

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

The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action authorizes and approves into the Kansas SIP requirements previously adopted by the state, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: March 14, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–7347 Filed 3–21–97; 8:45 am]

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40 CFR Part 52

[KS 019–1019; FRL–5800–7]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision concerning Kansas Air Regulation (K.A.R.) 28–19–79, Fuel Volatility, submitted by the Kansas Department of Health and Environment. This revision would set a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.2 pounds per square inch (psi), and 8.2 pounds per square inch for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol, for gasoline distributed in Wyandotte and Johnson Counties as part of the state plan to maintain its clean air quality.

DATES: Comments must be received on or before April 23, 1997.

ADDRESSES: Comments may be mailed to Stan Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA, or the Act) requires states which have areas failing to meet the National Ambient Air Quality Standard (NAAQS) for ozone to develop SIPs with sufficient control measures to attain and maintain the standard. The EPA designated the Kansas City Metropolitan Area (KCMA) as an area failing to meet the NAAQS on March 3, 1978. The area designated as nonattainment included five counties: Platte, Clay, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas. In spite of a series of SIP revisions, the area continued to experience violations of the ozone NAAQS throughout the 1980s. Each time violations occurred beyond an attainment date, the EPA notified the Governor and called for a revision to the Kansas SIP. In response to the last of these SIP calls, KDHE submitted a SIP revision which demonstrated attainment of the ozone NAAQS by December 31, 1987. Although the area experienced a number of violations in 1988, no violations were experienced during the subsequent three-year period.

In an effort to comply with the 1990 Amendments to the CAA, and to ensure continued attainment of the ozone NAAQS with an adequate margin of safety, the state submitted an ozone maintenance SIP for the Kansas portion of the KCMA on October 23, 1991. Accompanying the maintenance SIP were several new rules to control volatile organic compound (VOC) emissions from certain categories, the state's request to redesignate the KCMA as an attainment area with respect to the ozone NAAQS, and a commitment to implement certain contingency measures should the area exceed certain emission levels or experience additional violations. The EPA approved the

maintenance SIP and redesignated the KCMA to attainment on June 23, 1992.

During the three-year period following approval of the maintenance SIP, a number of exceedances of the ozone standard were recorded in the KCMA. As a result, the KCMA was once again in violation of the ozone NAAQS. The EPA notified the state of the violation on January 31, 1996, and requested that the contingency measures in the approved plan be implemented. Due to various problems associated with implementation of contingency measures in the approved contingency plan, the local community undertook an evaluation of substitute measures which could be implemented. After an extensive evaluation of available options, the Mid-America Regional Council (MARC), in conjunction with the Kansas City Air Quality Forum, recommended a package of measures to Kansas and Missouri. This recommendation contained a number of measures for implementation as contingency measures, including lower volatility gasoline. This notice and the accompanying technical support document (TSD) provide an analysis of the lower volatility gasoline portion of the package of substitute measures.

II. Regulatory Objective

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOCs; RVP is directly proportional to the rate of evaporation. Consequently, the lower the RVP, the lower the rate of evaporation. Lowering the RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOCs. VOC is an important component in the production of ground level ozone in the hot summer months. Reduction of RVP will help the state's effort to attain and maintain compliance with the NAAQS for ozone.

III. State Submittal

On December 5, 1996, KDHE submitted to the EPA Region VII a SIP revision to establish new limits on fuel volatility. These control measures were submitted as part of several contingency measures necessary for the KCMA to maintain clean air quality. Included in the submittal was a letter from Secretary James J. O'Connell, KDHE, to Dennis Grams, EPA Region VII Administrator, requesting authorization to implement a lower RVP requirement in the Kansas City area; Kansas Regulation, K.A.R. 29–19–79; and a Regulatory Impact Statement including an Environmental Impact Statement and an Economic Impact Statement. In addition, on December 19, 1996, John C. Irwin, Director, Bureau of Air and Radiation, KDHE, also sent a letter requesting the EPA to parallel process the rule to provide adequate time for gasoline facilities to prepare for the change in fuel volatility. The state held a public hearing on January 23, 1997.

Pursuant to the December 19, 1996, request from the state, the EPA is parallel processing this SIP revision concurrently with the state's proposal and adoption procedures for amending its SIP.

In parallel processing, the EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the state substantially changes its proposed regulatory revision in areas other than those identified in this notice, the EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, the EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by the EPA will occur only after the SIP revision has been adopted by Kansas and submitted formally to the EPA for incorporation into the SIP.

IV. Analysis of the SIP

A. Necessity Finding

Under sections 211(c) and 211(h) of the CAA, the EPA has promulgated nationally applicable Federal standards for RVP levels in motor vehicle gasoline. Because a Federal control promulgated under section 211(c)(1) applies to the fuel characteristic RVP, nonidentical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the Act prohibits state regulation respecting a fuel characteristic or component for which the EPA has adopted a control or prohibition, unless the state control is identical to the Federal control. Under section 211(c)(4)(C), the EPA may approve a nonidentical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the national primary or secondary ambient air quality standard that the plan implements. The EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. While the Kansas low RVP requirement is preempted by the Federal RVP requirements, the state can implement the low RVP requirement if the EPA finds it necessary and approves it as a revision to the SIP.

In its submittal, Kansas showed that additional VOC reductions are needed to address Kansas City's recent history of nonattainment problems and to assure continued attainment of the ozone NAAQS in the KCMA. While the area is designated as attainment for the ozone NAAQS, the KCMA is currently in danger of violating the standard due to exceedances occurring in the 1995–1996 period. Kansas estimates that the area needs to achieve approximately 8.5 tons per day of VOC reductions to continue to achieve attainment of the ozone NAAQS. Because emission trends continue to increase, the state believes it is important that control measures producing a significant portion of the needed reductions be implemented in time to reduce emissions beginning in the 1997 ozone season. Otherwise, there is a significant risk of exceedances and violations in 1997, and this risk will increase over time. The EPA agrees that an important criteria in evaluating the reasonableness of each control measure is whether it will achieve significant emission reductions in the near term, beginning in the 1997 and 1998 ozone seasons.

Kansas evaluated a broad range of available control measures to determine whether there are sufficient reasonable and practicable measures available to produce the needed emissions reductions without requiring low RVP gasoline. In addition to assessing the quantity of emission reductions attributable to each control measure, the state also considered the time needed for implementation and cost-effectiveness of each measure in evaluating the reasonableness and practicability of the other control measures in comparison to low RVP gasoline requirements. The cost-effectiveness ratio is based on the cost expected to be incurred from 1997 through 2006, resulting from implementing the control measure, divided by the 10-year sum of the daily VOC reductions. Kansas found that a 7.2 psi low RVP requirement could be implemented in time for the 1997 ozone season, would produce an estimated 4.1 tons per day of VOC emissions reductions, and has an estimated cost-effectiveness ratio of 1.1. The state also evaluated the following other measures: Stage II vapor recovery, reformulated gasoline, vehicle I/M programs, clean fueled fleets (CFF) program, light rail transit, free transit, and parking surcharge. Based on the state's evaluation, the EPA finds that there are not sufficient other reasonable and practicable measures available to produce the quantity of emissions reductions needed to continue to

achieve the NAAQS, and thus a low RVP requirement is necessary.

Kansas found that free transit on red sky-cast days can be implemented in time for the 1997 ozone season and has a very favorable cost-effectiveness ratio, but would generate only 0.3 tons per day reductions, which is a very small fraction of the goal of 8.5 tons per day total reductions. Free transit throughout the ozone season could be implemented on the same time frame, is less cost-effective, and would generate an additional 0.3 tons per day reductions. A parking surcharge could also be implemented promptly, but has a very high cost-effectiveness ratio and would add only 0.6 tons per day reductions. Thus, even if the state were to implement all of these measures they would not produce a significant quantity of emissions reductions in the next few ozone seasons, and hence would not be sufficient to ensure that the state will continue to achieve the ozone NAAQS.

While a number of other measures would achieve substantially greater reductions than free transit and a parking surcharge, the state found that all of these measures would take considerably longer to implement than low RVP, and none would produce emission reductions beginning in the 1997 and 1998 ozone seasons. One option the state considered is Stage II vapor recovery, which would reduce emissions an estimated 6.9 tons per day. However, Stage II would take approximately 18 months to implement, which means it would not reduce emissions before the 1999 ozone season. Moreover, installation of the Stage II equipment would require additional underground piping as well as new hose and nozzle sets at each affected station. Stage II would require substantial compliance efforts by a larger number of entities than would a low RVP requirement, and it would mainly affect smaller entities, which may have more difficulty absorbing compliance costs.

Another potential option is either a centralized or decentralized I/M program, with emissions reductions estimated ranging between 2.4 tons per day (basic decentralized I/M) and 25 tons per day (the EPA recommended centralized enhanced I/M), depending upon the type of I/M program selected. Kansas estimated that an I/M program would take four to six years to fully implement and three to four years before producing any emissions reductions benefits. An I/M program would require legislative as well as regulatory action in both Missouri and Kansas. Additionally, an I/M program would require development of substantial infrastructure (e.g., testing facilities) in the Kansas City area, and would require participation by every motor vehicle owner.

Kansas also considered light rail transit as a potential control measure, with estimated emissions reductions of 0.1 tons per day. The state considers light rail transit as an option only for the long term because it would require substantial lead time for implementation. Both Kansas and Missouri would have to pass authorizing legislation and secure funding sources. The states would also have to acquire land and undertake a large-scale construction project. Moreover, the state estimated that this option has a high cost-effectiveness ratio (compared to low RVP).

Finally, Kansas has been working to develop a CFF program by forming a workgroup to help develop an intrastructure for the program. Currently this program is in the planning stages and could take approximately two to three years to implement. Since this program is in the planning stages, exact emission reduction credits have not yet been identified. The expected reductions from the CFF program would produce only a portion of the identified goal of 8.5 tons per day leaving a need for additional significant reductions to continue to achieve attainment.

Given that low RVP is the only option that would produce substantial emissions reductions in the near term, and given its comparative ease of implementation (as well as superior cost-effectiveness to some of these options), the EPA finds that each of the measures discussed above is unreasonable in comparison to a low RVP requirement. This finding does not imply that these measures would be unreasonable if additional reductions were needed beyond those that would be produced by low RVP, or that these measures would be unreasonable given a longer time frame to reduce emissions. In addition to the measures discussed above, the state also evaluated opt-in to Federal reformulated gasoline (RFG) as another option. The EPA finds that opt-in to RFG is impracticable at this time because the area is a designated attainment area and, under current EPA regulations, only designated nonattainment areas can opt in to RFG.

B. Emission Impact of the Fuel Volatility Control

The fuel volatility control was identified by MARC as a control measure that could be implemented by the 1997 ozone season and will contribute significantly toward the established emission control. Reducing the fuel volatility limit from 7.8 to 7.2 psi will reduce VOC emissions by an expected 4.1 tons per day. Most of the emission reductions will occur from vehicle emissions (4.0 tons per day), and 0.1 tons per day will come from nonroad emissions, including storage and refueling emission.

C. Economic Impacts of the Fuel Volatility Control

The fuel volatility control will affect the cost of producing the gasoline. It is estimated that it will cost refineries an additional 1.5 cents per gallon to produce 7.2 psi RVP gasolines. Some cost will be passed on to the consumer; therefore, consumers in the KCMA may experience a gasoline price increase of about 1.5 cents per gallon.

V. Analysis of the Rule

The Kansas rule specifies that no person shall dispense, supply, exchange in trade, offer for sale or supply, and sell or store gasoline used as a fuel for motor vehicles and that has an RVP greater than 7.2 psi, or 8.2 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol. This rule applies beginning June 1 through September 15 of each year.

In addition, facilities other than a gasoline dispensing facility shall keep and maintain at the facility, for two years following the date of the RVP test, records of the information regarding the RVP of gasoline that is to be used as a fuel for motor vehicles.

Gasoline used exclusively for fueling implements of agriculture and gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less are exempt from this regulation.

The sampling procedures and test methods are consistent with the EPA recommendations as described in 40 CFR part 80, appendices D, E, and F.

Proposed Action

The EPA is proposing to approve this revision to the Kansas SIP concerning K.A.R. 28–19–79. At the state's request, the EPA is parallel processing this action.

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

VI. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

This Federal action authorizes and approves into the Kansas SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

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

The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action authorizes and approves into the Kansas SIP requirements previously adopted by the state, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: March 14, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–7348 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–98; DA 97–557]

Petition of MCI for Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements

AGENCY: Federal Communications Commission.

ACTION: Petition for declaratory ruling; request for comments.

SUMMARY: The Commission has released a Public Notice which establishes a pleading cycle for comments on a petition for declaratory ruling filed by MCI requesting the Commission to issue a declaratory ruling that new entrants need not obtain separate license or right-to-use agreements before purchasing unbundled network elements, and that the Communications Act of 1934, as amended, requires an incumbent LEC to provide requesting telecommunications carriers the same rights to intellectual property that the incumbent LEC enjoys. The Commission wishes to build a complete record on this issue.

DATES: Comments are due on or before April 15, 1997, and reply comments are due on or before May 6, 1997.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kalpak Gude, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

SUPPLEMENTARY INFORMATION:

Synopsis of Public Notice

On March 11, 1997, MCI filed a petition for declaratory ruling requesting the Commission to issue a declaratory ruling that any requirement imposed by an incumbent local exchange carrier (LEC) or by a state or local government that a requesting telecommunications carrier obtain separate license or right-to-use agreements before the requesting carrier may purchase access to unbundled network elements violates sections 251 and 253 of the Communications Act of 1934, as amended (the Act). MCI also asks the Commission to issue a declaratory ruling that the Act's nondiscrimination requirement requires an incumbent LEC to provide requesting telecommunications carriers the same rights to intellectual property that the incumbent LEC enjoys.

We are assigning file number CCBPol 97–4 to this proceeding. This issue MCI raises was also raised in a Petition for Reconsideration of the *First Report and Order* in CC Docket No. 96–98 (61 FR 45476 (August 29, 1996)) that was filed by Local Exchange Carrier Coalition. Therefore, commenters must include both the docket number and the file number on all pleadings, and should file copies in both proceedings.

In order to build as complete a record as possible, we encourage parties to comment on the following questions: (1) Does providing access to unbundled network elements implicate the intellectual property rights of equipment vendors or other third parties? Why or why not? We urge parties to provide specific supporting information, including descriptions of the types of provisions included in existing contracts between incumbent

LECs and third parties. (2) Does providing access to network elements other than access to vertical features of unbundled switches implicate intellectual property rights of equipment vendors or other third parties? Why or why not? (3) Does providing access to services for resale, in accordance with section 251, implicate intellectual property rights of equipment vendors or other third parties? Why or why not? (4) What are the potential burdens on requesting telecommunications carriers if they are required to independently negotiate licensing agreements with equipment vendors or other third parties before obtaining access to unbundled network elements? Are there ways to eliminate or reduce those burdens on requesting telecommunications carriers? In addition, we encourage parties to comment on MCI's proposal that incumbent LECs bear the burden of negotiating any extension or augmentation of intellectual property rights that might be implicated in interconnection agreements.

Interested parties should file comments on MCI's petition by April 15, 1997, and reply comments by May 6, 1997, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Janice Myles, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Parties filing comments should include the Policy Division internal reference number, CCBPol 97–4, as well as the docket number, CC Docket No. 96–98, on their pleadings. MCI's petition is available for inspection and copying during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554, as well as in the Common Carrier Bureau's Public Reference Room, Room 575, 2000 M Street, N.W., Washington, D. C. 20554. Copies can also be obtained from ITS by calling (202) 857–3800. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR §§ 1.1200–1.1216. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This ten-page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contract; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written material filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–7527 Filed 3–21–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 25, 26, 73, 76 and 100

[MM Docket No. 95–176; DA 97–568]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This *Order* extends the period for the public to file reply comments in this rulemaking from March 24, 1997 until March 31, 1997. This action will allow the public to more adequately reply to comments previously filed in response to the *Notice of Proposed Rulemaking* (''*NPRM*'') seeking comment on proposed rules for the closed captioning of video programming.

DATES: Reply comments are now due on or before March 31, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, John Adams or Alexis Johns, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: By this *Order,* we extend the time period for filing reply comments in this docket until March 31, 1997. Section 305 of the Telecommunications Act of 1996 (''1996 Act'') added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended (''Communications Act''). Section 713 requires the Commission to prescribe, by August 8, 1997, rules and implementation schedules for the closed captioning of video programming. On January 9, 1997, the Commission adopted a *NPRM*, summarized at 62 FR 4959 (February 3, 1997), in this docket, seeking comment on proposed rules, implementation schedules and exemptions as authorized by Congress in Section 713. The *NPRM* established March 24, 1997, as the deadline for filing reply comments.

This action is taken pursuant to authority found in Sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613.

Federal Communications Commission

Meredith J. Jones,

Chief, Cable Services Bureau.

[FR Doc. 97–7321 Filed 3–21–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 62, No. 56
Monday, March 24, 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

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on April 3, 1997, at the American Legion Hall, Hoopa, California. The purpose of the meting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 8:30 a.m. and continue until 3:00 p.m. Agenda items to be discussed include, but are not limited to: government-to-government relationships and consultation, implementation and effectiveness monitoring, and a panel discussion by three Provincial Advisory Committees. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Ave., P.O. 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: March 17, 1997.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 97–7311 Filed 3–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–826, A–428–822, A–274–802, and A–307–813]

Initiation of Antidumping Duty Investigations: Steel Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: James Doyle (Canada and Trinidad and Tobago), at (202) 482–0172; Edward Easton (Germany), at (202) 482–1777; or David Goldberger (Venezuela), at (202) 482–4136, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Initiation of Investigations

The 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 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).

The Petition

On February 26, 1997, the Department of Commerce (''the Department'') received a petition filed in proper form by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc., and Northwestern Steel & Wire Co. (''petitioners''). The Department received supplemental information to the petition on March 11, 1997.

In accordance with section 732(b) of the Act, petitioners allege that imports of steel wire rod (''SWR'') from Canada, Germany, Trinidad & Tobago, and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners have standing to file the petition because they are interested parties as defined in section 771(9)(C) of the Act.

Scope of Investigations

The products covered by these investigations are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of these investigations:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as ''Tire Cord Wire Rod.''
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as ''Valve Spring Quality Wire Rod.''

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided

for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition refers to the single domestic like product defined in the ''Scope of Investigation'' section, above. The Department has no basis on the record to find the petition's definition of the domestic like product clearly inaccurate. In this regard, we have found no basis on which to reject petitioners' representations that there are clear dividing lines, in terms of characteristics or uses, between the product under investigation on the one hand and, on the other hand, other carbon and alloy coiled steel products. The Department has, therefore, adopted the like product definition set forth in the petition. In this case, petitioners established industry support representing approximately 75 percent of the production of the domestic like product.

On March 13, 1997, Stelco Inc. (''Stelco''), a producer of wire rod in Canada, alleged that the petition covering imports from Canada did not contain information concerning support from domestic coiled bar producers. Stelco argued that domestic bar producers' support was necessary because petitioners' March 4, 1997, submission specifically included ''other coiled products known in the industry as 'bar.''' Accordingly, Stelco argued that the Department should poll the industry in order to evaluate the question of industry support.

The Department has determined that the petition contained adequate evidence of sufficient industry support and that polling is therefore unnecessary. Petitioners established industry support representing approximately 75 percent of the production of the domestic like product, which percentage includes the coiled bar. Stelco did not allege and has not demonstrated that coiled bar is a separate domestic like product requiring a separate determination as to industry support. Further, we note that both the American Iron and Steel Institute and HTSUS statistics treat coiled bars and coiled rods as one category. Because it is reasonable to find a single domestic like product for purposes of evaluating industry support in these circumstances, petitioners are well within the statutory requirements for industry support—both among all producers and among producers expressing an opinion—for the single like product covered by the petition. Finally, the Department notes that the inclusion or exclusion in industry support calculations of ''tire cord'' wire rod—which is excluded from the scope of these proceedings—does not materially affect petitioners' approximate support level of 75 percent (*see* Initiation Checklist, dated March 18, 1997, and found in the official file in Room B–099). Accordingly, the Department determines that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we will re-examine the information and revise the margin calculations, if appropriate.

Canada

Petitioners identified three Canadian exporters and producers of SWR: Ivaco, Inc. (''Ivaco''), Sidbec-Dosco, Inc. (''Sidbec-Dosco''), and Stelco, Inc. (''Stelco''). Petitioners based export price on price quotations (FOB-customer's location) to U.S. purchasers for carbon wire rod products manufactured by Sidbec-Dosco and Ivaco in Canada. The quoted prices were for three grades of rod during the months of March and April and the fourth quarter of 1996; they also were export prices (*i.e.*, prices to unrelated U.S. customers for purchase prior to export).

Petitioners made deductions for inland freight from the Canadian steel plants to the place of delivery to the U.S. purchaser, brokerage fees and customs duties paid upon entry of the merchandise into the United States. Petitioners obtained freight and brokerage fee quotations from a freight company offering trucking service in both Canada and the United States. Petitioners calculated customs duty charges based on the customs value for each U.S. product.

With respect to normal value, petitioners obtained home market FOB price quotations for carbon wire rod manufactured by Sidbec-Dosco and Ivaco in Canada. The prices were quoted in Canadian dollars on a delivered basis, for delivery in the fourth quarter of 1996.

Petitioners made deductions for inland freight from the Canadian steel plants to the home market customer, and for the credit costs. Petitioners obtained freight and brokerage fee quotations from a freight company offering trucking services in Canada and the United States. Petitioners based the home market credit expense calculation on thirty day credit terms, which were supported by the affidavit of the regional manager of a U.S. manufacturer of wire rod, and the 1996 fourth quarter average of the monthly stated prime rate

[1] See *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 Fed. Reg. 32376, 32380–81 (July 16, 1991).

reported in the Canadian Economic Observer. Petitioners noted that prices do not include any Goods and Service Tax, and that they did not make an adjustment for differences in physical characteristics of this merchandise, although the grades used for one of the price comparisons were different.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of SWR in the home market were made at prices below the fully allocated COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Therefore, pursuant to sections 773(a)(4) and 773(e) of the Act, petitioners based normal value for sales in Canada on constructed value (''CV'').

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacture (''COM''), selling, general, and administrative (''SG&A'') expenses, and profit. Petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce SWR in the United States and costs incurred for producing the subject merchandise in Canada. To calculate SG&A and financing expenses, the petitioners relied on the most recent company-specific and/or country-specific data for the steel industry available to the public. To calculate CV profit, the petitioners used the most recent profitability data for Canadian steel manufacturers available to the public.

The average dumping margins in the petition based on price-to-price comparisons range from 14.59 percent to 17.89 percent. After certain adjustments we made to the CV data listed in the petition, average dumping margins based on price-to-CV comparisons range from 27.91 percent to 40.55 percent.

Germany

Petitioners identified four exporters and producers of SWR: Brandenburg Elektrostahlwerk GmbH (''Brandenburg''), Ispat Hamburger Stahlwerke GmbH, Saarstahl AG (''Saarstahl''), and Thyssen Stahl AG. Petitioners obtained price quotes for two grades of SWR products manufactured by Brandenburg and by Saarstahl and offered for sale to unaffiliated purchasers in the United States. From these quoted prices, petitioners deducted foreign inland freight from the mill to the port, foreign port and loading fees, ocean freight and insurance, U.S. port and unloading fees, U.S. customs duties, and U.S. inland freight.

With respect to normal value, petitioners obtained two price quotes for Brandenburg and Saarstahl for SWR products offered for sale to customers in Germany which are either identical or similar to those sold to the United States. Petitioners adjusted these prices for estimated inland transportation and credit expenses. Petitioners did not make an adjustment for differences in physical characteristics of the merchandise used for a price comparison in the two markets, even though the grades used in the comparison were different.

In addition, the petitioners alleged that sales in the home market were made at prices below the fully allocated COP, and requested that the Department conduct a country-wide sales below COP investigation. Therefore, petitioners constructed a normal value for sales in Germany.

To calculate CV, petitioners based COM on their own production experience, adjusted for known differences between costs incurred to produce SWR in the United States and costs incurred for producing the merchandise in Germany. To calculate SG&A and financing expenses, petitioners relied on the most recent company-specific and/or country specific data for the steel industry available to the public. To calculate CV profit, petitioners used the most recent profitability data for German steel manufacturers available to the public.

The dumping margins based on price-to-price comparisons range from 19.95 percent to 36.68 percent. After certain adjustments we made to the CV data listed in the petition, average dumping margins based on price-to-CV comparisons range from 80.30 percent to 153.10 percent.

Trinidad and Tobago

Petitioners identified Caribbean Ispat, Ltd. (''CIL'') as the sole exporter and producer of SWR from Trinidad and Tobago. Petitioners based export price on FOB-customer's location prices to U.S. purchasers for carbon wire rod products manufactured by CIL in Trinidad and Tobago. The quoted prices were for two grades of rod during the month of June and the first quarter of 1996; they also were export prices (*i.e.*, prices to unrelated customers for purchase prior to export).

Petitioners made deductions for Trinidad and Tobago cargo handling fees, ocean freight, U.S. port and handling fees, and inland freight charges from the U.S. port to the U.S. purchaser location. Petitioners used the published port rates by the Point Lisas Industrial Port Development Corp., Ltd. Petitioners based their estimate of ocean freight and insurance costs by deducting the 1996 unit customs value of wire rod imports from Trinidad and Tobago, entered through the Louisiana port, by the CIF value of the same product. Petitioners did not adjust for duties because the merchandise enters duty free under the Caribbean Basin Initiative.

For normal value, petitioners stated that the Trinidad and Tobago prices were quoted on an FOB plant basis, so there was no need to adjust for inland freight; quoted prices were net of value added tax, so there was no need for a tax adjustment; payment terms specify cash on delivery, so there were no home market credit expenses.

In addition, the petitioners alleged that sales in the home market were made at prices below the fully allocated COP and requested that the Department conduct a sales below cost investigation. Therefore, petitioners constructed a normal value for sales in Trinidad and Tobago. To calculate CV, petitioners based COM for CIL based on publicly available data and their own production experience, adjusted for known differences between costs incurred to produce SWR in the United States and costs incurred for production of the subject merchandise in Trinidad and Tobago. To calculate SG&A and financing expenses, petitioners relied on the most recent company-specific data available to the public. To calculate profit for CV, the petitioners relied on an average profit figure for a U.S. surrogate manufacturer. We recalculated profit, using data supplied by the U.S. Embassy in Trinidad and Tobago.

The dumping margins based on price-to-price comparisons range from 40.07 percent to 40.88 percent. After certain adjustments we made to the CV data listed in the petition, average dumping margins based on price-to-CV comparisons range from 77.88 percent to 78.94 percent.

Venezuela

Petitioners identified two Venezuelan exporters and producers of SWR: CVG Siderurgica Del Orinoco C.A. (''SIDOR'') and Sidetur-Siderugica del Turbio SA. Petitioners obtained FOB-delivered price quotations to U.S. purchasers for SWR products manufactured by SIDOR in Venezuela. Petitioners deducted ocean freight, customs duties, port charges, and inland freight from the port of entry to the customer site.

With regard to normal value, petitioners relied upon market research to obtain FOB-plant price quotes from SIDOR. Petitioners made a circumstance-of-sale adjustment to

account for differences in credit expenses associated with the U.S. and home market sales.

In addition, the petitioners alleged that sales in the home market were made at prices below the fully allocated COP and requested that the Department conduct a sales below cost investigation. Therefore, the petitioners constructed a normal value for sales in Venezuela. To calculate CV, petitioners based COM for SIDOR based on publicly available data and their own production experience, adjusted for known differences between costs incurred to produce SWR in the United States and costs incurred for producing the subject merchandise in Venezuela. To calculate SG&A and financing expenses, the petitioners relied on the most recent company-specific data available to the public. To calculate profit for CV, the petitioners relied on the most recent profitability data for a Venezuelan steel manufacturer available to the public.

The dumping margins in the petition based on price-to-price comparisons range from 15.46 percent to 34.06 percent. The dumping margins in the petition based on price-to-CV comparisons range from 40.99 percent to 66.75 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners alleged that sales in the home markets of Canada, Germany, Trinidad and Tobago, and Venezuela were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales below COP investigation in each of these petitioned-for antidumping investigations. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition of the foreign like products in their respective home markets to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela are being, or are likely to be, sold at less than fair value.

Initiation of Antidumping Investigations

We have examined the petition on SWR and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the subject imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by August 5, 1997.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Canada, Germany, Trinidad and Tobago, and Venezuela. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by April 14, 1997, whether there is a reasonable indication that imports of SWR from Canada, Germany, Trinidad and Tobago, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: March 18, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7357 Filed 3–21–97; 8:45 am]

BILLING CODE 3510–DS–P

[C–122–815]

Pure and Alloy Magnesium From Canada: Final Results of the First (1992) Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On March 19, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty orders on pure and alloy magnesium from Canada for the period December 6, 1991 through December 31, 1992 (see *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada (Preliminary Results),* 61 FR 11186 (March 19, 1996)). We have completed these reviews and determine the net subsidy to be 9.86 percent ad valorem for Norsk Hydro Canada, Inc. and all other producers/exporters except Timminco Limited, which has been excluded from these orders. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4087.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1996, the Department published in the **Federal Register** the *Preliminary Results* of its administrative

reviews of the countervailing duty orders on pure and alloy magnesium from Canada (61 FR 11186). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the *Preliminary Results.* On April 18 and 25, 1996, case briefs and rebuttals were submitted by Norsk Hydro Canada, Inc. (NHCI), a producer of the subject merchandise which exported pure and alloy magnesium to the United States during the review period, the Government of Québec (GOQ), and the Magnesium Corporation of America (petitioner). At the request of respondents, the Department held a public hearing on May 2, 1996.

Period of Review

The reviews cover the period December 6, 1991 through December 31, 1992. The reviews involve one company and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environment Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, and Transportation Research and Development Assistance Program.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. (See 60 FR 80 (Jan. 3, 1995)).

Scopes of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included in the scope of the orders. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (''HTS''). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Secondary and granular magnesium are not included in the scopes of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from Canada* (57 FR 6094, February 20, 1992).

Calculation Methodology for Assessment and Cash Deposit Purposes

Since NHCI is the only known producer/exporter subject to these orders, we used its ad valorem subsidy rate to determine the country-wide ad valorem subsidy rate. This ad valorem subsidy rate does not apply to Timminco Limited because it has been excluded from these orders.

Analysis of Programs

Based upon our analysis of our questionnaire responses and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

1. Exemption From Payment of Water Bills

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy rate for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI and All Other Producers/ Exporters except Timminco Ltd	1.31

2. Article 7 Grants From the Québec Industrial Development Corporation

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.* On this basis, the net subsidy for this program is as follows:

Manufacturer/exporter	Rate (percent)
NHCI and All Other Producers/ Exporters except Timminco Ltd	8.55

II. Programs Found Not To Be Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

- St. Lawrence River Environment Technology Development Program.
- Program for Export Market Development.
- Export Development Corporation.
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec.
- Opportunities to Stimulate Technology Programs.
- Development Assistance Program.
- Industrial Feasibility Study Assistance Program.
- Export Promotion Assistance Program.
- Creation of Scientific Jobs in Industries.
- Business Investment Assistance Program.
- Business Financing Program.
- Research and Innovation Activities Program.
- Export Assistance Program.
- Energy Technologies Development Program.
- Transportation Research and Development Assistance Program.

We received no comments on these programs from the interested parties; therefore, we have not changed our findings from the *Preliminary Results.*

Analysis of Comments

Comment 1: Countervailability of the Exemption From Payment of Water Bills

Respondents argue that the NHCI's contract with its supplier of water, La Societé du Parc Industriel et Portuaire de Bécancour (''Industrial Park''), was inextricably linked with the credit it received from the GOQ to offset its water bills. If the water credit had not been received, respondents state that a different billing arrangement would have been made. Therefore, in determining the amount of the benefit conferred by the credit, the Department should look to what NHCI would have paid absent the water credit and the contract compared to what it paid with the credit and the contract. To calculate what NHCI would have paid absent the credit and the contract, respondents argue that the closest approximation is the amount NHCI would have paid under its present contract based on actual water consumption rather than forecasted consumption.

Petitioner states that under the terms of the contract between NHCI and the Industrial Park, the amount invoiced is based, in part, on forecasted consumption and this amount is what NHCI would have paid in the absence of the water credit. By countervailing the portion of the water invoice that was offset by the water credit and, hence, not paid by NHCI, petitioner states that the Department correctly calculated the countervailable benefit in the *Preliminary Results.* Even if the Department were to consider what NHCI would pay in the absence of the credit and existing contract, petitioner points out that other Industrial Park customers also are obligated to pay an amount based, in part, on forecasted consumption although they are allowed to change their forecasted consumption levels yearly. Hence, forecasted consumption cannot be ignored as an element of the charge for water. Petitioner also points out that, in addition to requiring the Industrial Park to supply the actual amount of water used by NHCI, the contract also bound the Industrial Park to certain other potential obligations upon the request of NHCI. According to petitioner, the contract was structured to compensate the Industrial Park for any costs it might incur in meeting those other potential obligations.

DOC Response: We disagree with respondents that we are required to hypothesize what NHCI would have paid for its water in the absence of the credit and the contract it entered into to measure the benefit conferred by the credit. The position put forward by NHCI is analogous to a situation where a company received a low-interest loan from a government and argues to the Department that because of the low interest rate, it borrowed more than it otherwise would have. Therefore, the company would contend, to calculate the benefit conferred by the low-interest loan, the Department should compare the actual amount of interest paid on the low-interest loan with the actual amount of interest the company would have paid on a smaller loan at a higher benchmark interest rate. In this loan situation, we would not enter into a hypothetical calculation of what amount the company would have borrowed absent the low-interest loan. Instead, consistent with section 771(5)(A)(II)(c) of the Act, we would simply countervail the difference in the two interest rates without regard to what effect the interest rate has on the other terms of the loan, i.e., the amount borrowed.

In this review, the terms of the contract between NHCI and the Industrial Park unambiguously state that NHCI is required to pay an amount based, in part, on forecasted consumption. To the extent the GOQ's provision of the credit relieved NHCI from paying its water bills, a countervailable benefit existed without regard to whether NHCI would have received different terms under an alternative arrangement. Therefore, we determine that the benefit is the full amount of the credit.

Comment 2: Article 7 Assistance Under the SDI Act

Petitioner states that the label ''interest rebate'' placed on the Article 7 assistance provided by the SDI does not change the nature of the assistance and that it remains, in substance, a grant. According to petitioner, the purpose, amount and disbursement timetable for the Article 7 assistance was inextricably linked to NHCI's purchase of specified environmental protection equipment. Petitioner further points out that the Article 7 assistance was not tied to the cost of NHCI's plant, the total amount of NHCI borrowing, the interest rate paid by NHCI on its borrowings, or the total amount of interest incurred by NHCI. Petitioner argues that the assistance had the impact of encouraging NHCI to install specified environmental protection equipment as opposed to encouraging NHCI to borrow money that it otherwise would not have borrowed. In light of the above, petitioner concludes that the funding was in the form of a non-recurring grant. Petitioner emphasizes that the Department should not allow respondents to engage in ''subsidy engineering'' by turning a large non-recurring capital grant into some other type of benefit.

Respondents argue that the Department improperly applied its grant methodology to the Article 7 assistance provided to NHCI. According to respondents, because NHCI knew it would receive interest rebates from SDI prior to taking out loans, the Department should calculate the benefit using its loan methodology and reduce the interest rate charged by the amount of the interest rebated. Respondents state that this would be consistent with the Department's methodology, citing a number of cases (e.g., *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom (UK Steel)*, 58 FR 37393, 37397 (July 9, 1993)).

Respondents further contend that the *Preliminary Results* were based on significant errors of fact regarding the interest rebates received by NHCI. First, respondents argue that the relationship between the interest rebates and the underlying loans was not indirect. Second, the interest rebates received by NHCI reduced NHCI's costs of borrowing for the construction of its plant, not its costs of purchasing environmental equipment.

With respect to the first point, respondents argue that the Department was incorrect in its assertion that the Article 7 assistance was more closely linked to the acquisition of certain assets than the accumulation of interest costs. Moreover, respondents maintain that the SDI assistance was not intended solely for the purchase of environmental protection equipment, but was also intended to facilitate the construction of NHCI's facility in Québec. The fact that the Article 7 assistance was intended to achieve more than one objective does not distinguish the Article 7 assistance from other interest rebate programs which the Department has treated under its loan methodology, according to respondents.

With respect to the second point, respondents argue that since the Department wrongly assumed that Article 7 assistance was provided solely for the purchase of environmental equipment, the Department was able to conclude that the interest rebates exceeded the interest that would be in connection with the purchase of the environmental equipment. Hence, the Department concluded that the Article 7 assistance should not be treated as an interest rebate. However, because the Article 7 assistance was intended to reduce the cost of financing for the project as a whole, the assistance was not excessive in the sense described by the Department.

DOC Position: The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as an interest rebate, then under the methodology adopted by the Department in the 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology (*Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, (Belgium Steel*) 58 FR 37273, 37276, July 9, 1993). However, if treated as a grant, the benefits would be allocated over a period corresponding to the life of the company's assets.

In their brief, respondents argue that the interest rebate methodology reflects the fact that companies face a choice between debt and equity financing. If a company knows that the government is willing to rebate interest charges before the company takes out a loan, the government is encouraging the company to borrow rather than sell equity. Hence, respondents conclude, the benefit should be measured with reference to the duration of the borrowing for which the rebate is provided.

We disagree that the Department's interest rebate methodology was intended to reflect the choice between equity and loan financing. In the 1993 steel cases, (See, e.g., *Belgium Steel*), we examined a particular type of subsidy, interest rebates, and determined which of our valuation methodologies was most appropriate. The possible choices were between the grant and loan methodologies. Where the company had knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at 5 percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a 10 percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel cases was never intended to dictate that the Department should apply the loan methodology in every situation. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government told a company that it would make all interest payments on all construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, i.e., partial interest rebates paid over a period of years on particular long-term loans.

As we did in the 1993 steel cases, the Department in these reviews is seeking the most appropriate methodology for the Article 7 assistance. We erred in our *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada,* 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of Article 7 assistance was contingent, inter alia, on NHCI making interest payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the General Issues Appendix (GIA) attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* 58 FR 37217, 37254 (July 9, 1993), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

Comment 3: Re-Examination of Specificity of Article 7 Assistance

In the event the Department continues to treat Article 7 assistance as a non-recurring grant, respondents state that the Department is obliged to make a finding that the Article 7 assistance conferred a subsidy to NHCI during the POR. The Department may not, as it has here, rely on a factual finding of disproportionality during a different time period and different amounts of assistance. Respondents state that a finding of de facto specificity requires a case-by-case analysis, citing *PPG Industries, Inc. v. United States, Geneva Steel v. United States,* and *Certain Steel Products from Brazil* to support their reasoning. Respondents also cite the sixth administrative review of *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (Live Swine) (59 FR 12243 (March 16, 1994)) as an example where the Department reexamined the

countervailability of benefits found to be de facto specific in prior reviews.

Respondents maintain that given the Department's responsibility to make a finding of specificity and countervailability based on the information relevant to the POR, the Department should consider any new assistance provided by SDI since the end of the original period of investigation. Respondents then present a methodology they believe should be employed whereby the Department would compare the portion of NHCI's original grant allocated to the POR, based on the Department's standard allocation methodology, and the portions of benefits allocated to the POR for all assistance bestowed to all other enterprises receiving SDI assistance to determine whether NHCI received a disproportionate share of benefits. Respondents state that the Department had a responsibility to gather the information necessary to make the specificity determination they have described. Since the Department has not gathered the information required for their proposed methodology, respondents conclude that a determination of de facto specificity during the POR is not possible.

Petitioner counters that since the Article 7 assistance was in the form of a non-recurring grant, the Department properly looked at the time period when the government granted the assistance to make the specificity finding. According to petitioner, the provision of the assistance was, and always will be, specific regardless of how the GOQ administers the program in future years—even if it were to abolish the program. In other words, petitioner states that no future action by the GOQ could retroactively make the subsidy non-specific. Simply because the Department's grant calculation methodology assigns an amortized portion of the assistance to this review period, it does not mean that the GOQ is granting a new subsidy worthy of a new specificity analysis. Indeed, states petitioner, if a new subsidy were being analyzed, the Department's specificity analysis would not take into account portions of old subsidies amortized into the period being examined.

DOC Position: It is the Department's policy not to revisit specificity determinations absent the presentation of new facts or evidence (see, e.g., *Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order*, 59 FR 58814, November 15, 1994). In this review, no new facts or evidence have been presented which would lead us to question that determination. We address respondents' arguments in favor of making a POR-specific determination below.

Respondents refer to the various reviews of the countervailing duty order on live swine from Canada as demonstrating that the Department has, as a matter of course, revisited its de facto specificity determinations from one segment of a proceeding to another. While distinct de facto specificity determinations were made with respect to the Tripartite program in the fourth, fifth and sixth reviews, these were not done as a matter of course. The Department reexamined specificity in these reviews of live swine only as a result of an adverse decision by the Binational Panel. Because the Binational Panel overturned the Department's finding of specificity regarding the Tripartite program in the fourth review of live swine for lack of evidence (and eventually rejected its analysis regarding specificity in the fifth review but upheld its decision), the Department continued to collect information in the sixth review, which was running concurrently with the Binational proceedings. In explaining its actions in the sixth review, the Department recognized that it does not routinely revisit specificity determinations, as respondents would have us believe, in stating the following:

> Although our practice is not to reexamine a specificity determination (affirmative or negative) made in the investigation or in a review absent new facts or evidence of changed circumstances, the record in the prior reviews did not contain all of the information we consider necessary to define the agricultural universe in Canada.

(See *Live Swine*.) As can be seen from the foregoing, the facts surrounding the live swine reviews do not correspond to the situation presented here. In particular, the issue of specificity had not been conclusively settled in the live swine reviews and was in the process of litigation, and different information was available; unlike this case in which a definitive specificity determination had already been established.

As for respondents' arguments that de facto specificity determinations should be done on a case-by-case basis, we agree. However, we disagree with respondents as to what ''case-by-case'' means. In each of the citations respondents refer to, ''case'' referred not to a separate segment of the same proceeding (e.g., the first review of an order distinct from the second review), but to a separate investigation or review of different products (e.g., an investigation of carbon black from Mexico as opposed to an investigation of steel products from Brazil) . It is this latter definition of ''case'' we find to be the proper basis for examination of de facto specificity determinations. Since a separate de facto specificity determination was made in the investigations of pure and alloy magnesium, we find that the analysis was properly conducted.

In proposing that the Department base a POR-specific de facto specificity finding on the portions of non-recurring grants allocated to the POR, the respondents appear to be confusing the initial specificity determination based on the action of the granting authority at the time of bestowal with the allocation of the benefit over time. These are two separate processes. The portions of grants allocated to periods of time using the Department's standard allocation methodology are irrelevant to an examination of the actual distribution of benefits by the granting government at the time of bestowal. We agree with petitioner that the determination of whether a non-recurring subsidy was specific (or not) at the time of bestowal then becomes attached to the subsidy.

Based on all of the arguments above, we find that the bases of the original specificity determination are still valid. Since no new evidence has been presented which would cause us to revisit the original specificity determination, we continue to find assistance under Article 7 of the SDI Act to be specific and, therefore, countervailable.

Comment 4: Appropriate Denominator

Respondents state that in the *Preliminary Results* the Department deviated from its standard practice in determining the denominator for companies with multinational production facilities that fail to rebut the presumption that subsidies are domestically tied. In particular, respondents argue that it is the Department's policy to tie such subsidies to domestic operations, by allocating benefits to sales by the domestic company regardless of country of manufacture, as opposed to tying to domestic production, as was done in the *Preliminary Results*. Respondents additionally state that the Department both failed to explain its basis for presuming that the subsidies were tied to Canadian production and to respond to NHCI's arguments in favor of allocating the subsidies over sales by NHCI of subject merchandise regardless of country of manufacture. In so doing, respondents claim the Department denied NHCI due process by preventing it from rebutting the presumption and

from responding to the rationale the Department used to support its decision to tie the subsidies to domestic production. In support of their assertion that the subsidies NHCI received are tied to its domestic operations, respondents state that any funds received benefited all employment-related activities in Canada (e.g., sales of all products) and that these activities are related to both domestic and foreign production. Respondents elaborate further that the denominator policy used by the Department in this case is a deviation from the fungibility of money principle.

Respondents also cite *British Steel plc v. United States (British Steel)* (479 F. Supp. 1254, 1371) in which the Court reversed and remanded the Department's determinations because it found that the Department should have given plaintiffs due notice of its decision to apply the rebuttable presumption that the subsidies at issue were tied to domestic production in order to allow plaintiffs the opportunity to rebut the Department's presumption.

Petitioner states that there is nothing on the record indicating that the GOQ intended the funds it provided to NHCI to benefit production in another country. Therefore, the Department should continue to allocate the subsidies received over sales of merchandise produced in Canada.

DOC Response: Respondents cite *British Steel* in an attempt to imply that the Department must inform parties early during the course of each proceeding of its intent to use the rebuttable presumption that subsidies to companies with foreign manufacturing operations are tied to domestic production. However, the facts involved in *British Steel* are readily distinguishable. Therefore, the holding in that case does not apply to the present situation.

In *British Steel,* the Court was examining the Department's policy of using the rebuttable presumption articulated in the GIA. In particular, the Court took issue with the introduction of the new policy in the final-determination stage of the investigation because the timing prevented parties from both commenting on the methodology and from presenting evidence rebutting the presumption. It is important to note that the Department's remand determination, as affirmed by the Court, upheld the appropriateness of using the rebuttable presumption. The Department has continued to use the rebuttal presumption and this policy has become accepted Department practice. Unlike *British Steel,* we are not dealing with the introduction of a new policy late into the course of a proceeding in this case. Therefore, the Department was not required to forewarn respondents of the use of the rebuttable presumption.

We also note that the use of a denominator based only on domestically produced merchandise did not come as a surprise to respondents. To begin, in the original investigations of these cases (which pre-dated the rebuttable presumption) the Department used a denominator based only on sales of domestically produced merchandise (*Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium From Canada,* 57 FR 30946 (July 13, 1992)). Since the investigations in these cases, there has been a changed circumstances review (57 FR 54047 (November 16, 1992)) and a Binational Panel proceeding. In all of the proceedings, the denominators have included only domestically produced merchandise and in no case have respondents objected to those denominators. In addition, the questionnaire for these reviews requested information on sales denominators based on domestically produced merchandise. NHCI provided the requested sales denominator information along with denominators based on total sales by NHCI and arguments why those based on total sales should be used. Moreover, sales of domestically produced merchandise was used as the denominator in the *Preliminary Results.* As can be seen from the foregoing, respondents were aware as to the possible use of a denominator based on domestically produced merchandise and did indeed have an opportunity to attempt to rebut the presumption.

Respondents also argue that the Department must explain the basis of its presumption. However, the idea behind the use of a rebuttable presumption is that the fact presumed—in this case that subsidies bestowed on companies with foreign manufacturing operations are tied to domestic production—becomes the default position and does not have to be explained in each case. As the Department stated in the GIA, ''Thus, under the Department's refined ''tied'' analysis, the Department will begin by presuming that a subsidy provided by the government of the country under investigation is tied to domestic production'' (GIA at 37231). It follows that the Department will find that subsidies are tied to domestic production in the absence of evidence to the contrary.

As for respondents' complaint that the Department failed to address its arguments that the subsidies received by NHCI benefited all of the company's operations, not just its manufacturing activities, we note that in the GIA it states, ''A party may rebut this presumption by presenting evidence tending to show that the subsidy was not tied to domestic production * * *'' The phrase, ''tending to show'' means that the party attempting to rebut the presumption must provide enough evidence to convince a reasonable fact-finder of the non-existence of the presumed fact—that subsidies are tied to the recipient firm's domestic production (Results of Redetermination Pursuant to Court Remand on General Issue of Sales Denominator: *British Steel plc* v. *United States,* Consol. Ct. No. 93–09–00550–CVD, Slip Op. 95–17 and Order (CIT Feb. 9, 1995) at 17). The mere absence of evidence limiting the government's intended scope of the benefit to domestic production is not sufficient. In this case, respondents' arguments have not risen to the level of evidence that would convince us that the GOQ intended that the subsidies it bestowed on NHCI were to benefit more than just domestic production. Therefore, respondents have failed to rebut the presumption that the subsidies received by NHCI were tied to domestic production.

The Department's methodology for determining what to include in the denominator when a company has foreign manufacturing operations is explained in the GIA: ''If we determine that the subsidy is tied to domestic production, we will allocate the benefit of the subsidy fully to sales of domestically produced merchandise'' [emphasis added] (GIA at 37231). This quotation makes it clear that sales of foreign-produced merchandise by a respondent company would not be included in the denominator. Even if we were to consider tying the subsidies at issue to domestic operations, using respondents' suggestion of a sales denominator based on total NHCI sales would be improper since such a figure would include sales of foreign-produced merchandise by NHCI and, therefore, value-added from operations in other countries. Based on the foregoing arguments, we have continued to allocate subsidies received by NHCI to the company's merchandise produced in Canada.

Comment 5: Suspension of Liquidation for the Period April 4, 1992 to August 31, 1992

Respondents argue that since the Department terminated suspension of liquidation for entries on or after April 4, 1992 to August 31, 1992,

countervailing duties cannot be reassessed for that period.

DOC Position: We agree with respondents.

Final Results of Review

For the period December 6, 1991 through December 31, 1992, we determine the net subsidy to be 9.86 percent ad valorem for Norsk Hydro Canada Inc. and all other companies except Timminco Limited, which has been excluded from these orders. This rate corrects the rate of 9.87 found in the *Preliminary Results* which arose from a rounding error.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties on entries during the periods December 6, 1991 to April 3, 1992 and September 1, 1992 to December 31, 1992:

Manufacturer/exporter	Rate (percent)
Norsk Hydro Canada Inc. and All Other Companies Except Timminco Limited (which is excluded from these orders)	9.86

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 9.86 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Norsk Hydro Canada Inc. and all other companies except Timminco Limited (which was excluded from the order during the original investigation), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7358 Filed 3–21–97; 8:45 am]

BILLING CODE 3510–DS–P

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the countervailing duty orders on pure and alloy magnesium from Canada for the period January 1, 1993 through December 31, 1993. We have completed these reviews and preliminarily determine the net subsidy to be 7.13 percent *ad valorem* for subject merchandise for Norsk Hydro Canada, Inc. (NHCI) and all other producers/exporters from Canada except exports from Timminco Limited, which company has been excluded from these orders. If the final results of these reviews remain the same as these preliminary results, the Department will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Cynthia Thirumalai, AD/CVD Enforcement, Group 1, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464 or 482–4087, respectively.

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39392) the countervailing duty orders on pure and alloy magnesium from Canada. The Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 39543) of the countervailing duty orders on August 3, 1994. We received timely requests for review from petitioner, Magnesium Corporation of America (Magcorp) and respondent, NHCI. The Department initiated the administrative reviews, for the period January 1, 1993 through December 31, 1993, on September 16, 1994 (59 FR 47609).

The Department issued a questionnaire to the Government of Canada (GOC) on September 7, 1994. On October 24, 1994, we received questionnaire responses from NHCI, the GOC and the Government of Québec (GOQ). The Department issued supplemental questionnaires to the GOQ on October 11, 1996 and NHCI on November 5, 1996. We received supplemental responses from the GOQ on October 28, 1996 and NHCI on November 18, 1996.

On October 18, 1994, petitioner requested that the Department re-examine whether the amended electric power contract between NHCI and Hydro Québec is countervailable. On April 28, 1995, the Department declined to reinvestigate the amended electric power contract.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Scope of the Reviews

The products covered by these orders are pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Secondary and granular magnesium are not included. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and Customs purposes, our written descriptions of the scopes of these proceedings are dispositive.

Period of Review

The period of review (POR) is January 1, 1993 through December 31, 1993. The reviews cover one producer/exporter of subject merchandise, NHCI, and the following programs: Exemption from Payment of Water Bills, Article 7 Grants from the Québec Industrial Development Corporation (SDI), St. Lawrence River Environmental Technology Development Program, Program for Export Market Development, Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, Financial Assistance Program for Research, Formation and for the Improvement of the Recycling Industry, and Transportation Research and Development Assistance Program.

Analysis of Programs

I. Programs Conferring Subsidies

A. Exemption From Payment of Water Bills

Pursuant to a December 15, 1988 agreement between NHCI and La Société du Parc Industriel et Portuaire de Bécancour (Industrial Park), NHCI is exempt from payment of its water bills. Except for the taxes associated with its bills, NHCI does not pay the invoiced amounts of its water bills.

In the *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada (Magnesium from Canada)*, 57 FR 30946, 30948 (July 13, 1992), the Department determined that the exemption received by NHCI was limited to a specific enterprise or industry, or group of enterprises or industries, because no other company receives such an exemption. In this review, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

We preliminarily determine the countervailable benefit to be the amount NHCI would have paid absent the exemption. To calculate the benefit under this program, we divided the amount NHCI would have paid for water during the POR by NHCI's total POR sales of Canadian-manufactured products. On this basis, we preliminarily determine that the net subsidy provided by this program is 0.97 percent ad valorem.

B. Article 7 Grants From the Québec Industrial Development Corporation

The Québec Industrial Development Corporation (SDI) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers, and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (See *Magnesium from Canada*, 57 FR 30946, 30949 (July 13, 1992).)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In *Magnesium from Canada*, we determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

The issue presented by this case is whether the Article 7 assistance received by NHCI should be treated as an interest rebate or as a grant. If it is treated as an interest rebate, then under the methodology adopted by the Department in the 1993 steel cases, the benefit of the Article 7 assistance would be countervailed according to our loan methodology (*Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium (Belgium Steel)*, 58 FR 37273, 37276 (July 9, 1993)). However, if treated as a grant, the benefits would be allocated over a period corresponding to the life of the company's assets.

In the 1993 steel cases (see, e.g., *Belgium Steel*), we examined a particular type of subsidy, interest rebates, and determined which of our valuation methodologies was most appropriate. The possible choices were between the grant and loan methodologies. Where the company had knowledge prior to taking the loan out that it would receive an interest rebate, we decided that the loan methodology was most appropriate because there is virtually no difference between the government offering a loan at 5 percent interest (which would be countervailed according to the loan methodology) and offering to rebate half of the interest paid on a 10 percent loan from a commercial bank each time the company makes an interest payment. Hence, we were seeking the closest methodological fit for different types of interest rebates.

However, the interest rebate methodology described in the 1993 steel cases was never intended to dictate that the Department should apply the loan methodology in every situation. The appropriate methodology depends on the nature of the subsidy. For example, assume that the government told a company that it would make all interest payments on all construction loans the company took out during the next year up to $6 million. This type of ''interest rebate'' operates essentially like a $6 million grant restricted to a specific purpose. Whether the purpose is to pay interest expenses or buy a piece of equipment does not change the nature of the subsidy. In contrast, the interest rebate methodology is appropriate for the type of interest rebate programs investigated in the 1993 steel cases, i.e., partial interest rebates paid over a period of years on particular long-term loans.

As we did in the 1993 steel cases, the Department in these reviews is seeking the most appropriate methodology for the Article 7 assistance. We erred in our *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*, 61 FR 11186 (March 19, 1996), in stating that the primary purpose of the Article 7 assistance was to underwrite the purchase of environmental equipment. However, it cannot be disputed that the environmental equipment played a crucial role in the agreement between SDI and NHCI. Most importantly, the aggregate amount of assistance to be provided was determined by reference to the cost of environmental equipment to be purchased. In this respect, the Article 7 assistance is like a grant for capital equipment.

Further, the assistance provided by SDI is distinguishable from the interest rebates addressed in the 1993 steel cases in that the interest payments in the steel cases rebated a portion of the interest paid on particular long-term loans. Here, although the disbursement of the Article 7 assistance was contingent, inter alia, on NHCI making interest

payments, the disbursements were not tied to the amount borrowed, the number of loans taken out or the interest rates charged on those loans. Instead, the disbursements were tied to NHCI meeting specific investment targets and generally to NHCI having incurred interest costs on borrowing related to the construction of its facility.

Therefore, while we recognize that NHCI had to borrow and pay interest in order to receive individual disbursements of Article 7 assistance, we do not agree that this fact is dispositive of whether the interest rebate methodology used in the 1993 steel cases is appropriate. We believe this program more closely resembles the scenario described above where the government agrees to pay all interest incurred on construction loans taken out by a company over the next year up to a specified amount. Because, in this case, the amount of assistance is calculated by reference to capital equipment purchases (something extraneous to the interest on the loan) and the reimbursements do not relate to particular loans, we determine that the Article 7 assistance should be treated as a grant.

The Department has in past cases classified subsidies according to their characteristics. For example, in the General Issues Appendix (GIA) attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37254 (July 9, 1993), we developed a hierarchy for determining whether so-called ''hybrid instruments'' should be countervailed according to our loan, grant or equity methodologies. In short, we were asking whether the details of particular government ''contributions'' made them more like a loan, a grant or an equity infusion. Similarly, when a company receives a grant, we look to the nature of the grant to determine whether the grant should be treated as recurring or non-recurring. In these reviews, we have undertaken the same type of analysis, i.e., determining an appropriate calculation methodology based on the nature of the subsidy in question. As with hybrid instruments and recurring/non-recurring grants, it is appropriate to determine which methodology is most appropriate based on the specific facts of the Article 7 assistance. Although the Article 7 assistance exhibits characteristics of both an interest rebate and a grant, based on an overview of the contract under which the assistance was provided, we determine that the weight of the evidence in this case supports our treatment of the Article 7 assistance as a grant.

For the reasons set forth in *Magnesium from Canada*, we preliminarily determine that the grant provided under Article 7 was non-recurring because it represented a one-time provision of funds. (See 57 FR 30946, 30949 (July 13, 1992)).

We calculated the benefit from the grant received by NHCI using the company's cost of long-term, fixed-rate debt as the discount rate and our declining balance methodology, consistent with § 355.49 of the *Proposed Regulations*. We divided that portion of the benefit allocated to the POR by NHCI's total sales of Canadian-manufactured products. (See the Allocation Methodology section below regarding the selection of the allocation period.) We preliminarily determine the net subsidy to be 6.16 percent ad valorem for NHCI.

II. Programs Preliminarily Found Not To Be Used

We examined the following programs and preliminarily find that NHCI did not apply for or receive benefits under the following programs during the POR: St. Lawrence River Environmental Technology Development Program, Program for Export Market Development, the Export Development Corporation, Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec, Opportunities to Stimulate Technology Programs, Development Assistance Program, Industrial Feasibility Study Assistance Program, Export Promotion Assistance Program, Creation of Scientific Jobs in Industries, Business Investment Assistance Program, Business Financing Program, Research and Innovation Activities Program, Export Assistance Program, Energy Technologies Development Program, Financial Assistance Program for Research Formation and for the Improvement of the Recycling Industry, and Transportation Research and Development Assistance Program.

Allocation Methodology

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for non-recurring grant benefits. (See GIA at 37226.) However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (British Steel), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996 *(British Steel*, 929 F. Supp. 426, 439 (CIT 1996)).

The Department has decided to acquiesce to the Court's decision and, as such, we intend in all future cases to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. Specifically, the Department has preliminarily determined that it is reasonable and practicable to allocate all new non-recurring subsidies (i.e., subsidies that have not yet been assigned an allocation period) based on a company-specific AUL. However, if a subsidy has already been countervailed based on an allocation period established in an earlier segment of the proceeding, it does not appear reasonable or practicable to reallocate that subsidy over a different period of time. In other words, since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulting benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the amount countervailed and, thus, would result in the possibility of over-countervailing or under-countervailing the actual benefit. The Department has preliminarily determined that a more reasonable and accurate approach is to continue using the allocation period first assigned to the subsidy. We invite the parties to comment on the selection of this methodology and provide any other reasonable and practicable approaches for complying with the Court's ruling.

In the current reviews, there are no new non-recurring grant subsidies. The non-recurring grant under review was provided prior to the POR; the allocation period for the grant was established during prior segments of these proceedings. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to the grant.

Preliminary Results of Review

We preliminarily determine the net subsidy for the period January 1, 1993 through December 31, 1993, to be 7.13 percent ad valorem.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties of 7.13

percent of the f.o.b. invoice price on all shipments of subject merchandise from Canada, except from Timminco Limited (which was excluded from the order in the original investigation).

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of 7.13 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Canada, except from Timminco Limited (which was excluded from the order during the original investigation), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Parties to these proceedings may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38 (e).

Representatives of parties to the proceedings may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceedings, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7359 Filed 3–21–97; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–823, C–274–803, C–122–827, and C–307–814]

Notice of Initiation of Countervailing Duty Investigations: Steel Wire Rod from Germany, Trinidad and Tobago, Canada and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose (Germany), Vince Kane (Trinidad and Tobago), Robert Bolling (Canada) and Chris Cassel (Venezuela), Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5414, 482–2815, 482–1386 and 482–4847, respectively.

Initiation of Investigations

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act).

The Petition

On February 26, 1997, the Department of Commerce (the Department) received a petition filed in proper form by Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Texas, Inc. and Northwestern Steel and Wire Co. (the petitioners), six U.S. producers of wire rod. Supplements to the petitions were filed on March 4, 10, 11, 12, 13, 14, 17, and 18, 1997.

In accordance with section 701(a) of the Act, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Germany, Trinidad and Tobago, Canada and Venezuela receive countervailable subsidies.

The petitioners state that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act.

Determination of Industry Support for the Petition

Section 702(b)(1)of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition refers to the single domestic like product defined in the ''Scope of Investigation'' section, above. The Department has no basis on the record to find the petition's definition of the domestic like product clearly inaccurate. In this regard, we have found no basis on which to reject petitioners' representations that there are clear dividing lines, in terms of characteristics or uses, between the product under investigation on the one hand and, on the other hand, other carbon and alloy coiled steel products. The Department has, therefore, adopted the like product definition set forth in the petition. In this case, petitioners established industry support representing approximately 75 percent of the production of the domestic like product.

[1] See *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

On March 12, 1997, the Department held consultations with representatives of the Government of Canada (GOC) and the Government of Quebec (GOQ) pursuant to 702(b)(4)(ii), during which they submitted certain information with respect to industry support for the petition (See March 18, 1997 memos to the file regarding these consultations and *Consultations* section, below). On March 13, 1997, Stelco Inc. (Stelco), a producer of wire rod in Canada, alleged that the petition covering imports from Canada did not contain information concerning support from domestic coiled bar producers. Stelco argued that domestic bar producers' support was necessary because petitioners' March 4, 1997, submission specifically included ''other coiled products known in the industry as 'bar.' '' Accordingly, Stelco argued that the Department should poll the industry in order to evaluate the question of industry support.

The Department has determined that the petition contained adequate evidence of sufficient industry support and that polling is therefore unnecessary. Petitioners established industry support representing approximately 75 percent of the production of the domestic like product, which percentage includes the coiled bar. The GOC, GOQ and Stelco did not allege and have not demonstrated that coiled bar is a separate domestic like product requiring a separate determination as to industry support. Further, we note that both the American Iron and Steel Institute and HTSUS statistics treat coiled bars and coiled rods as one category. Because it is reasonable to find a single domestic like product for purposes of evaluating industry support in these circumstances, petitioners are well within the statutory requirements for industry support—both among all producers and among producers expressing an opinion—for the single like product covered by the petition. Finally, the Department notes that the inclusion or exclusion in industry support calculations of ''tire cord'' wire rod—which is excluded from the scope of these proceedings—does not materially affect petitioners' approximate support level of 75 percent (see Antidumping Initiation Checklist, dated March 18, 1997, and found in the official file in Room B–099). Accordingly, the Department determines that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Injury Test

Because Germany, Trinidad and Tobago, Canada and Venezuela are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Germany, Trinidad and Tobago, Canada and Venezuela materially injure, or threaten material injury to, a U.S. industry.

Consultations

Pursuant to Section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the petitions filed. On March 12, 13 and 17, consultations were held with representatives from Canada; Trinidad and Tobago; and the European Commission (EC) and Germany, respectively. On March 14 and 17, 1997, we received submissions from the GOQ and the GOC.

Scope of the Investigation

The products covered by these investigations are certain hot-rolled carbon steel and alloy steel products, in coils, of approximately round cross section, between 5.00 mm (0.20 inch) and 19.0 mm (0.75 inch), inclusive, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) free machining steel that contains by weight 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium; or (f) concrete reinforcing bars and rods.

The following products are also excluded from the scope of these investigations:

- Coiled products 5.50 mm or less in true diameter with an average partial decarburization per coil of no more than 70 microns in depth, no inclusions greater than 20 microns, containing by weight the following: Carbon greater than or equal to 0.68 percent; aluminum less than or equal to 0.005 percent; phosphorous plus sulfur less than or equal to 0.040 percent; maximum combined copper, nickel and chromium content of 0.13 percent; and nitrogen less than or equal to 0.006 percent. This product is commonly referred to as ''Tire Cord Wire Rod.''
- Coiled products 7.9 to 18 mm in diameter, with a partial decarburization of 75 microns or less in depth and seams no more than 75 microns in depth; containing 0.48 to 0.73 percent carbon by weight. This product is commonly referred to as ''Valve Spring Quality Wire Rod.''

The products under investigation are currently classifiable under subheadings 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Allegation of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the petitions on wire rod from Germany, Trinidad and Tobago, Canada and Venezuela and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of wire rod from these countries receive subsidies.

A. Germany

Petitioners have made specific subsidy allegations with respect to two German wire rod producers: Saarstahl and Hamburger Stahlwerke (HSW). We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Germany:

1. *Saarstahl Debt Forgiveness*
2. *Assumption of Saarstahl's Guaranteed Debt*
3. *Saarstahl's Private Bank Debt Forgiveness/Assurances of Liquidity Provided to Private Banks*
4. *Post-Bankuptcy Assistance to Saarstahl*
5. *Worker Assistance under Article 56 of the European Coal and Steel Community*
6. *1984 Assistance to HSW*
7. *1984 State Aid to HSW*

8. *1984 Loan Guarantee to HSW*
9. *1994 Assistance to HSW*

We note that the EC has ordered repayment of the 1994 assistance to HSW. Consultations with representatives of the EC indicate that the assistance is being repaid, regardless of the fact that the EC decision is under appeal. We intend to look into this possibility.

Petitioners allege that Saarstahl was uncreditworthy from 1986 to present, and in prior years if the Department should deem such years relevant. However, petitioners only allege non-recurring countervailable subsidies in 1989 and 1993–1996. Therefore, we will only examine Saarstahl's creditworthiness in these years.

Petitioners also allege that Saarstahl was unequityworthy from 1986 to present, and in prior years if the Department should deem such years relevant. However, petitioners provide no information that Saarstahl received equity infusions in the relevant years. Therefore, we will not examine Saarstahl's equityworthiness in our investigation.

Petitioners allege that HSW was uncreditworthy and unequityworthy from 1984 to 1994. However, petitioners only allege non-recurring countervailable subsidies in 1984 and 1994. For those years in which non-recurring subsidies were not alleged we will not examine HSW's creditworthiness and equityworthiness.

B. Trinidad and Tobago

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Trinidad and Tobago:

1. *Government Equity Infusions in the Iron and Steel Corporation of Trinidad and Tobago (ISCOTT) over the Period 1983 though 1990 for Investment in Plant, Loss Coverage, Debt Service, or Other Purposes*
2. *Ongoing Government Support of ISCOTT from 1989–1994*

During this period ISCOTT's assets were leased by a private company, Caribbean Ispat, Ltd. (Ispat). Information provided by petitioners indicates that the government of Trinidad and Tobago assumed the debt incurred by ISCOTT prior to the lease. We intend to investigate the assumption of debt and any other ongoing support to the production of wire rod during the leasing period.

3. *Preferential Natural Gas Prices*
4. *Preferential Electricity Rates*
5. *Loan Guarantee from the Trinidad and Tobago Electric Commission*
6. *Preferential Terms for the Point Lisas Lease*
7. *Tax Credits for Exports*
8. *Export Promotion Allowance for Tax Purposes*
9. *Corporate Tax Exemption under the Fiscal Incentives Act*
10. *Import Duty Concessions under Section 56 of the Customs Act*

Petitioners have alleged that ISCOTT was uncreditworthy and unequityworthy during the years 1980–1995. We are not investigating creditworthiness or equityworthiness in the years prior to 1983. In *Carbon Steel Wire Rod From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 480, January 4, 1984) (1984 final), we determined that investments in, and loans to the company were on terms consistent with commercial considerations. Petitioners have not provided any new evidence to lead us to change our previous determination. With respect to the period 1983 to 1990, we will investigate whether ISCOTT was creditworthy or equityworthy during the years in which petitioners have alleged non-recurring countervailable subsidies.

We are not including in our investigation the following programs alleged to be benefitting the production of the subject merchandise in Trinidad and Tobago:

1. ISCOTT's Rent-Free Use of a Dock Facility

In 1984, the Department determined that ISCOTT's rent-free use of a dock facility was countervailable. Press reports filed with the petition indicate that Ispat has been paying a rental fee for this facility. (See petition Exhibit 9 B–7.) Petitioners assume that this rental fee is preferential but offer no support for their assumption. Therefore, we are not including this program in our investigation.

2. Exemption From the Value Added Tax (VAT)

Petitioners allege that companies exporting at least 80 percent of production may receive an exemption from the VAT on manufacturing inputs. Because exemptions from VAT or rebates of VAT paid on inputs used to produce for export are regarded as permissible, we are not including this program in our investigation.

3. Trinidad and Tobago Free Trade Zones

The petition documents the existence of free trade zones in Trinidad and Tobago established under the Free Trade Zones (Amendment) Act of 1995. Certain of the benefits available to companies within the zones appear to be countervailable. However, as described in the petition, Ispat's plant is adjacent to, and not within, the designated free zone; therefore petitioners have not demonstrated that it is eligible for these benefits.

C. Canada

Petitioners have made specific subsidy allegations with respect to only one Canadian wire rod producer: Sidbec-Dosco, Inc. We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Canada:

1. *1982 Assistance to Sidbec-Dosco*
2. *Assistance to Reduce Sidbec-Dosco's Accumulated Deficit during the period 1984 to 1986*
3. *Sidbec-Dosco Debt-to-Equity Conversion in 1987*
4. *Sidbec Dosco Debt-to-Equity Conversion in 1988*
5. *1987 Grant to Sidbec-Dosco*

Petitioners allege that Sidbec-Dosco was uncreditworthy during the years 1977–1988. We will investigate the creditworthiness of Sidbec-Dosco in 1982 and 1984–1988. These are the years in which we will be investigating the receipt of non-recurring subsidies.

We are not including in our investigation at this time the following program alleged to be benefitting producers of the subject merchandise in Canada:

Assistance Prior to 1982

Petitioners allege that Sidbec-Dosco received some form of assistance prior to 1982. In addition, petitioners allege that Sidbec-Dosco was uncreditworthy and unequityworthy during this period. Although we found sufficient evidence to investigate whether Sidbec-Dosco was subsidized in 1982 (see the program listed under item (1) above), for assistance which may have been provided earlier, petitioners only cite to a 1982 news article which states that Sidbec-Dosco had been provided a certain amount of funds from either the GOC or GOQ since Sidbec-Dosco's inception. Sidbec-Dosco was founded in 1964, and petitioners provided no evidence or indication of when during the 1964 to 1982 period these other funds may have been provided to the company. In particular, petitioners provided no evidence that any of these funds—whatever their precise nature might be—were provided to Sidbec-Dosco during or after 1977, *i.e.*, the allocation period captured by petitioners' allegation of a company-

specific 20 years average useful life of assets for Sidbec-Dosco. Consequently, we do not have sufficient information to initiate an investigation of a specific program based on this allegation of assistance.

D. Venezuela

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Venezuela:

1. *Government Equity Infusions in SIDOR in 1977, 1978, 1981, 1982 and 1983*
2. *Government Conversion of SIDOR's Debt to Equity in 1981, 1986, 1989 and 1992*
3. *Government Guarantees of SIDOR's Private Debt in 1987 and 1988*
4. *1990 Government Loan to SIDOR*
5. *Government Provision of Iron Ore for less than Adequate Remuneration*
6. *Preferential Tax Incentives Under Decree 1477*

Petitioners also allege that SIDOR was uncreditworthy in the following years: 1977, 1978, 1981–1983, 1986–1990 and 1992. We will investigate SIDOR's creditworthiness in each of these years because these are the years in which we will be investigating either government equity infusions, loans or loan guarantees.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petitions have been provided to the representatives of Germany, Trinidad and Tobago, Canada and Venezuela. We will attempt to provide copies of the public version of the petitions to all the exporters named in the petition.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by April 14, 1997, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Germany, Trinidad and Tobago, Canada and Venezuela of wire rod. Any ITC determination which is negative will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to Section 702(c)(2) of the Act.

Dated: March 18, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7356 Filed 3–21–97; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection; Comment Request

March 19, 1997.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation for National and Community Service is soliciting comments concerning its proposed Evaluation Information System (EIS) Form for Learn and Serve America: School and Community-Based Programs.

Copies of the information collection requests can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section on or before May 19, 1997. The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Learn and Serve America, Attn: Brad Lewis, Program Officer, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Brad Lewis, (202) 606–5000, ext. 113.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Evaluation has engaged Brandeis University and Abt Associates to do qualitative evaluations on Learn and Serve America: School and Community-based Programs. Additional information regarding quantitative descriptive data on programs needs to be sought to provide a complete overview of program success.

II. Current Action

The Office of Evaluation plans to distribute, through the mail, the Evaluation Information System (EIS) forms to recipients of Learn and Serve America: School and Community-Based grants. The EIS forms will collect grantee and sub-grantee information for the purpose of maintaining records and disseminating grant/program information to several audiences. The Corporation for National and Community Service seeks approval of a new form to evaluate the impact of the program on student participants.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Evaluation Information System Form.

OMB Number: None.

Agency Number: None.

Affected Public: Grantees and sub-grantee recipients only.

Total Respondents: 200.

Frequency: Annual.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 200 hrs.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 19, 1997.

Marilyn Smith,

Director, Learn and Serve America.

[FR Doc. 97–7339 Filed 3–21–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

AGENCY: United States Air Force, Department of Defense.

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: Department of Defense/United States Air Force USAF Military Aircraft Overflight Study.

Type of Request: New collection.

Number of Respondents: 1,500.

Responses Per Respondent: 1.

Annual Responses: 1,500.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 250.

Needs and Uses: This collection of information is necessary to obtain acoustical noise date and visitor survey data, to estimate a dose-response relationship between sounds from military aircraft overflights and effects (reactions) on visitors to National Park Service (NPS) areas. Concurrent with the on-site interviews, sound recordings of the exposure to aircraft overflights will be taken to determine the ''noise dose'' experience by each visitor. A minimum of 300 visitors and a maximum of 500 visitors will be surveyed at each of three potential sites over a period of 4–5 days at each site. This study builds upon research conducted by the NPS to examine the dose-response relationship between sightseeing aircraft overflights and NPS visitor reactions. Because of the different characteristics of sounds from military aircraft, the dose-response relationship for military aircraft overflights may be quite different from the relationship developed for sightseeing aircraft.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

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. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 18, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7285 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Keesler Medical Center has been designated as a Regional Specialized Treatment Services (STS) Facility for Cardiac Surgery for TRICARE Region 4. This designation covers the following Diagnosis Related Groups:

104—Cardiac valve procedure with cardiac cath
105—Cardiac valve procedure without cardiac cath
106—Coronary bypass with cardiac cath
107—Coronary bypass without cardiac cath
108—Other cardiothoracic procedures
110—Major cardiovascular procedures with cardiac cath
111—Major cardiovascular procedures without cardiac cath
112—Percutaneous cardiovascular procedures
124—Circulatory diseases except acute myocardial infarction, with cardiac cath and complex diagnoses
125—Circulatory diseases except acute myocardial infarction, with cardiac cath without complex diagnoses

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by Keesler Medical Center in accordance with the provisions of the Joint Federal Travel Regulation. All DoD beneficiaries who reside in the Regional STS Catchment Area for TRICARE Region 4 must be evaluated by Keesler Medical Center before receiving CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to Keesler Medical Center. If the procedure cannot be performed at Keesler Medical Center, the facility will provide a medical necessity review in order to support issuance of a Nonavailability Statement.

The Regional STS Catchment Area covering TRICARE Region 4 is defined by zip code in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 4 that fall within a 200 mile radius of Keesler Medical Center.

EFFECTIVE DATE: June 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Ellen Lewis, Keesler Medical Center, at (601) 377–9627, or Captain Margaret Orcutt, OSD (Health Affairs), at (703) 695–6800.

SUPPLEMENTARY INFORMATION: In FR Doc. 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58995–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually.

Dated: March 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7328 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: April 18, 1997 (800 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretariat, DIA Scientific Advisory

Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7286 Filed 3–21–97; 8:45 am]

BILLING CODE 3000–04–M

National Defense Panel; Notice of Meeting

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on April 1 and 2, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public in order for the Panel to discuss classified material.

DATES: April 1 and 2, 1997.

ADDRESSES: Suite 504, 1931 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel (NDP) was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the NDP is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review (QDR) and an Alternative Force Structure Analysis to meet the national security challenges of the twenty-first Century.

Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 8:30 a.m. until 5:00 p.m. on April 1 and 2, 1997. The Panel will be presented classified briefings on the Deep Attack Weapons Mix Study and its potential impact of military investment strategy. They will also discuss the DoD response to recommendations on areas of further study in the QDR. These discussions are based upon classified information provided by the DoD QDR Integration Panel.

FOR FURTHER INFORMATION: Please contact the National Defense Panel at (703) 697–5136.

Dated: March 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7287 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Group of Advisors to the National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: April 8, 1997.

ADDRESSES: La Posada de Santa Fe, 330 East Palace Avenue, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: collier@nsep.policy.osd.mil

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: March 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7284 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board 1997 Summer Study Task Force on DoD Responses to Transnational Threats

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1997 Summer Study Task Force on DoD Responses to Transnational Threats will meet in closed session on April 1–2, 1997 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task force will provide an assessment of the DoD posture and recommend actions to improve this posture. Specifically, review the legislation, executive orders, prior studies and current activities of the government, identify the variety of threats which should be addressed by the Department, assess the nation's vulnerability to these threats, examine the DoD capabilities for playing its proper role in response, identify available and potential technologies which may be applicable for enhancing the protection of US Armed Forces, and recommend actions by the Department to position itself properly for this set of problems.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: March 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7329 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Innovative Support Structure, Phase II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Innovative Support Structure, Phase II will meet in closed session on April 2, 1997 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will participate in an advisory capacity to the Infrastructure Panel Chairman, Quadrennial Defense Review, and provide appropriate analysis and inputs to the Infrastructure Panel deliberations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting

concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: March 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7330 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Underground Facilities

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Underground Facilities will meet in closed session on April 30–May 2, 1997 at Defense Special Weapons Agency, Nuclear Test Site, Las Vegas, Nevada.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: March 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7331 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, as amended, notice is hereby given on a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: April 8–13, 1997 (Summarized agenda follows).

ADDRESSES: Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, VA 22071, Phone Number: (703) 478–2900.

AGENDA: Sessions will be conducted daily and will be open to the public where indicated on the attached notice. The agenda will include the following:

Tuesday, April 8, 1997

General Conference Registration
New Member Orientation (New Members Only—Rules & Procedures)

Wednesday, April 9, 1997

General Conference Registration
Field Trip (New Members & Escorts only)
OSD Social (Paid Registered Conference Participants only)
Executive Committee Meeting (Executive Committee Only—Administrative Procedures)

Thursday, April 10, 1997

Opening Ceremony/General Business Session (Open to Public)
OSD Official Luncheon (Invited Guests only)
Joint Subcommittee Session (Open to Public)
Subcommittee Session (Open to Public)

Friday, April 11, 1997

Joint Subcommittee Session (Open to Public)
Subcommittee Session (Open to Public)
Luncheon (Paid Registered Conference Participants only)
Subcommittee Sessions (Open to Public)
Executive Committee Meeting (Executive Committee Only—Administrative Procedures)
OSD Reception and Dinner (Invited Guests only)

Saturday, April 12, 1997

Subcommittee Sessions (Open to Public)
Tri-Committee Review (Open to Public)
Executive Committee Rules and Procedures (Executive Committee only)

Sunday, April 13, 1997

Final Review (Open to Public)
Closing Session (Open to Public)

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kay Troutt, USAF or CDR Deborah R. Goodwin, USN, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the OSD Luncheon, OSD Reception and Dinner and Field Trip.

(2) The Opening Session/Business Session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than March 28, 1997.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral Presentations by members of the public will be permitted only on Sunday, April 13, 1997 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office one copy of the presentation by March 28, 1997 and make 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Executive Director, DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter oral discussion conducted by the Committee members at any of the session; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Non-social agenda events that are not open to the public relate solely to internal personnel rules and practices, see 5 U.S.C. 552 b(c)(2).

Dated: March 18, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–7283 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–M

Defense Special Weapons Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Special Weapons Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Special Weapons Agency proposes to add one record system to its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on April 23, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: The Defense Special Weapons Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on March 14, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 19, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDSWA 017

SYSTEM NAME:

Voluntary Leave Sharing Program Records.

SYSTEM LOCATION:

Office of Manpower Management and Personnel, Headquarters, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave sharing program as either a donor or recipient of annual leave.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the leave transfer program, the status of the hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and DSWA approvals or denials.

Donor records include the individual's name, organization, office, telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours being transferred (or donated leave), and, in the case of the transfer program, the designated leave recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 et seq (Leave); 10 U.S.C. 136; 5 CFR part 630; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in managing the DSWA Voluntary Leave Sharing Program. The recipient's name, and a brief description of the hardship, if authorized by the recipient, are published internally for solicitation purposes. The Social Security Number is obtained to ensure the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-related injury or illness; where the leave donor and leave recipient are employed by different Federal agencies, to the personnel and finance offices of the Federal agency involved to effectuate the leave transfer.

The 'Blanket Routine Uses' set forth at the beginning of DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in the performance of their official duties. Records are stored in locked cabinets or rooms, and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Civilian Personnel Management Division, Office of Manpower Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written requests to the Chief, Civilian Personnel Management Division, Office of Manpower Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written requests to the Chief, Civilian Personnel Management Division, Office of Manpower Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Individual should provide full name and Social Security Number.

CONTESTING RECORDS PROCEDURES:

The DSWA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in DSWA Regulation 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Headquarters, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–7325 Filed 3–21–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; Comment request.

SUMMARY: The Director, Information Resources Management Group, 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 May 23, 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 Director, Information Resources Management Group 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 to 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: March 18, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of the Under Secretary

Type of Review: New.

Title: School-level Implementation of Education Reform and Title I.

Frequency: One Time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,600, *Burden Hours:* 1,680.

Abstract: This study is being conducted to support the legislative requirement in P.L. 103–382, Section 1501 to assess the implementation of Title I and education reform. This study will examine principals' perceptions of education reform and Title I and will review school-level documents for evidence of education reform activities.

[FR Doc. 97–7309 Filed 3–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–66–003]

Canyon Creek Compression Company; Notice of Compliance Filing

March 18, 1997.

Take notice that on March 12, 1997, Canyon Creek Compression Company (Canyon Creek) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 123, to be effective May 1, 1997.

Canyon Creek states that the purpose of the filing is to revise its compliance filing submitted February 28, 1997, at Docket No. RP97–66, to correct an error in Section 9.4(b)(4) of its General Terms and Conditions.

Canyon Creek states that copies of the filing have been served on its jurisdictional customers, interested state commissions, and all parties set out on the official service list at Docket No. RP97–66.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7307 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2703–000]

Citizens Utilities Company; Notice of Filing

March 18, 1997.

Take notice that on March 11, 1997, Citizens Utilities Company tendered for filing in this docket what it described as an ''Uncontested Motion of Citizens Utilities Company to Withdraw Filing.''

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. 20462, 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 March 26, 1997. 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. 97–7301 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR97–6–000]

Louisiana Intrastate Gas Company L.L.C.; Notice of Petition for Rate Approval

March 18, 1997.

Take notice that on March 3, 1997, Louisiana Intrastate Gas Company L.L.C. (LIG) filed a Petition to justify its existing interruptible maximum rate of 20.25 cents per MMBtu for Section 311(a)(2) of the Natural Gas Policy Act of 1978 interruptible transportation service. LIG states that, as is currently in effect, shippers will be charged for (1) filing fees required to implement, commence or continue service; and (2) their pro rata share of gas consumed by LIG as compressor fuel, company use and unaccounted for gas, as provided in the relevant agreements, subject to a 2% maximum for such compressor fuel, company use and unaccounted for gas.

LIG also filed a Petition for rate approval to initiate Section 311(a)(2) firm transportation and firm authorized overrun services. LIG also states that it petitions the Commission for approval of a maximum reservation charge for such service on LIG's mainline of $4.22 per MMBtu per month, and a maximum usage charge or 9.75 cents per MMBtu. LIG also petitions for Commission approval of an authorized overrun rate of 9.75 cents per MMBtu for firm Section 311(a)(2) shippers requesting firm authorized overrun service on LIG's mainline system. Firm and firm overrun shippers will be charged filing fee costs and a pro rata share of compressor fuel, company use and unaccounted for gas, as provided in the relevant agreements, subject to a 2% maximum.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before April 2. 1997. The Petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7304 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–329–002]

NorAm Gas Transmission Company; Notice of Filing

March 18, 1997.

Take notice that on March 13, 1997, NorAm Gas Transmission Company (NGT) tendered for filing a notice that it was withdrawing its filing previously make in this proceeding, with prejudice, and will make full refunds, with interest, for all amounts previously collected as Gas Supply Realignment Costs through a demand surcharge previously authorized under NGT's Seventh Revised Sheet No. 13 to its FERC Gas Tariff, Fourth Revised Volume No. 1. Refunds will include interest, calculated in accordance with the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7306 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–778–000]

NXIS, LLC; Notice of Issuance of Order

March 18, 1997.

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

On March 17, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

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

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

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

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 16, 1997.

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

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7302 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–288–000]

Texas Gas Transmission Corporation; Notice of Application

March 18, 1997.

Take notice that on March 13, 1997, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP97–288–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service with ANR Pipeline Company (ANR), which was authorized in Docket

No. G–10395, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon a transportation service with ANR because the service is no longer necessary or beneficial and both parties have agreed to terminate the transportation service.

Any person desiring to be heard or to make protest with reference to said application should on or before April 8, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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

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

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7300 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–027 and RP96–44–006]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

March 18, 1997.

Take notice that on February 26, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report pursuant to an uncontested Stipulation and Agreement (Partial Settlement) approved by Commission letter order issued December 23, 1996 in Docket Nos. RP95–197 et al and RP96–44 et al (Consolidated).

Transco states that this Partial Settlement resolves certain outstanding issues between Transco and Northeast Energy Associates, L.P. and North Jersey Associates, L.P. (Energy Associates) and provides settlement rates for services rendered by Transco to Energy Associates under Rate Schedules X–319 and X–320.

Transco further states that it has calculated refunds for Energy Associates based on the total amount collected from Energy Associates for the period September 1, 1995 through October 31, 1996, in excess of the total amount that Transco would have collected under the revised rates stated on the tariff sheets approved as part of the Partial Settlement (subject to further adjustment, as necessary, to reflect the outcome of the remaining issues in Phases I and II). The refunds to Energy Associates total $77,402.19 including interest.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7305 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–202–000]

USG Pipeline Company; Notice of Site Visit

March 18, 1997.

On March 26–27, 1997, beginning at 12:00 p.m., the Office of Pipeline Regulation (OPR) staff will conduct a site visit with USG Pipeline Company of the proposed USG Pipeline Project in Marion County, Tennessee, and Jackson County, Alabama.

All parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Warren C. Edmunds,

Acting Director, Office of Pipeline Regulation.

[FR Doc. 97–7299 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–43–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 18, 1997.

Take notice that on March 13, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 6B, to be effective April 1, 1997.

WNG states that this filing is being made to reflect revised fuel and loss reimbursement percentages pursuant to the Settlement filed on November 27, 1996, in Docket No. RP95–136–004. By order issued March 7, 1997, the Commission accepted the Settlement to be effective March 1, 1997. WNG has calculated the fuel and loss reimbursement percentages to be effective April 1, 1997, based on the reversal of the reclassification as proposed in the Settlement. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1995.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7308 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–1936–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 17, 1997.

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

1. Louisville Gas and Electric Company

[Docket No. ER97–1936–000]

Take notice that on March 4, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Northern Indiana Public Service Company under LG&E's Rate Schedule GSS.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER97–1937–000]

Take notice that on March 4, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreement for Non-Firm Point-to-Point Transmission Service with Illinois Power Company and Citizens Lehman Power Sales under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to the Transmission customers as agreed to be the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and the Illinois Commerce Commission.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–1938–000]

Take notice that on March 4, 1997, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with The Cleveland Electric Illuminating Company and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER97–1939–000]

Take notice that on March 4, 1997, The Dayton Power and Light Company (Dayton), submitted a service agreement establishing Indiana Municipal Power Agency as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Indian Municipal Power Agency and the Public Utilities Commission of Ohio.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. ER97–1940–000]

Take notice that on March 4, 1997, Consumers Power Company, d/b/a Consumers Energy Company (''Consumers Energy''), tendered for filing Service Agreements for Network Integration Transmission Service and Non-Firm Point-to-Point Transmission Service (the ''Service Agreements'') between Consumers Energy—Transmission Transactions and Consumers Energy—Electric Sourcing and Trading dated as of March 1, 1997. Consumers Energy requests that the Service Agreements be made effective as of March 1, 1997.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Company

[Docket No. ER97–1941–000]

Take notice that on March 4, 1997, The United Illuminating Company (''UI''), tendered for filing the ''Agreement Amending the Interim Agreement Between The Connecticut Light & Power Company and The United Illuminating Company, Dated August 24, 1993'' (''Agreement''), which UI and Northeast Utilities Service Company (''NUSCO'') executed on December 26, 1996. UI also filed a certificate of concurrence demonstrating that NUSCO, on behalf of The Connecticut Light & Power Company, assents to and concurs in the Agreement.

UI requests an effective date for the Agreement of March 1, 1997, the date the open access tariff filed on December 31, 1996 by certain participants of the New England Power Pool became effective. UI states that it has served a copy of the filing upon NUSCO.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER97–1942–000]

Take notice that on March 4, 1997, Public Service Company of Colorado (''Public Service''), tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service and Rocky Mountain Generation Cooperative, Inc. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests this Service Agreement be made effective on February 14, 1997.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER97–1943–000]

Take notice that on March 4, 1997, Public Service Company of Colorado (''Public Service''), tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service and Southern Energy Trading and Marketing, Inc. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests this Service Agreement be made effective on February 14, 1997.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER97–1944–000]

Take notice that on March 5, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement between Virginia Electric and Power Company and The Power Company of America, L.P. under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994, as revised on December 31, 1996. Under the tendered Service Agreements Virginia Power agrees to provide services to The Power Company of America, L.P. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service

Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER97–1947–000]

Take notice that on March 5, 1997, Arizona Public Service Company (''APS''), tendered for filing Service Agreements to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff, Revision No. 1 with The Power Company of America L.P. (''PCA''), Williams Energy Services Company (''Williams''), and Idaho Power Company (''IPC'').

A copy of this filing has been served on PCA, Williams, IPC, the Idaho Public Utilities Commission and the Arizona Corporation Commission.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER97–1948–000]

Take notice that on March 5, 1997, Arizona Public Service Company (''APS''), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (''APS Tariff'') with the following entity:

Colorado River Agency

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER97–1949–000]

Take notice that on March 5, 1997, Southern Company Services, Inc. (''SCS''), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the ''Southern Company System''), submitted for filing Amendment No. 8 to The Southern Company System Intercompany Interchange Contract (''IIC'') dated October 31, 1988, as amended, and the Allocation Methodology and Periodic Rate Computation Manual incorporated therein (''Manual''). The purpose of the amendment is to adopt ''marginal replacement fuel cost'' (MRFC''), as defined in the Manual, to determine the charges for energy transactions among the companies related to opportunity sales to non-associated entities. In addition, the Southern Company System is proposing a change in practice under its rates for opportunity sales to adopt MRFC for pricing those transactions as well. SCS requests an effective date of May 1, 1997 for this submittal.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Indiantown Cogeneration, L.P.

[Docket No. QF90–214–002]

On March 7, 1997, Indiantown Cogeneration, L.P. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: Within 15 days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

14. Lake Cogen, Ltd.

[Docket No. QF92–198–002]

On March 10, 1997, Lake Cogen, Ltd. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: Within 15 days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7296 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER97–1069–000, et al.]

New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 18, 1997.

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

1. New England Power Company

[Docket No. ER97–1069–000]

Take notice that on February 21, 1997, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Heartland Energy Services, Inc., Proven Alternatives, EnerConnect, Inc.

[Docket Nos. ER94–108–011, ER95–473–007, and ER96–1424–001 (not consolidated)

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

On January 31, 1997, Heartland Energy Services, Inc. filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–108–000.

On February 19, 1997, Proven Alternatives filed certain information as required by the Commission's March 29, 1995, order in Docket No. ER95–473–000.

On February 10, 1997, EnerConnect, Inc. filed certain information as required by the Commission's June 10, 1996, order in Docket No. ER96–1424–000.

3. Florida Keys Electric Coop Assn. Inc.

[Docket No. ER97–1392–000]

Take notice that on March 5, 1997, Florida Keys Electric Coop Assn. Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER97–1440–000]

Take notice that on March 4, 1997, Southern Company Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER97–1459–000]

Take notice that on March 11, 1997, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Washington Water Power Company

[Docket No. ER97–1533–000]

Take notice that on January 31, 1997, Washington Water Power Company tendered for filing a summary of its activity report for the quarter ending December 31, 1996.

Comment date: March 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Valero Power Services Company

[Docket No. ER97–1847–000]

Take notice that on February 26, 1997, Valero Power Services Company tendered for filing a Notification of Change in Status and revised Rate Schedule FERC No. 1.

Comment date: March 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER97–1954–000]

Take notice that on March 5, 1997, Public Service Company of Colorado (Public Service), tendered for filing an Amendment to the Interconnection and Transmission Service Contract between Public Service and Western Area Power Administration. Specifically Public Service is filing Revision No. 7 to Exhibit B and Revision No. 13 to Exhibit D of this Contract designated as Public Service Rate Schedule FERC No. 47. The Revised Exhibit B removes Julesburg as a Point of Delivery and Revised Exhibit D changes the Midway Substation deliveries to 30,000 Kw annually. Public Service requests that this filing be made effective as of December 1, 1996.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Delmarva Power & Light Company

[Docket No. ER97–1955–000]

Take notice that on March 5, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to Duke/Louis Dreyfus pursuant to Delmarva's open access transmission tariff.

Delmarva states that a copy of the filing was provided to Duke/Louis Dreyfus.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Company

[Docket No. ER97–1956–000]

Take notice that on March 5, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing service agreements providing for firm point-to-point transmission service to the City of Dover pursuant to Delmarva's open access transmission tariff.

Delmarva states that copies of the filing were provided to the City of Dover and its agent, Duke/Louis Dreyfus.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Capital & Trading, Inc.

[Docket No. ER97–1957–000]

Take notice that on March 5, 1997, Wholesale Power Services, Inc. is changing its name to Cinergy Capital & Trading, Inc. Accordingly, pursuant to 18 CFR 35.16 and § 131.51, Cinergy Capital & Trading, Inc. of 251 N. Illinois Street, Suite 1410, Indianapolis, Indiana 46204, on this 5th day of March, 1997, hereby adopts, ratifies, and makes its own, in every respect, all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by Wholesale Power Services, Inc. effective March 5, 1997.

(1) WPS Rate Schedule No. 1

Copies of this notice have been served on the public utility commissions of the States of Ohio, Indiana and Kentucky.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER97–1958–000]

Take notice that on March 4, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements under which NYSEG will provide capacity and/or energy to Koch Energy Trading, Inc. (Koch), Duke/Louis Dreyfus L.L.C. (DLD), Federal Energy Sales, Inc. (FES), Citizens Lehman Power Sales (Citizens), and Rainbow Energy Marketing Corporation (REM) in accordance with the NYSEG market-based power sales tariff.

NYSEG has requested waiver of the notice requirements so that the service agreements with Koch and Citizens become effective as of February 13, 1997, and the service agreements with FES, DLD, and REM become effective as of February 24, 1997.

NYSEG served copies of the filing upon the New York State Public Service Commission, Koch, FES, DLD, Citizens and REM.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER97–1959–000]

Take notice that on March 5, 1997, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and itself under its Transmission Services (TS) Tariff.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER97–1961–000]

Take notice that on February 26, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Service Agreements with Benton Rural Electric Association, McMinnville Water & Light, Minnesota Power & Light Company and Vantus Power Services under, PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 3.

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

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

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER97–1962–000]

Take notice that on February 25, 1997, South Carolina Electric & Gas Company (''SCE&G''), submitted a service agreement establishing Rainbow Energy Marketing Corporation (''REMC'') as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon, REMC and the South Carolina Public Service Commission.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER97–1963–000]

Take notice that on February 21, 1997, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the ''Tariff'') entered into between Cinergy and Pennsylvania Power & Light Company.

Cinergy and Pennsylvania Power & Light company are requesting an effective date of January 22, 1997.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER97–1964–000]

Take notice that on March 5, 1997, Illinois Power Company (''Illinois Power''), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Tennessee Valley Authority will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 1, 1997.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Rochester Gas and Electric Corporation

[Docket No. ER97–1965–000]

Take notice that on March 5, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the USGen Power Services, L.P. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December, 31 1996 filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of February 28, 1997 for the USGen Power Services, L.P. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER97–1966–000]

Take notice that on March 5, 1997, Entergy Services, Inc. (Entergy Services), tendered for filing a Notice of Cancellation of Service Schedule D, Economy Energy, under the Interconnection Agreement (the Interconnection Agreement) between Entergy Mississippi, Inc. (Entergy Mississippi), formerly known as Mississippi Power & Light Company, and South Mississippi Electric Power Association (SMEPA), Entergy Mississippi Rate Schedule No. 251. Entergy Services states that Entergy Mississippi has never provided service to SMEPA under Schedule D to the Interconnection Agreement, and that sales that Entergy Mississippi would have made to SMEPA under Schedule D in the future, if any, will instead be made under other applicable service schedules on file with the Commission.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER97–1967–000]

Take notice that on March 5, 1997, Entergy Services, Inc. (Entergy Services), tendered for filing a Notice of Cancellation of Service Schedule E, Economy Energy, under the Interchange Agreement (the Interchange Agreement) between Entergy Mississippi, Inc. (Entergy Mississippi), formerly known as Mississippi Power & Light Company, and Alabama Electric Cooperative, Inc. (AECI), Entergy Mississippi Rate Schedule No. 269. Entergy Services states that Entergy Mississippi has never provided service to AECI under Schedule E to the Interchange Agreement, and that sales that Entergy Mississippi would have made to AECI under Schedule E in the future, if any, will instead be made under other applicable service schedule on file with the Commission.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Colonial Energy, Inc.

[Docket No. ER97–1968–000]

Take notice that on March 5, 1997, Colonial Energy, Inc. (Colonial Energy), tendered for filing pursuant to Rule 205, 18 CFR 385.205, 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.

Colonial Energy intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Colonial Energy sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Colonial Energy nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. UtiliCorp United Inc.

[Docket No. ER97–1969–000]

Take notice that on March 6, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Public Service Company of Colorado for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER97–1970–000]

Take notice that on March 6, 1997, Entergy Services, Inc. (''Entergy Services''), on behalf of Entergy Arkansas, Inc. (''Entergy Arkansas''), tendered for filing the Second Amendment to Power Agreement Between the City of North Little Rock, Arkansas and Entergy Arkansas (''Amendment'').

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER97–1971–000]

Take notice that on March 6, 1997, Entergy Services, Inc. (''Entergy Services''), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the ''Entergy Operating Companies''), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Progress Power Marketing, Inc. (''Progress'').

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Entergy Services, Inc.

[Docket No. ER97–1972–000]

Take notice that on March 6, 1997, Entergy Services, Inc. (''Entergy

Services'), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the ''Entergy Operating Companies'), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Coral Power, L.L.C. (''Coral').

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Montana Power Company

[Docket No. ER97–1973–000]

Take notice that on February 20, 1997, Montana Power Company (MP) tendered for filing Rate Schedule FERC No. 1, General Terms and Conditions which MP is requesting to replace with the Original Rate Schedule FERC No. 1.

Comment date: March 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER97–1974–000]

Take notice that on March 6, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated January 1, 1997 between Cinergy, CG&E, PSI and Equitable Power Services Company (EPSC).

The Interchange Agreement provides for the following service between Cinergy and EPSC

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

Cinergy and EPSC have requested an effective date of one day after this initial filing of the interchange Agreement.

Copies of the filing were served on Equitable Power Services Company, the Kentucky Public Service Commission, the Pennsylvania Public Utility Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. New York State Electric & Gas Corporation

[Docket No. ER97–1975–000]

Take notice that on March 6, 1997, New York State Electric & Gas Corporation (''NYSEG'), filed a Service Agreement between NYSEG and New York State Electric & Gas Corporation, (''Customer'). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on January 29, 1997 with revised sheets effective on February 7, 1997, in Docket No. OA96–195–000 and ER96–2438–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of February 1, 1997 for the New York State Electric & Gas Corporation Service Agreement. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Niagara Mohawk Power Corp.

[Docket No. ER97–2006–000]

Take notice that on March 11, 1997, Niagara Mohawk Power Corporation (''Niagara Mohawk'') notified the Commission that it is canceling Electric Rate Schedule No. 95, under which the New York Power Authority (''Authority'') sells power and energy from its James A. FitzPatrick (''FitzPatrick'') nuclear power plant to Niagara Mohawk, and under which Niagara Mohawk provides transmission services to the Authority to accommodate the delivery of FitzPatrick power and energy to certain Niagara Mohawk industrial customers. Cancellation of the rate schedule is effective on May 24, 1997.

A copy of this filing has been served on the New York State Public Service Commission, and the Authority.

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Montana Power Company

[Docket No. ER97–2038–000]

Take notice that on February 26, 1997, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission an Executed Service Agreement with Bonneville Power Administration under FERC Electric Tariff, Original Volume No. 4 (Control Area Services Tariff).

Comment date: March 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Florida Power Corporation

[Docket Nos. ER97–515–000, ER97–516–000, and ER97–606–000]

Take notice that on February 18, 1997, pursuant to the Commission's Letter Order dated January 15, 1997, Florida Power Corporation (Florida Power) tendered for filing revised rate sheets which unbundle the affected wholesale generation, transmission and ancillary services. In addition, Florida Power also tendered for filing a network transmission service agreement providing for service to Florida Power Corporation pursuant to its open access transmission tariff (the T–6 Tariff).

Comment date: March 27, 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. 97–7295 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 2902 and 2901-Virginia]

Georgia-Pacific Corporation, Nekoosa Packaging Corporation; Notice of Scoping Meeting Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

March 18, 1997.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, the Georgia-Pacific Corporation (hereinafter referred to as Georgia-Pacific) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission (FERC) for the Big Island and Holcomb Rock Hydroelectric Projects located in Amherst and Bedford Counties, Virginia. Two public scoping meetings will be held, pursuant to the National Environmental Policy Act of 1969 (NEPA), to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, Georgia-Pacific will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information,

especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although Georgia-Pacific's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is to be issued by the Commission.

All interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was sent out on September 13, 1996, as part of the Initial Stage Consultation Document (ISCD). Copies of the Scoping Document and ISCD will also be available at the meetings.

A scoping meeting for federal, state and local resource agencies will be held on April 16, 1997, at Georgia-Pacific Corporation, Big Island Mill, Big Island, Virginia at 2:00 p.m. An evening scoping meeting will be held on April 16, 1997, at 7:00 p.m. at Big Island Elementary School, 1114 School Days Road, off State Route 122, Big Island, Virginia. The scoping meetings are open to all interested parties.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission for scoping meetings. Because this meeting will be at NEPA scoping meeting, the Commission will not conduct another NEPA scoping meeting when the application and EA are filed with the Commission. Instead, the Commission staff will attend the meetings held on April 16, 1997.

The meetings will be recorded and, thereby, will become a part of the formal record of the proceedings on the Big Island and Holcomb Rock Projects. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record. Written scoping comments may also be mailed to Wayne M. Dyok, Foster Wheeler Environmental Corporation, 8100 Professional Place, Suite 308, Lanham, Maryland 20785.

Correspondence should clearly show the following caption on the first page: Scoping Comments, Big Island and Holcomb Rock Hydroelectric Projects, FERC Nos. 2902 and 2901, Virginia.

For further information, please contact Wayne Dyok (Foster Wheeler Environmental Corporation, consultant to Georgia-Pacific) at (301) 429–2101 or Rainer Feller at (202) 219–2796.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7303 Filed 3–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5801–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Air Pollutant Emission Standards for the Synthetic Organic Chemical Industry (HON Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP subparts F, G, H, and I, the Hazardous Organic NESHAP (HON), OMB Control Number 2060–0282, expires 05/31/97. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 23, 1997.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740 (phone), and refer to EPA ICR No. 1414.03.

SUPPLEMENTARY INFORMATION:

Title: NESHAP subparts F, G, H, and I, the Hazardous Organic NESHAP (HON), OMB number 2060–0282, expires 05/31/97. This is a request for an extension of a previously approved collection.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 63.100, 63.110, 63.160, and 63.190; 40 CFR Part 63, subparts F, G, H, and I, respectively, hazardous air pollutant emissions from process vents, storage vessels, transfer racks, wastewater and equipment leaks. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control is being properly applied. Respondents are owners or operators of processes in SOCMI industries, styrene-butadiene rubber production, polybutadiene production, chloride production, pesticide production, chlorinated hydrocarbon use in production of chemicals, pharmaceutical production, and miscellaneous butadiene use.

Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAP's) from stationary sources. In the Administrator's judgment, hazardous air pollutant (HAP) emissions in the synthetic organic chemical industry and other negotiated industries cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NESHAPs have been promulgated for this source category as required under section 112, Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this ICR was published on 12/02/96 (61 FR 63840); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4,760 hours per response for existing sources and 9,296 hours per response for new sources. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No additional third party burden is associated with this ICR.

Respondents/Affected Entities: Owners and Operators of processes in SOCMI Industries.

Estimated Number of Respondents: 308.

Frequency of Response: Episodic, Quarterly and Semi-annually.

Estimated Total Annual Hour Burden: 1,727,724 hours.

Estimated Total Annualized Cost Burden: $98,460,900.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to ICR No. 1414.03 and OMB control number 2060–0282 in any correspondence.

Ms. Sandy Farmer, US Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 18, 1997.

Joseph Retzer,

Director. Regulatory Information Division.

[FR Doc. 97–7344 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5801–5]

Amendment to Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of amendment to open meeting of the Public Advisory Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that the dates and times for the Common Sense Initiative Council's Automobile Manufacturing Sector Subcommittee meeting scheduled for March 26, and March 27, 1997, in Romulus, Michigan, have been amended.

AMENDMENT OF OPEN MEETING NOTIFICATION: Notice is hereby given that the Environmental Protection Agency, has amended an open meeting of the Common Sense Initiative Council's Automobile Manufacturing Sector Subcommittee (reference FRN dated March 11, 1997, 62 FR 11183) scheduled for Wednesday, March 26, and Thursday, March 27, at the Crowne Plaza Hotel, 800 Merriman Road, Romulus, Michigan. The Subcommittee will not meet on Wednesday, March 26, 1997. They will hold a one day meeting on Thursday, March 27, 1997. On March 27, 1997, the meeting will begin at approximately 9:00 a.m. EST rather than at 9:30 a.m. EST, as previously scheduled. The meeting will end at approximately 3:30 p.m. EST.

FOR FURTHER INFORMATION: For more information regarding the amendment of this meeting, please call Alan Powell, Designated Federal Officer (DFO), at EPA, Region 4, by telephone on (404) 562–9045, or by fax on (404) 562–9068, or call Keith Mason, Alternate DFO, at EPA, on (202) 260–1360.

Dated: March 18, 1997.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 97–7350 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5801–4]

Public Meeting on the Effluent Limitations Guidelines and Standards for the Landfills Industry

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency is announcing a public meeting on the upcoming proposed effluent limitations guidelines and standards for the Landfills industry. The EPA intends to propose effluent limitations guidelines and standards late in 1997, and this is the only public meeting that the Agency plans to sponsor prior to proposal. EPA will report on the status of regulatory development, and interested parties can provide information and ideas to the Agency on key technical, scientific, economic, and other issues.

DATES: The public meeting will be held on Monday, April 21, 1997, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held in the EPA auditorium at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tinger, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street SW., Washington DC 20460. Telephone (202) 260–4992, fax (202) 260–7185 or E-Mail Tinger.John@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is developing proposed effluent limitations guidelines and standards for the Landfills industry under authority of the Clean Water Act (33 U.S.C. 1251 et seq.). The Landfills industry includes landfills that generate wastewater from leachate collection systems. The Landfills industry includes industrial, municipal, and hazardous waste landfills.

Topics for the public meeting include subcategorization, exclusions, summary of industry information, and preliminary plans for technology-based regulatory options. The meeting will not be recorded by a reporter or transcribed for inclusion in the rulemaking record.

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting. For those unable to attend the meeting, a document summary will be available following the meeting, and can be obtained by sending an e-mail request to John Tinger at the previously mentioned address.

Dated: March 17, 1997.

Tudor Davies,

Director, Office of Science and Technology.

[FR Doc. 97–7343 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5801–3]

Privacy Act of 1974; Transit Subsidy Program System of Records

AGENCY: Environmental Protection Agency.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Environmental Protection Agency (EPA) is publishing a notice of a new system of records, ''EPA Transit Subsidy Program.'' The system of records, which is managed by the EPA's Transportation Management Section, is used to coordinate and manage the EPA Transit Subsidy Program. We are also proposing routine uses for this new system.

EFFECTIVE DATES: This proposed notice will be effective May 5, 1997, unless EPA receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to: Transportation Management Section, Environmental Protection Agency, 401

M Street, SW, Washington, DC 20460, Mail Code 3204. Tel: (202) 260–2088.

FOR FURTHER INFORMATION CONTACT: Dione Bowlding, Transportation Officer, Transportation Management Section, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Mail Code 3204. Tel: (202) 260–2088.

SUPPLEMENTARY INFORMATION: The EPA proposes to establish a new system of records, ''EPA Transit Subsidy Program.'' This system of records will be used by EPA's transportation management and other administrative staff to: (1) Manage the EPA Transit Subsidy Program, including receipt and processing of employee applications and distribution of the fare media to employees; (2) track the use of appropriated funds used to support the program, and (3) evaluate employee participation in the program.

Under the Treasury, Postal Service and General Government Appropriations Act of 1991, Federal agencies are authorized to establish a program which provides subsidies for commuting to and from work using a qualifying mass transit system. The transit subsidy program is intended to encourage and increase the use of public transportation by EPA employees, to reduce emissions from vehicles traveling to and from work, to improve air quality and to reduce energy consumption.

Dated: March 3, 1997.

Alvin M. Pesachowitz,

Acting Assistant Administrator for Administration and Resources Management and Chief Information Officer.

EPA–35

SYSTEM NAME:

Environmental Protection Agency Transit Subsidy Program, EPA/FMSD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Transportation Management Section, Facilities Management and Services Division, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Security and Property Management Branch, Facilities Management and Services Division, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA employees whose duty station is in the greater Washington, DC area and who apply for and participate in the EPA Transit Subsidy Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, home address, grade level, office address and phone number, current and proposed commuting pattern, estimated monthly commuting cost, certification and recertification forms, and other information related to carrying out activities under the transit subsidy program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Treasury, Postal Service and General Government Appropriations Act of 1991 (section 629 of Pub. L. 101–509), found at 5 U.S.C. note prec. section 7901); Federal Employees Clean Air Incentives Act (section 2(a) of Pub. L. 103–172, found at 5 U.S.C. 7905); and Executive Order 9397.

PURPOSE(S):

To manage the EPA Transit Subsidy Program, including receipt and processing of employee applications and distribution of the fare media to employees; to track the use of appropriated funds used to support the program; and to evaluate employee participation in the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures of records in this system of records may be made as follows:

1. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

2. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

3. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to requests for discovery.

4. To Federal government contractors, grantees or volunteers who have been engaged to assist the government in the performance of a contract, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity.

5. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

6. To a Federal, State, or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant or other benefit.

7. To a Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

8. To representatives of the General Services Administration and the National Archives and Records Administration, who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

9. To authorized Federal agencies and non-Federal entities for use in computer matching programs to help eliminate fraud and abuse, to detect unauthorized overpayments made to individuals, and to recoup moneys owed to the Federal government by individuals. In making disclosures for computer matching purposes, EPA will comply with the Computer Matching and Privacy Protection Act and appropriate Office of Management and Budget guidelines.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and computer disks.

RETRIEVABILITY:

Records are retrieved by name and the first four digits of the social security number.

SAFEGUARDS:

Direct access to computer and hard-copy files is limited to Transportation Management Section employees who have an official need-to-know. Computer records are also protected by individual passwords assigned to authorized users. All records are in rooms which are locked during non-business hours. During business hours, access to rooms containing records in this system is controlled by on-site personnel.

RETENTION AND DISPOSAL:

Records are retained for a maximum of two years following the last month of an employee's participation in the EPA Transit Subsidy Program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Management Section, mail code 3406, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

NOTIFICATION PROCEDURES:

Individuals may determine if a record concerning themselves exists in this system by writing to the System Manager at the address listed above. The request should include: (a) Full name and (b) appropriate dates of participation in the transit subsidy program. The System Manager may require additional information to verify the identity of individuals.

RECORD ACCESS PROCEDURES:

Same as notification procedures. In addition, individuals should also reasonably specify the record being sought.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures. In addition, individuals should reasonably identify the record, specify the information being contested, the corrective action sought and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–7346 Filed 3–21–97; 8:45 am]
BILLING CODE 6560–50–P

[FRI–5711–4]

Massachusetts Marine Sanitation Device Standard; Notice of Determination

On December 6, 1996, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Stage Harbor Complex in the Town of Chatham, County of Barnstable, State of Massachusetts. The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a ''No Discharge Area'' (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are two public pump-out facilities located within the proposed area to service vessels in Stage Harbor Complex.

The facilities will be self-service with oversight provided by personnel from the Chatham Harbormaster's office.

The pump-out located at the town owned Old Mill Boatyard (OMBY) facility is a shore based facility and has a 60 gallon per cycle capacity with discharge to a 2,000 gallon tight tank. The facility provides access for vessels up to 50 feet in length and a draft of 5 feet at mean low water. This facility is available daily from June 10 through Labor Day from approximately 0900 to 1700 (9:00 am–5:00 pm). During the spring and fall the pump-out facility is available by contacting the Harbormaster's office by phone (508) 945–5185 or VHF radio channel 16.

The portable pump-out located at Stage Harbor Marine (SHM) has a 225 gallon capacity and is discharged directly to the Chatham Water Pollution Control Facility for treatment. This unit is accessible via the fuel dock which provides services to vessels of up to 40 feet and draft of 6 feet at mean low water. This facility is available daily from Memorial Day to Thanksgiving from 0800 to 1630 (8:00 am–4:30 pm). The pump-out may also be available from Thanksgiving to mid-December and mid-April to Memorial Day, Monday to Friday from 0800 to 1630 (8:00 am–4:30 pm). These dates are variable due to winter. Stage Harbor Marine can be contacted at (508) 945–1860 or VHF radio channel 9.

In addition to these pump-out facilities, the Stage Harbor Complex area has six on shore toilet facilities. Four are available to the public and two are private and restricted to marina patrons and their guests. The four on shore facilities available to the public are located at the Stage Harbor Road bathing beach, Barn Hill Road Town Landing, and the Old Mill Boatyard, and are open from June 21 to September 1 between the hours of 0800 and 1600 (8:00 am–4:00 pm). The fourth facility at the Stage Harbor Marina is open to the public but privately maintained and is open approximately from May 1 until November.

The waste from the Old Mill Boatyard facility is collected and stored in the existing, Department of Environmental Protection approved, 2,000 gallon tigh tank. This tank is fitted with alarms that activate in time to ensure waste removal long before the capacity is reached. The town of Chatham has an annual agreement with a licensed waste hauler and septage is transported to the Chatham Water Pollution Control Facility for treatment.

The number of mooring permits indicate that 1,161 vessels reside within the Stage Harbor Complex and 972 are identified as recreational and 189 are commercial vessels. Stage Harbor Complex is primarily a ''parking lot'' harbor and 90% of the total vessel population is under 25 feet in length, and therefore do not have any type of marine sanitation device. There are a number of locations in the Complex with public launching ramps, however, the size and condition of the ramps and the depth of the water limit use to vessels 25 feet and under. In addition to

the vessels that reside in the Complex, there is a transient population estimated at 110 vessels which have marine sanitation devices.

The resources of the Stage Harbor Complex are recreational and commercial. One of the Towns most used public bathing beach is located on Stage Harbor Road at the head of Oyster Pond. The northern tip of the Monomoy National Wildlife Refuge abuts the proposed No Discharge Area and provides recreational opportunities in addition to its wildlife role. The Stage Harbor Complex is also used by both recreational and commercial shell fishermen for the harvest of quahogs, softshell clams, mussels, oysters, and bay scallops and is the site of the Towns' only commercial aquaculture operations.

Therefore, based on an examination of the petition and its supporting information, which included a site visit by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the areas covered under this determination which include Stage Harbor, north of a line drawn across its mouth at Nantucket Sound, and the following tributaries: Little Mill Pond, Mill Pond, Mitchell River, Oyster Pond River, and Oyster Pond. The Proposed area encompasses approximately 620 acres of water-sheet in the southeast corner of the town of Chatham. The latitude and longitude defining the boundaries of the Stage Harbor Complex are—Oyster Pond 41°40′84″–069°57′84″, Little Mill Pond 41°40′6″–069°57′3″, and at the mouth of Stage Harbor 41°39′4″–069°59′0″. This determination is made pursuant to Section 312(f)(3) of Public Laws 92–500, as amended by Public Law 95–217 and 100–4.

Dated: March 11, 1997.

John P. DeVillars,

Regional Administrator.

[FR Doc. 97–7345 Filed 3–21–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability; Washoe Development, Washoe County, NV

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Washoe Development, Washoe County, Nevada, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the FDIC until June 23, 1997.

ADDRESSES: Copies of detailed descriptions of this property, including maps, may be obtained from or are available for inspection by contacting the following person: Mr. J. Russell Hibbs, Federal Deposit Insurance Corporation, Western Service Center, 4 Park Plaza; Mail Stop J–620D–60, Irvine, CA 92714, (714) 263–7753; Fax (714) 263–7699.

SUPPLEMENTARY INFORMATION: The Washoe Development property consists of approximately 481 acres in two parcels (Parcel A and Parcel B) of undeveloped land located on U.S. Highway 395 and William Brent Road in Washoe County, Nevada. U.S. Highway 395 borders the east side of both Parcel A and Parcel B. Parcel A extends west from U.S. Highway 395 to State Route 429 (Old Highway 395) and lies 700 to 2,700 feet north of William Brent Road. Parcel B extends 2,300 feet west from U.S. Highway 395 along William Brent Road and 2,900 feet south of William Brent Road. Parcel A consists of approximately 235.4 acres in Section 10 and 11, Township 16 North, Range 19 East. Parcel B consists of approximately 245.4 acres in Section 10, 11, 14, and 15, Township 16 North, Range 19 East. The Washoe Development property contains wetlands and lies in a valley between two mountain ranges. This property is adjacent to or contiguous with lands managed by the Nevada Division of Wildlife, Nevada State Lands, and the Washoe County Treasurer for recreational, open space, and/or natural resource conservation purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before June 23, 1997 by the Federal Deposit Insurance Corporation at the appropriate address stated above.

ELIGIBLE ENTITIES: Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and,
3. ''Qualified organizations'' pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

FORM OF NOTICE: Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: Washoe Development

Federal Register Publication Date: March 24, 1997

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the FDIC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: March 18, 1997.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–7290 Filed 3–21–97; 8:45 am]

BILLING CODE 6714–01–M

Determination of Insufficiency of Assets to Satisfy All Claims of Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), as manager of the FSLIC Resolution Fund,

successor in interest to the Federal Savings and Loan Insurance Corporation as receiver for Butterfield Savings and Loan Association, Santa Ana, California, has determined that the proceeds which can be realized from the liquidation of the assets of the receivership estate are insufficient to allow a dividend, distribution or payment to any holder of a claim or equity interest. Therefore, any such claims or interests are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, FDIC, 550 17th Street, NW., Room H–11048, Washington, DC 20429. Telephone: (202) 736–0168.

Dated: March 18, 1997.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–7326 Filed 3–21–97; 8:45 am]

BILLING CODE 6714–01–P

Sunshine Act Meeting; Notice of a Matter To Be Withdrawn From the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the ''discussion agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, March 25, 1997, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.:

Memorandum and resolution re:

Proposed Rule Regarding Deposit Insurance Simplification.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 20, 1997.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–7481 Filed 3–20–97; 2:13 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Theodore J. Hofer, Freeman, South Dakota; to acquire an additional 3.4 percent, for a total of 35.8 percent, of the voting shares of H & W Holding Company, Freeman, South Dakota, and thereby indirectly acquire Merchants State Bank, Freeman, South Dakota.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Morris Mayer Testamentary Trust, Dale Walkenhorst as Trustee, Madison, Nebraska; to acquire 26.91 percent of the voting shares of Madison Bancshares, Inc., Madison, Nebraska, and thereby indirectly acquire Bank of Madison, Madison, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Donald Edward Powell, Amarillo, Texas; to acquire 100 percent of the voting shares of Tejas Bancshares, Inc., Fritch, Texas, and thereby indirectly acquire Fritch State Bank, Fritch, Texas.

Board of Governors of the Federal Reserve System, March 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–7298 Filed 3-21-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Four Meetings of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of four meetings of the National Bioethics Advisory Commission. The Commission will continue discussing its response to the President's request to review the legal and ethical implications of the possible cloning of humans following the discovery of a technique for cloning sheep. The Commission is to report to the President in late May. This scientific finding raises a host of issues including ethical questions, in particular, the possible use of this technique to clone human embryos, as well as the promise of benefits in a number of areas. The meetings are open to the public and opportunities for statements by the public will be provided.

Dates/Times/Locations

Sunday, April 13, 1997, 7:30 a.m.–3:30 p.m.—Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA. 22202

Friday, May 2, 1997, 7:30 a.m.–3:30 p.m.—Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA. 22202

Saturday, May 17, 1997, 7:30 a.m.–3:30 p.m.—Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA. 22202

Saturday, June 7, 1997, 7:30 a.m.–3:30 p.m.—Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA. 22202

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The general mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications. On the issue of cloning, the Commission is to undertake a thorough review of the legal and ethical issues associated with the use of this technology, and report back to the President with recommendations on possible federal actions to prevent its abuse.

Tentative Agenda

The Commission will continue its review of the legal and ethical issues associated with the possible cloning of human beings and may hear from a number of invited speakers who are experts in their fields. Because of the very short lead time, more details are not yet available. Agendas will be available shortly before each meeting (see details below).

Public Participation

The meetings are open to the public with attendance limited by the

availability of space. Members of the public who wish to present oral statements should contact the Acting Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the NBAC will reserve limited time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned on a first come, first serve basis or along other considerations. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the Commission members and inclusion in the record. We urge anyone planning to speak to call the NBAC office two or three days before each meeting to obtain final information on the final logistical arrangements.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: March 19, 1997.

Henrietta D. Hyatt-Knorr,

Acting Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–7366 Filed 3–21–97; 8:45 am]

BILLING CODE 4160–17–P

Office of Inspector General

Program Exclusions: February 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of February 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs.

In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ALVAREZ, TONDALAYO E ..... CHICAGO, IL	02/27/97
ANISIMOV, VLADIMIR A ..... SALEM, OR	03/17/97
ARNOLD, SAMUEL ..... FAIRFIELD, OH	03/13/97
BAGLEY, ETTA RUTH ..... DETROIT, MI	03/10/97
BELOS, KAREN ..... BURNHAM, IL	03/10/97
BLOCK, ANNA M ..... MILWAUKEE, WI	02/27/97
BONER, JUDITH ANN COOPER ..... DECATUR, TX	02/27/97
BOSTICK, BENNIE K ..... PHILADELPHIA, MS	02/27/97
CAMPBELL, ROGER ..... CENTRALIA, IL	11/23/96
CARNEY, POMP TEMPLE ..... BRANDON, MS	03/16/97
COOPER, STANFORD ..... ST LOUIS, MO	02/27/97
CORBITT, TONI M ..... HUNTINGTON, WV	03/10/97
COULSON, KENNETH WAYNE ROCK CREEK, OH	03/16/97
CULP, ROBERT B III ..... SPARTANBURG, SC	03/16/97
DELOACH, DENNIS A ..... SALT LAKE CITY, UT	03/12/97
DETROIT DIVERSE CARE, INC ..... DETROIT, MI	03/16/97
DUNKLE, DONALD J JR ..... LOUISVILLE, KY	03/05/97
ELSO, IGNACIO ..... MIAMI, FL	03/06/97
FERNANDEZ, CHELY ..... MIAMI BEACH, FL	03/06/97
FOY, DANA M ..... DECATUR, IN	03/13/97
GALLAGHER, MEGAN H ..... HAZEL PARK, MI	03/10/97
GARCIA-LOREDO, FELIX ANGEL ..... HIALEAH, FL	03/06/97
GREENE, SHIRLIE JR ..... MEMPHIS, TN	03/05/97
GROSS, RALPH R ..... BEATTYVILLE, KY	03/02/97
HALL, LEO JR ..... CHICAGO, IL	03/16/97
HAMMOND, PHYLLIS ..... RIDGLAND, MS	03/16/97
HAYES, JOYCE ANNE ..... WINSTON-SALEM, NC	03/16/97
HENDERSON MANAGEMENT GROUP INC ..... MARION, SC	03/16/97
HERNANDEZ, CHRISTOPHER BORON, CA	02/27/97
HERNANDEZ, KERRIE LYNN SANTA ANA, CA	02/27/97
HESS, GILIA ..... LAWRENCEVILLE, GA	03/13/97
HOWES, GAYLE D ..... W PRESTONSBURG, KY	03/02/97
JENA, DEBRA J ..... SOUTH BEND, IN	03/16/97
JONES, CANDY TALLEY ..... SAN ANTONIO, TX	03/11/97
JOSEPH, JEFFREY B ..... COPPERS LICK, KY	03/02/97
JOSEPH, PAUL E ..... PRESTONSBURG, KY	03/02/97
JUNIUS, SAMANTHA M ..... GRETNA, LA	03/17/97
KING, PAMELA RENEE ..... NASHVILLE, TN	03/02/97
LAMBERT, DUANE ..... DENVER, CO	03/12/97
LUDWIG, HERMAN HENRY .... CINCINNATI, OH	03/05/97
MARONEY, PAULA J ..... PHOENIX, AZ	03/12/97
MCCLOY, BRIAN R ..... SIOUX CITY, IA	03/16/97
MCMANUS, JAMES C ..... LAKELAND, FL	03/06/97
MONDEJAR, JESSE ..... CHARLOTTE, MI	03/10/97
MORLEY, SANDRA ..... VALLEJO, CA	03/13/97
MURDERS, HERMAN D ..... HARLEM, GA	03/05/97
NELSON, JANET MARIE ..... CRAWFORD, TX	03/11/97
NIGHTINGALE, VALERIE ..... LITHONIA, GA	03/05/97
NOVIN, SHEILA E ..... MEQUON, WI	03/16/97
OLIVER, CINDY ..... LITTLE ROCK, MS	02/27/97
PATTERSON, JEFFREY DUANE ..... MARTIN, TN	03/05/97
PORTER, MAXINE ..... DIXON, IL	03/10/97
PROPPS, THERMAL LEE ..... LITTLE ROCK, AR	02/27/97
RENEHAN, THOMAS C JR ..... SALT LAKE CITY, UT	03/12/97
ROBINETT, ELIZABETH ARBUCKLE ..... SPRING, TX	03/11/97
ROBINSON, EARNESTINE ..... MACON, MS	03/17/97
ROLLEY, RONALD T ..... LAFAYETTE, IN	03/16/97
S.H.E. DBA OPELIKA HEALTH CARE ..... OPELIKA, AL	03/16/97
SATTERFIELD, DIANA L ..... COLUMBUS, IN	03/16/97
SHARP, ULYSSEE JR ..... JESSUP, GA	03/05/97
SIDHU, SAMARJEET ..... EL PASO, TX	03/11/97
SIMS, CAROLYN J ..... HOUSTON, TX	03/11/97
SMITH, LINDA FAYE	03/11/97

Subject, city, state	Effective date
NASHVILLE, AR	
TAMBUNTING, DINDO SANTOS ..... SUN VALLEY, CA	02/27/97
TURBEVILLE, MICHAEL ANDREW ..... DRESDEN, TN	03/05/97
VIEIRA, EDWARD THOMAS JR ..... LEWISBURG, PA	03/12/97
WAHAB, ABDUL JALEEL ..... COLEMAN, FL	03/06/97
WEBER, JOHN DOUGLAS ..... CEDAR FALLS, IA	03/10/97
WELLMAN, JOHN E ..... ST MARYS, OH	03/13/97
WESTBROOK, MILDRENE L ... OMAHA, NE	03/17/97
WILKINSON, JOHN ELBERT ... BRICKEYS, AR	02/27/97
WILLIAMS, JUDITH ANN ..... PUEBLO, CO	03/17/97
WILLIAMS, CHARLESETTA NOUGBODE ..... FAIRBURN, GA	03/16/97
WILLIAMS, BENJAMIN OLUSOLA ..... ST PAUL, MN	02/27/97
WILSON, ALAN WARDER ..... LAS VEGAS, NV	03/05/97
ZUPNICK, JAMES ..... MARLBOROUGH, CT	03/12/97

PATIENT ABUSE/NEGLECT CONVICTIONS

BEAT, MARCIA M ..... FORT SMITH, AR	03/17/97
BENSON, DIANE ..... BROOKHAVEN, MS	03/16/97
BILLUPS, TERESA ..... PEARL, MS	02/27/97
BOOKER, DERRICK ..... BIRMINGHAM, AL	03/16/97
BOYD, BRENDA LEE ..... HAMBURG, AR	03/17/97
BRALEY, MARGARETTE ..... HAMPTON, VA	03/13/97
BRATCHER, OLLIE ..... WILMINGTON, DE	03/17/97
BURNETTE, MICHELLE ..... ABERDEEN, SD	03/17/97
BURROW, MARY ..... MEMPHIS, TN	03/16/97
CAMPBELL, CONSUELO ..... LITTLE ROCK, AR	03/11/97
COX, REGINA ..... BIRMINGHAM, AL	03/05/97
COX, VELMA JEAN ..... PEARL, MS	02/27/97
DIESTERHAFT, DONALD DAVID JR ..... REDFIELD, SD	03/17/97
EUGENE, LELIA MAE ..... NEW ORLEANS, LA	03/16/97
FOSTER, DAVID R ..... EUREKA, IL	03/16/97
FOSTER, DOUGLAS EDMUND HOBART, OK	03/11/97
FRIDAY, RUTH ANN ..... INKSTER, MI	03/16/97
GARCIA, DANIEL ..... GOLDEN, CO	03/17/97
GARRETT, BETTY EUGENE ... CONWAY, AR	03/11/97
GIBBS, ADRIAN D ..... SEAFORD, DE	03/17/97
GRADY, DOROTHY ..... MERIDIAN, MS	02/27/97
GRAHAM, FANNIE MAE ..... WEST HELENA, AR	03/11/97
GUERRA, ALAN J ..... EAST PEORIA, IL	03/10/97
HAMPTON, JUDY ..... N LITTLE ROCK, AR	03/11/97
HAND, ANGELA MARIE ..... BROKEN ARROW, OK	03/17/97
HANSEN, TIA ..... SEAFORD, DE	03/17/97
HOWARD, ESTELLA MARIE ... ALEXANDRIA, LA	03/17/97
JONES, JUANITA V ..... LAWTON, OK	03/17/97
JONES, THELMA JEAN ..... ALEXANDRIA, LA	03/11/97
JONES, PHYLLIS M ..... BIRMINGHAM, AL	03/16/97
KEPHART, SAM THOMAS ..... JACKSON, TN	03/16/97
LADD, BETTY JEAN ..... HENRYETTA, OK	03/17/97
LEACH, KRISTINA ..... RAVENA, OH	03/13/97
MANNING, WILLIE JR ..... CANTON, MS	02/27/97
MARSH, SCOTT A ..... MEDINA, OH	03/10/97
MATHIS-ROGERS, THERESA OXFORD, MS	02/27/97
MCRAE, DEBRA ..... RAEFORD, NC	03/16/97
MOLDEN, CAROLYN ..... BILOXI, MS	03/17/97
NELSON, PARIS ..... NORMANDY, MO	02/27/97
OATES, ROBBIE DIANE ..... ALEXANDRIA, LA	03/11/97
ROSS, ANGELA DENISE ..... OKLAHOMA, OK	03/17/97
SAZMAND, ABDULRASOOL ... ARLINGTON, TX	03/16/97
SCHOONOVER, MICHAEL HOWARD ..... PORTAGE, IN	03/16/97
SHEARL, WALTER ERNEST ... KNOXVILLE, TN	03/16/97
SHELBY, DORIS ..... JACKSON, MS	03/16/97
SKIDMORE, JAMIE LEE ..... SIOUX FALLS, SD	03/12/97
SWIFT, SALLY THERESA ..... HAMPTON, AR	03/11/97
THOMPSON, MICHAEL ..... ALBUQUERQUE, NM	03/16/97
THOMPSON, LIZ MARIE JAMES ..... BATON ROUGE, LA	03/11/97
TORRES, WILSON ..... BURLINGTON, MA	02/27/97
TOWNSEND, TED ..... BROOKHAVEN, MS	02/27/97
WARE, JESSIE L ..... MIDWEST CITY, OK	03/17/97
WASHINGTON, JUDY ANN HUNT ..... AMITE, LA	02/27/97
WHEELER, JEAN ..... N LEWISBURG, OH	03/10/97
WHITTING, LISA R ..... CROCKETT, TX	03/16/97
WILLIAMS, ANGELA L ..... SPRING ARBOR, MI	03/10/97

CONVICTION FOR HEALTH CARE FRAUD

CANNON, VALERIE L ..... MILLSBORO, DE	03/17/97
GALLAGHER, ROSE ..... FRANKFORT, IL	02/27/97
LUNDY, RODNEY D ..... SMYRNA, GA	03/05/97
NICHOLSON, MICHELLE ..... ORANGE, CA	03/17/97
SAMS, FREDERICK ..... DECATUR, AL	03/16/97
TRAMONTANA, JOSEPH ..... PASS CHRISTIAN, MS	03/17/97
TRAN, DAVID PHONG ..... DIAMOND BAR, CA	03/05/97
WINTEROWD, KEITH GENE ... BASTROP, TX	03/16/97

CONTROLLED SUBSTANCE CONVICTIONS

GIOMETTI, RENEE M ..... GRAEAGLE, CA	03/17/97
SOBCZAK, MICHELE ANN ..... GRAND RAPIDS, MI	03/16/97

LICENSE REVOCATION/SUSPENSION/ SURRENDER

ALTMAS, DIANE STEWART .... GROVE CITY, PA	03/10/97
BARNEY, CARL W JR ..... OGDEN, UT	03/12/97
BECKER, FRANK O ..... LONG GROVE, IL	03/16/97
BEDFORD, TONYA ..... DENVER, CO	03/12/97
CARSON, NORMAN ..... LYNCHBURG, VA	03/13/97
CASO, WILLIAM D ..... ELIZABETH, KY	03/05/97
COLBY, PATRICIA ANN ..... PEMBROKE, NH	03/17/97
COLLINS, NATALEAR R ..... FRANKLINTON, NC	03/16/97
COTHRAN, DOROTHY ..... GAITHERSBURG, MD	03/10/97
CREWS, JOHN ..... LYNCHBURG, VA	03/13/97
CURRAN, EDWARD J ..... BOWDOINHAM, ME	03/17/97
DALTON, ANTHONY PETER .. VIROQUA, WI	03/10/97
DENARDO, MARY OLIVER ..... MCKEESPORT, PA	03/10/97
DESAI, JASUBHAI K ..... MONROE, MI	02/27/97
DOWLING, CHRIS A ..... WEARE, NH	03/17/97
EPPERSON, DOROTHY ..... DANVILLE, VA	03/13/97
GLOVER, TERI ..... MERIDIAN, MS	02/27/97
GORDON, MARK A ..... BAYTOWN, TX	03/05/97
GUERZON, ROSARIO G	03/10/97

Subject, city, state	Effective date
POTOMAC, MD	
HENDERSON, WANDA KAY ... DANVILLE, VA	03/13/97
HOLLIS, LISA STEEVER ..... SHILLINGTON, PA	03/17/97
HUTTO, APRIL ..... VIRGINIA BEACH, VA	03/13/97
JAMES, BETTY ..... CHEYENNE, WY	03/12/97
JENKINS, ERMA G ..... SARDIS, MS	03/05/97
KOPITZKE, JEANINE M ..... WILLMAR, MN	03/10/97
LANDESMAN, RENEE K ..... ELLICOTT CITY, MD	03/17/97
LOCKE, STEVEN W ..... LOUISVILLE, KY	03/05/97
MELNICK, JOSEPH L ..... WYNNEWOOD, PA	03/10/97
MERRIOTT, KIMBERLY ..... BENA, VA	03/13/97
MOORE, DEBRA ..... CLEVELAND, ND	03/12/97
NEWMARK, LEONARD ..... ST LOUIS, MO	03/10/97
SAMUELS, THOMASINA R ..... TEMPLE HILLS, MD	03/10/97
SAMURA, BETTY SART ..... ALEXANDRIA, VA	03/10/97
SMITH, VANESSA MILLER ..... EMPORIA, VA	03/13/97
STROZIER, JESSICA ..... ALEXANDRIA, VA	03/10/97
TEMPLE, KAREN GENTRY ..... COLONIAL HGTS, VA	03/13/97
VIZCAINO, SUSAN A ..... E SULLIVAN, NH	03/17/97
WOODS, ROSEMARY C ..... GALVESTON, TX	02/27/97
WORLEY, PAULA ..... CHARLOTTESVILLE, VA	03/13/97
ZAIDMAN, RAKHIL M ..... BALLWIN, MO	03/10/97
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
ABSOLUTE CARE BENJAMIN WILLIAM ..... MINNEAPOLIS, MN	02/27/97
BEHAVIORAL EDUCATION TRAINING ..... PASS CHRISTIAN, MS	03/17/97
BOSTICK FAMILY PHARMACY PHILADELPHIA, MS	02/27/97
C.F. MEDICAL SERVICES, INC ..... MIAMI BEACH, FL	03/06/97
CAMPBELL-SUPERIOR AMBULANCE ..... CENTRALIA, IL	11/23/96
CAMPTON AMBULANCE ..... CAMPTON, KY	03/02/97
COLORADO THERAPY SERVICES P.C. ..... PHOENIX, AZ	03/12/97
DOCTORS HOME HEALTH CARE SVCS ..... COLEMAN, FL	03/06/97
EL PASO ADDICTION & PSYCHIATRI ..... SPRINGFIELD, MO	03/16/97
FEDERAL MEDICAL SUPPLY AUGUSTA, GA	03/05/97
GET WELL CARE SERVICES, INC ..... MIAMI BEACH, FL	03/06/97
GET WELL CARE SERVICES, INC ..... MIAMI, FL	03/06/97
H & W THERAPY, P.C. ..... PHOENIX, AZ	03/12/97
HELPING CARE, INC ..... FRANKFORT, IL	02/27/97
KILMER CHIROPRACTIC CLINIC ..... ROANOKE, VA	03/10/97
OPTICAL LAB, INC ..... PALM BCH GARDENS, FL	03/06/97
SHARP COMMUNITY AMBULANCE SVC ..... JACKSONVILLE, FL	03/06/97
TEXAS THERAPY CLINICS, P.C. ..... BASTROP, TX	03/16/97
U S AMBULANCE, INC ..... JESSUP, GA	03/05/97
WHELIHAN OPTICAL CENTER PALM BCH GARDENS, FL	03/06/97
DEFAULT ON HEAL LOAN	
AIELLO, MICHAEL P ..... WATERFORD, MI	03/06/97
BARGER, PAUL L ..... ST LOUIS, MO	03/06/97
BOESKY, ANDREW A ..... PARCHMENT, MI	03/06/97
COLEMAN, JAMES T ..... NEW ALBANY, MS	03/16/97
COLLINS, CECIL E JR ..... BLUFF CITY, TN	03/02/97
COWAN, ROBERT F ..... PENSACOLA, FL	03/02/97
DAVIS, CHARLES G ..... GLENDORA, CA	03/06/97
GREENE, SILAS R ..... PANAMA CITY, FL	03/02/97
GULLOTTA, GERALDINE P .... SAN DIEGO, CA	03/06/97
GUY, GEOFFREY C ..... SAFETY HARBOR, FL	03/02/97
HAUPTLE, MARY BETH ..... ANCHORAGE, AK	03/06/97
HO, TRAM B ..... ST PETERSBURG, FL	03/02/97
HOBLIT, JOHN W ..... ST PETERSBURG, FL	03/02/97
ISAACS, ROLIN W ..... ATLANTA, GA	03/02/97
JUDD, RONALD K ..... JASPER, GA	03/02/97
KEEN-CENTOFANTI, JUDITH R ..... CLIFFORD, MI	03/06/97
KELEHER, JAMES P ..... TUCSON, AZ	03/05/97
KELLING, GREGORY A ..... INDEPENDENCE, MO	03/16/97
KERR, THOMAS H ..... CHARLOTTE, NC	03/02/97
KLEJNOT, TIMOTHY ALLEN ... MARIETTA, GA	03/02/97
KNIGHT, RONALD G ..... PEACHTREE CITY, GA	03/02/97
LANCASTER, BARRY D ..... MARIETTA, GA	03/02/97
LANE, MICHAEL S ..... OMAHA, NE	03/12/97
LISTER, RUFUS G ..... ACKWORTH, GA	03/02/97
LOWE, STEPHANIE M ..... RIVERDALE, GA	03/02/97
MANCHESTER, KEVIN E ..... CHARLOTTE, NC	03/02/97
MARSH, JEFFREY C ..... MARIETTA, GA	03/02/97
MAYNARD, JENNIFER ELLEN DIAMOND BAR, CA	03/06/97
MCCLAIN, VAN A ..... WHEATRIDGE, CO	03/12/97
MCCONNER, SADIE B ..... MARIETTA, GA	03/02/97
PEARSON, HAYWOOD L ..... GASTONIA, NC	03/02/97
PETERSON, GREGORY W ..... LITTLETON, CO	03/12/97
PRICE, STEVEN VANCE ..... LOS ANGELES, CA	03/06/97
PRYOR, CORNELIUS M III ..... LOS ANGELES, CA	05/28/96
REID, HENRY L III ..... DAYTON, TN	03/02/97
RITER, LESTER E ..... AVONDALE, AZ	03/05/97
ROBERTSON, DANA L ..... COLUMBIA, MO	03/06/97
RODRIGUEZ, FRANK ..... MIAMI, FL	03/02/97
SHIELDS, JUDITH I ..... CANTON, OH	03/06/97
SMALL, TAMMIE J ..... SMYRNA, GA	03/06/97
WELDEN, CHARLES R ..... TULSA, OK	03/11/97

Dated: March 11, 1997.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 97–7275 Filed 3–21–97; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Center for Research Initial Review Group for June 1997. These meetings will be open to the public as indicated below, to discuss program planning; program accomplishments; administrative matters such as previous meeting minutes; the report of the Director, National Center for Research Resources (NCRR); review of budget and legislative updates; and special reports or other issues relating to committee business. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance

with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Public Affairs Officer, NCRR, National Institutes of Health, 1 Rockledge Center, Room 5146, 6705 Rockledge Drive, MSC 7965, Bethesda, Maryland 20892–7965, (301) 435–0888, will provide summaries of meetings and rosters of committee members. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed below, in advance of the meeting.

Name of Committee: National Center for Research Resources Initial Review Group—Comparative Medicine Review Committee.

Dates of Meeting: June 2–3, 1997.

Place of Meeting: One Washington Circle Hotel, The Caucus Room, One Washington Circle, Washington, DC 20037, (202) 872–1680.

Open: June 2, 8:00 a.m.–9:30 a.m.

Closed: June 2, 9:30 a.m.—until adjournment.

Scientific Review Administrator: Dr. Raymond O'Neill, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0820.

Name of Committee: National Center for Research Resources Initial Review Group—General Clinical Research Centers Review Committee.

Date of Meeting: June 18–19, 1997.

Place of Meeting: Doubletree Hotel, Regency Room, 1750 Rockville Pike, Rockville, MD 20892, (301) 468–1100.

Open: June 18, 8:00 a.m.–10:00 a.m.

Closed: June 18, 10:00 a.m.–until adjournment.

Scientific Review Administrator: Dr. Charles Hollingsworth, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, Telephone: (301) 435–0818.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research, National Institutes of Health)

Dated: March 18, 1997.

LaVerne Y. Stringfield,

Committee Management officer, NIH.

[FR Doc. 97–7264 Filed 3–21–97; 8:45 am]

BILLING CODE 4140–01–M

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: April 10, 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. Bela Gulyas, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0811.

Purpose/Agenda: To evaluate and review grant applications. 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 sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health, HHS)

Dated: March 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–7266 Filed 3–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Allergy and Infectious Diseases Special Emphasis Panel, TB Research Materials and Vaccine Testing, March 31, 1997, Teleconference Review, Solar Building, Room 1A4, 6003 Executive Boulevard, Bethesda, Maryland which was published in the **Federal Register** on March 11, 1997, Citation (62 FR 11215).

This committee was to have convened at 2:00 p.m. on March 31, but the meeting has been changed to 12:00 p.m. on April 1, 1997, Solar Building, Room 1A4.

As previously announced, the meeting will be closed to the public for the review of contract proposals.

Dated: March 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–7265 Filed 3–21–97; 8:45 am]

BILLING CODE 4140–01–M

Natonal Institute of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on May 20, 1997, in Conference Room D of the Natcher Conference Center, Building 45, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 8:30 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress. Attendance by the public will be limited to space available.

Ms. Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2A21, telephone 301–435–3732, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Siskind in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Disease Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–7267 Filed 3–21–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

Division of Research Grants; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, April 28–29, 1997, Building 31C, Conference Room 10, National Institutes of Heath, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on April 28 to adjournment on April 29. The meeting will include, among other topics, a discussion of some recent experiences and experiments in streamlining the peer review system. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Rockledge 2 Building, Suite 3016, National Institutes of Health, Bethesda, Maryland 20892–7778, telephone (301) 435–1124, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Rockledge 2 Building, Suite 3176, National Institutes of Health, Bethesda, Maryland 20892–7762, phone (301) 435–0691, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: March 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–7268 Filed 3–21–97; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institute of Child Health and Human Development Contraception and Infertility Research Loan Repayment Program

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Center for Population Research (CPR) of the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH), announces the availability of educational loan repayment under the NICHD Contraception and Infertility Research Loan Repayment Program (CIR–LRP or the Program). The CIR–LRP, which is authorized by Section 487B of the Public Health Service (PHS) Act (42 U.S.C. 288–2) as added by the NIH Revitalization Act of 1993 (Pub. L. 103–43), provides for the repayment of the educational loan debt of qualified health professionals (including graduate students) who agreed to commit to a period of obligated service of not less than two years conducting research with respect to contraception and/or infertility. The CIR–LRP will pay up to $20,000 of the principal and interest of such individual's educational loans for each year of obligated service. In addition to the loan repayments, the CIR–LRP will pay participants an amount equal to 39 percent of the total amount of the loan repayments made for the taxable year in order to provide reimbursement for tax liability caused by the Program's loan repayments. The purpose of the CIR–LRP is the recruitment and retention of highly qualified health professionals conducting contraception and/or infertility research. Through this notice, the NICHD, NIH, invites health professionals who meet the prescribed eligibility criteria to apply for participation in the CIR–LRP.

DATES: Interested persons who meet the eligibility requirements may request information about the CIR–LRP beginning on March 1, 1997. Applications for participation in the CIR–LRP can be submitted at any time after April 1, 1997.

ADDRESSES: Information regarding the CIR–LRP may be obtained by contacting: Dr. Louis V. DePaolo, Health Scientist Administrator, Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, Building 61E, Rm. 8B01, Bethesda, Maryland 20892–7510 (Voice: 301/496–6515); FAX: 301/496–0962; E-Mail: depaolol@hd01.nichd.nih.gov).

Applications can be submitted at any time after April 1, 1997 to: Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, Building 61E, Room 8B01, Bethesda, Maryland 20892–7510. For courier deliveries, the following address should be used: Contraception and Infertility Research Loan Repayment Program, Center for Population Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 8B01, Rockville, Maryland 20851

SUPPLEMENTARY INFORMATION: The NIH Revitalization Act of 1993 (Pub. L. 103–43) was enacted on June 10, 1993, adding section 487B of the PHS Act (42 U.S.C. 288–2). Section 487B authorizes the Secretary of Health and Human Services in consultation with the Director of NICHD to establish a program of entering into contracts with qualified professionals under which such health professionals agree to conduct contraception and/or infertility research in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of their outstanding graduate and/or undergraduate educational loans. The Secretary, in consultation with the Director of NICHD, has established a program to provide such loan repayments. This program is known as the Contraception and Infertility Research Loan Repayment Program (CIR–LRP). In return for these loan repayments, applicants must agree to participate in contraception and/or infertility research for a period of obligated service of not less than two years. Selected applicants become participants in the CIR–LRP only upon the signing of a written contract by the Director, NICHD, the Secretary's designate. While the statute authorizes repayment of the educational loans of qualified health professionals agreeing to participate in contraception and/or infertility research, the initial implementation of the program will be limited to employees of the three NICHD Contraception Research Centers and two NICHD Infertility Research Centers due to limited availability of funds.

Eligibility Criteria

Qualified health and allied health professionals including, but not limited to, physicians, Ph.D.-level scientists, nurses and physician assistants, as well as graduate students and postgraduate research fellows training in the health professions are eligible to apply provided that they will be or are engaged, at the time of participation in the CIR–LRP, in employment/training at one of five Cooperative Specialized Contraception or Infertility Research Centers (''CIR Center'') funded by NICHD as authorized by Section 452A of the PHS Act (42 U.S.C. 285g–5) and as mandated in the NIH Revitalization

Act of 1993 (Title X, NICHD, Subtitle A, Research Centers With Respect to Contraception and Research Centers With Respect to Infertility, Section 1001, Grants and Contracts for Research Centers). As such, applicants will be expected to participate in research relating to infertility and/or contraception. For purposes of the CIR–LRP, infertility research is defined as research whose long-range objective is to evaluate, treat or ameliorate conditions which result in the failure of couples to either conceive or bear young, and contraception research is defined as research whose ultimate goal is to provide new or improved methods of preventing pregnancy.

In order to be considered for selection into the CIR–LRP, an applicant meeting the above eligibility requirements must submit a completed and signed application form. In addition, the individual must: (1) Sign and submit a CIR–LRP contract by which he/she agrees to serve the obligated minimum period of two years conducting contraception or infertility research at the CIR Center approved by the Director, NICHD; (2) have completely satisfied any other service obligation for health professional service which is owed under an agreement with the Federal Government, State Government or other entity prior to beginning the period of service under the CIR–LRP, and (3) certify that he/she is not delinquent on any amounts which are owed to the Federal Government.

Participants must be U.S. citizens, nationals or permanent residents. Individuals who are fulfilling internship, residency or other advanced primary-care training requirements are not eligible to participate.

Application Procedure and Selection Process

Submission of applicants for participation in the CIR–LRP by eligible individuals will be made to NICHD on behalf of the applicant by the CIR Center. The application will include: (1) Institutional assurance of future employment/affiliation with the CIR Center (e.g., contract between individual and institution) of not less than two years from the anticipated effective date of the CIR–LRP contract between the individual and NICHD; (2) a description of the applicant's proposed role in the scientific research on contraception and/or infertility being conducted in the CIR Center, and (3) a brief statement addressing the applicant's long-range career plan for engaging in contraception or infertility research. The application will be reviewed by the CIR–LRP Panel (Panel), chaired by the Deputy Director, NICHD, and comprised of representatives of the NICHD's Office of Administrative Management, the respective Program Officers of the Center for Population Research, and special consultants as required. The Panel will review and select applications for approval based upon the credentials of the applicant and other criteria the Secretary deems appropriate such as the scientific merit of the research and the nature of the applicant's career plan focus. Priority will be given to applicants with a clear career focus in the specialized areas of contraceptive and/or infertility research over those engaging in general reproductive sciences research. In addition to this review, the CIR–LRP will determine whether the educational loan debt qualifies for loan repayment assistance under this Program (see below). All selections are subject to final approval by the Director, NICHD. The NICHD will notify the applicant of the outcome of the review. It is anticipated that the selection process will take approximately six to eight weeks following receipt of the application.

Program Administration

The applicant is required to submit: (1) A completed and signed CIR–LRP contract, and (2) a copy of an institutional assurance of employment/affiliation with a CIR Center for no less than a two-year period from the anticipated effective date of the CIR–LRP contract. Neither the applicant nor the Federal Government is bound by this contract until: (1) The applicant has submitted and had approved by the Director, NICHD, a complete, accurate application as required by this program announcement, (2) the contract is signed by the Director, NICHD, and (3) authorized funds are agreement to the NICHD to carry out the contract.

The effective date of the contract will be the date it is signed by the Director or the date employment/training begins at the CIR Center, whichever is later. Initial contracts will be executed to cover a two-year service period. Following conclusion of this initial contract, participants may be considered for one-year renewal contracts, subject to approval of the Panel, for up to two additional years. Graduate students must maintain full-time enrollment (as determined by the academic institution of study), and be in good academic standing (as determined by the academic institution of study) while participating in the CIR–LRP.

Program Benefits for Participants

The CIR–LRP will pay up to $20,000 of the principal and interest of a participant's preexisting, nondelinquent qualified (see below) educational (graduate and/or undergraduate) loan balance for each year of obligated service that is fulfilled by the applicant.

The CIR–LRP's payments to lenders on behalf of the participants represent taxable income to the participant. The CIR–LRP reports each year to the Internal Revenue Service the payments it makes to all participants. Section 338B of the Public Health Service Act (42 U.S.C. 2541–1), incorporated by reference in section 487B, provides, however, that in addition to the loan payments made to lenders, the CIR–LRP will also pay to the participants an amount equal to 39 percent of the total amount of the loan repayments made for the taxable year. Participants should note that this payment is also considered taxable income by the Internal Revenue Service and many State and local taxing authorities.

The CIR–LRP will make quarterly payments to the lenders. Payment is made by a U.S. Treasury check shortly after the end of each full quarter of satisfactory service. Since the first payment to lenders will not be made until after the end of the first quarter of obligated service, participants should continue to make monthly loan payments for the first three months of his/her service to avoid defaulting on his/her loans and affecting his/her credit ratings.

Loan Documentation and Qualification

A copy of the promissory note for each outstanding loan must be submitted with the application. (This usually may be obtained upon request to the lenders.) The CIR–LRP will determine if the loans were reasonably necessary to meet the costs of education, in terms of each individual loan and in terms of each applicant's total educational loan debts. Loans qualifying for repayment include preexisting loans obtained by the participant for:

(1) Undergraduate and graduate tuition expenses;

(2) All other reasonable educational expenses including fees, books, supplies, educational equipment and materials required by the school, and laboratory expenses; and

(3) Reasonable living expenses including the costs of room and board, transportation, commuting and other costs incurred during an individual's attendance at school as determined by the Secretary.

Applicants must complete a lender verification form for each loan. The most current balance of each loan—principal plus interest plus loan expenses (such as the required

insurance premiums on the unpaid balances of some loans)—should be determined as accurately as possible and reported by the applicant on each form. This enables the CIR–LRP to reserve adequate funds for loan repayments under the contract should the applicant become a CIR–LRP participant. The CIR–LRP will send the loan verification forms to each lender for verification. If the CIR–LRP is unable to obtain adequate loan verification from the lender, the applicant may be asked to submit other documentation, such as copies of the original loan application, to document that the loan (or a stated portion of the loan) was obtained for the educational purposes stated previously.

Financial obligations not qualifying for repayment include:

(1) Physician Storage Area Scholarship Program;

(2) Public Health Service and National Health Service Corps Scholarship Programs;

(3) Armed Forces (Army, Navy or Air Force) Health Professions Scholarship Programs;

(4) Indian Health Service Scholarship Program;

(5) National Research Service Award Program;

(6) Loans for which contemporaneous documentation is not available;

(7) Loans or ''scholarship'' arrangements which impose financial obligations upon the applicant if service is not performed;

(8) Loans without a promissory note made when the loan was given;

(9) Loans that are delinquent;

(10) Loans, or those parts of loans, obtained for educational or living expenses while at school, which exceed the ''reasonable'' level, as determined by a review of the school's standard school budget or additional contemporaneous documentation for the year in which the loan was made, as determined by the CIR–LRP;

(11) Loans which have been paid in full;

(12) Loans not obtained from a Government entity or commercial or other charter lending institution, such as loans from friends and relatives or other private individuals;

(13) Loans for graduate studies obtained following entry into the CIR–LRP.

Breach of the Loan Repayment Agreement

In the event that the participant fails to begin or complete the two-year minimum period of obligatory participation in contraception or infertility research at a CIR Center as set forth in the contract, and payments have been rendered to the lenders on behalf of the individual, he/she is in breach of the contractual agreement, and is liable to pay monetary damages to the United States Government. Participants who leave during the first year of the initial contract are liable for amounts already paid by the Program plus an amount equal to $1,000 multiplied by the number of months of the original obligation. Participants who leave during the second year of the contract are liable for (a) the total of the amounts the Program paid the lenders, plus (b) an ''unserved obligation penalty'' of $1,000 for each month unserved. If a participant completed the two-year minimum obligatory period, but cannot complete additional obligatory periods, no obligation penalties will be levied, but the participant will owe the United States for any payments the CIR–LRP made to the lenders for which service by the participant was not performed unless, in the opinion of the CIR–LRP Panel, they continue to participate in contraception and/or infertility research during the additional obligatory periods. If a participant must terminate employment/training at a CIR Center for reasons beyond his/her control, and transfers to a site other than a CIR Center, payments will cease upon transfer. He/she may not be liable for monetary damages as described above, if, in the judgment of the CIR–LRP Panel, he/she continues to participate in contraception and/or infertility research. However, if he/she transfers to another CIR Center with the approval of the Director, NICHD, the contract will be amended and the participant will still be considered bound by the ongoing contract obligations, and the lenders will continue to receive payments on behalf of the participant according to schedule.

Additional Program Information

This Program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This Program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1995. The information collection and recordkeeping associated with the Program have been approved by OMB under OMB No. 0925–0440 (expires December 31, 1999).

The Catalog of Federal Domestic Assistance number for the CIR–LRP is 93.209.

Dated: March 12, 1997.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 97–7269 Filed 3–21–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4120–N–04]

Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required By Law; Further Amendment to Timeframes

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On September 26, 1996, the Department published a notice which implements section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Section 202 requires PHAs to identify certain distressed public housing developments that will be required to be replaced with tenant-based assistance if they cannot be revitalized by any reasonable means. In that eventuality, households in occupancy would be offered tenant-based or project-based assistance and would be relocated—if sufficient housing will not be maintained, rehabilitated, or replaced on the current site—to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice.

On December 26, 1996, at 61 FR 68048, the Department issued a notice which amended the timeframes that the Department set in the September 26, 1996 notice for accomplishing the standards necessary for compliance with section 202. This notice makes a further amendment to the timeframes by extending the March 31, 1997 deadline for accomplishing Standard D until June 30, 1997.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Senior Director for Policy and Legislation, Public and Indian Housing, Room 4116, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0713. For hearing or speech impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–

279, 42 U.S.C. 1437l note) (''OCRA'') requires PHAs to identify certain distressed public housing developments that will be required to be assessed. Households in occupancy would be offered tenant-based or project-based assistance (that can include other public housing units) and would be relocated—if sufficient housing will not be maintained, rehabilitated, or replaced on the current site—to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

On September 26, 1996, at 61 FR 50632, the Department published a notice to implement section 202 of OCRA. The notice established the standards for conducting the assessments and the conversion plan. It also set forth certain timeframes for meeting those standards. The timeframes set in that notice were amended by publication of a notice in the **Federal Register** on December 26, 1996, at 61 FR 68048, in order to be equitable to all of the housing authorities to be assessed. This notice further amends the timeframes by extending the March 31, 1997 deadline for accomplishing Standard D until June 30, 1997. Based on further analysis and the public comments received on the September 26, 1996 notice, an interim rule will be issued in the near future which will further address Standard D, as well as respond to the public comments received.

Dated: March 20, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–7523 Filed 3–20–97; 2:22 pm]

BILLING CODE 4210–33–P 1

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–820329

Applicant: Mark Malfatti, Belmont, CA

The applicant requests a permit to acquire in interstate commerce one pair of captive born Grand Cayman Rock iguana (*Cyclura nubila lewisi*) for the purpose of enhancement of the species through captive breeding.

PRT–826258

Applicant: Monte L. Bean Life Sciences Museum, Brigham Young University, Provo, UT.

Applicant requests a permit to import the skin of one cheetah (*Acinonyx jubatus*) which died of natural causes at Hoedspruit Cheetah Project, South Africa, for the purpose of conservation education.

PRT–826004

Applicant: Samuel Allen, Clackamas, OR.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–751198

Applicant: Kelly A. Young, Las Vegas, Nevada.

The applicant requests a permit to reexport and reimport Black leopard (*Panthera pardus delacouri*), tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

PRT–826402

Applicant: Wildlife Conservation Society, Bronx, New York.

The applicant requests a permit to import two male Pink pigeon (*Columba mayeri*) from Jersey Wildlife Preservation Trust, Mauritius for the purpose of enhancement of the species through conservation education and captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–740507

Applicant: Alaska Fish and Wildlife Research Center, Anchorage, AK.

Type of Permit: Take/Import for Scientific Research.

Name and Number of Animals: Alaskan sea otter (*Enhydra lutris lutris*).

Summary of Activity to be Authorized: The applicant has requested amendments to and reissuance of a previously issued permit for the following activites: (a) take of up to 325 Alaskan sea otters (includes capture and release of 200, and capture/recapture, collect biological samples, flipper tag, implant transponder chip for 125 and, of the 125, surgically implant 111 with a radio transmitter), (b) collection of biological samples from salvaged specimens found dead on Alaskan beaches, or in Alaskan waters or as may be available through the Native Alaskan subsistence harvest, and (c) import of tissue samples from sea otters in Canada and Russia.

Source of Marine Mammals for Research/Public Display: Alaska, Canada, and Russia.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: March 18, 1997.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–7297 Filed 3–21–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WO–640–1820–00 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for each of the Bureau of Land Management (BLM) Resource Advisory Councils that have member terms expiring this year. The Councils provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—holders of federal grazing permits, representatives of energy and mining development, timber industry, off-road vehicle use and developed recreation;

Category Two—representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups;

Category Three—representatives of State and Local government, Native American tribes, academicians involved in natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the council has jurisdiction. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each council in the State. Nominations for Resource Advisory Councils should be sent to the appropriate BLM offices listed below.

Alaska

Alaska Resource Advisory Council

Theresa McPherson, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–3322

Arizona

Arizona Resource Advisory Council

Deborah Stevens, Arizona State Office, BLM, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215

California

Bakersfield Resource Advisory Council

Ron Fellows, Bakersfield District Manager, 3801 Pegasus Avenue, Bakersfield, California 93308, (805) 391–6000

Susanville Resource Advisory Council

Linda Hansen, Area Manager, Eagle Lake Resource Area, 2950 Riverside Drive, Susanville, California 96130, (916) 257–0456

Ukiah Resource Advisory Council

Renee Snyder, Area Manager, Clear Lake Resource Area, 2550 North State Street, Ukiah, California 95482–3023, (707) 468–4000

Colorado

Front Range Resource Advisory Council; Southwest Resource Advisory Council; Northwest Resource Advisory Council

Sheri Bell, Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, (303) 239–3671

Idaho

Upper Columbia Resource Advisory Council; Upper Snake Resource Advisory Council; Lower Snake Resource Advisory Council

Glenda Hawkins, Idaho State Office, BLM, 1387 Vinnell Way, Boise, Idaho 83709–2500, (208) 373–4013

Montana and Dakotas

Butte Resource Advisory Council; Dakotas Resource Advisory Council; Lewistown Resource Advisory Council; Miles City Resource Advisory Council

Jody Weil, Montana State Office, BLM, Granite Tower, 222 N. 32nd Street, Billings, Montana 59107–6800, (406) 255–2913

Nevada

Mojave-Southern Resource Advisory Council; Northeastern Great Basin Resource Advisory Council; Sierra Front Northwestern Resource Advisory Council

Daniel Rathbun, Nevada State Office, BLM 850 Harvard Way, Reno, Nevada 89520–0006, (702) 785–6767

New Mexico

New Mexico Resource Advisory Council

Rem Hawes, New Mexico State Office, BLM, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7507

Oregon/Washington

Eastern Washington Resource Advisory Council; John Day/Snake Resource Advisory Council; Southeastern Resource Advisory Council

Brenda Lincoln, Oregon State Office, BLM, 1515 S.W. 5th Avenue, Portland, Oregon 97208–2965, (503) 952–6437

Utah

Utah Resource Advisory Council

Sherry Foote, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155, (801) 539–4195

DATES: All Nominations should be received by the appropriate State Office by May 8, 1997.

FOR FURTHER INFORMATION CONTACT:

Melanie Wilson, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, MS–LS–406, Washington, D.C. 20240; 202–452–0377.

Dated: March 19, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–7497 Filed 3–21–97; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated below. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

On March 26, 1997, the members of the Resource Advisory Council will tour the Yucca Mountain project site, escorted by the Department of Energy. Because of security restrictions the tour is limited to the RAC members. Tours to Yucca Mountain are available to the public through the Yucca Mountain Information Office.

DATES AND TIMES: Date is March 27, 1997, from 7:30 a.m. to approximately 1 p.m. The council will meet at the Tonopah Convention Center, 301 W. Brougher, Tonopah, NV. The public comment period will begin at 11 a.m.

FOR FURTHER INFORMATION CONTACT: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Dated: March 7, 1997.

Michael F. Dwyer,

District Manager.

[FR Doc. 97–7271 Filed 3–21–97; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Land Management

[ES–960–1910–00–4377, ES–48651, Group 159, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 14, Township 40 North, Range 4 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 28, 1997.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 28, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–7288 Filed 3–21–97; 8:45 am]

BILLING CODE 4310–GJ–P

[ES–960–1910–00–4377, ES–48652, Group 158, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in Lower Nemahbin Lake in section 24, Township 7 North, Range 17 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 28, 1997.

The survey was executed in response to an application for the survey of an unsurveyed island submitted by Eugene J. Ouchie, Associate Regional Counsel, Chicago Title Insurance Company on behalf of Gerald J. and Dorothy A. Turow.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 28, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: March 14, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–7291 Filed 3–21–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Department annual report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until the sixtieth day from the date published in the **Federal Register.** Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Mahoney, 202–616–2896, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Overview of this information collection:

(1) Type of Information Collection: Revised collection.

(2) Title of the Form/Collection: Department Annual Report

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 1103–0031. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Governments. Other: None. Other: None.

The information collection is used to determine grantee progress on its COPS Hiring grant. Completion of such report is a condition of all COPS hiring programs. The COPS Office achieves the goals hiring of the crime bill by offering the Universal Hiring grant program. It is designed to assist with the implementation of community policing by providing funding for up to $75,000 of the salaries and benefits of newly hired officers for a three year period. Throughout the grant period, law enforcement agencies are expected to plan, in good faith, to retain the funded positions through full local funding.

As the COPS Office's grants mature, it is important that it monitor the progress of this good faith planning for retention. Thus, the COPS Office has expanded its Department Annual Report by adding a question specific to retention planning. The remainder of the information collected under the previously approved [1] Department Annual Report will remain the same: questions aimed at collecting the minimum information necessary to monitor the progress of law enforcement agencies as successfully hiring their COPS funded officers and implementing community policing as they indicated they would in their grant application. With the anticipated OMB approval of the revised Department Annual Report, the COPS Office will retire its predecessor from dissemination to its grantees.

The information collected in the Department Annual Report will continue to be collected once per year so long as the law enforcement agency receives COPS program hiring monies. The Instruments will be mailed to the grantees with instructions and a sample completed Progress Report Document.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10,000 responses; 1.3 hours per response. The information will be collected one time per year from each respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 38,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–7289 Filed 3–21–97; 8:45 am]

BILLING CODE 4410–21–M

[1] OMB Approval Number 1103–0030. Expiration 6/98.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Jazz Masters Advisory Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (Jazz Masters Section) to the National Council on the Arts will take place on April 11, 1997. The teleconference will convene from 2:00 p.m. to 3:00 p.m. in Room 703, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: March 19, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 97–7354 Filed 3–21–97; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Leadership Initiatives Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel (Millennium Projects Section) to the National Council on the Arts will be held on April 15, 1997 from 9:00 a.m. to 5:00 p.m. The panel will meet in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

A portion of this meeting, from 4:00 p.m. to 5:00 p.m., will be open to the public for a policy discussion regarding the future of the Millennium initiative. The remaining portion of this meeting, from 9:00 a.m. to 4:00 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532,

TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: March 18, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–7353 Filed 3–21–97; 8:45 am]

BILLING CODE 7532–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Connecticut Yankee Atomic Power Company, et al. (the licensee) to withdraw its April 22, 1996, application for a proposed amendment to Facility Operating License No. DPR–61 for the Haddam Neck Plant, located in Middlesex County, Connecticut.

The proposed amendment would have revised the overload cutoff limit on the manipulator crane inside the containment.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 19, 1996 (61 FR 31175). However, by letter dated February 18, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the amendment application dated April 22, 1996, and the licensee's letter dated February 18, 1997, which withdrew the license amendment application. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 13th day of March 1997.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office—Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 97–7333 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant, Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Connecticut Yankee Atomic Power Company (the licensee) to withdraw 18 proposed license amendments to Facility Operating License No. DPR–61 for the Haddam Neck Plant, located in Middlesex County, Connecticut. The license amendments are no longer required due to the licensee's December 5, 1996, letter certifying permanent cessation of operation and permanent offload of fuel from the reactor vessel. The licensee withdrew the amendment requests in a letter dated December 23, 1996.

The submittal date, subject, and **Federal Register** location (and date of publication) for the previously issued Notice of Consideration of Issuance of Amendment for the 18 proposed amendments being withdrawn are listed below:

1. December 20, 1994; 24-Month Fuel Cycle—Steam Generator Inspection Frequency; 60 FR 6574 (February 2, 1995)
2. October 20, 1995; 24-Month Fuel Cycle—Electrical Power Systems Surveillance Extensions; 60 FR 65673 (December 20, 1995)
3. October 24, 1995; Limiting Safety System Settings; 60 FR 62488 (December 6, 1995)
4. October 27, 1995; Containment Isolation Valves; 60 FR 65675 (December 20, 1995)
5. November 1, 1995; 24-Month Fuel Cycle—Containment Isolation Valves Surveillance Extensions; 60 FR 62488 (December 6, 1995)
6. December 4, 1995; 24-Month Fuel Cycle—Reactivity Control Systems Surveillance Extensions; 61 FR 7548 (February 28, 1996)
7. December 19, 1995; 24-Month Fuel Cycle—Containment Air Recirculation System Surveillance Extensions; 61 FR 7548 (February 28, 1996)
8. December 19, 1995; Dose Consequences Reanalysis and Containment Pressure and Temperature Reanalysis; 61 FR 11229 (March 19, 1996)
9. December 19, 1995; 24-Month Fuel Cycle—Plant Systems Surveillance Extensions; 61 FR 7548 (February 28, 1996)
10. December 20, 1995; 24-Month Fuel Cycle—Reactor Coolant Systems Surveillance Extensions; 61 FR 7548 (February 28, 1996)
11. December 20, 1995; 24-Month Fuel Cycle—Instrumentation Surveillance Extensions; 61 FR 7548 (February 28, 1996)
12. January 12, 1996, superseded by an April 16, 1996, letter; Ultimate Heat Sink; 61 FR 28610 (June 5, 1996)
13. February 27, 1996; Turbine Cycle—Safety Valves; 61 FR 28608 (June 5, 1996)
14. February 28, 1996; Reactor Coolant System—Relief Valves; This proposed amendment was not noticed in the **Federal Register** prior to the withdrawal of the request.
15. March 7, 1996; Containment Air Recirculation System; This proposed amendment was not noticed in the **Federal Register** prior to the withdrawal of the request.
16. March 7, 1996; RH-MOV–808A (Replacement of Manual Valve with a Motor-Operated Valve); 61 FR 28609 (June 5, 1996)
17. March 28, 1996; Reactor Coolant System Safety Valves; 61 FR 28609 (June 5, 1996)
18. April 22, 1996; 10 CFR Part 50, Appendix J, Primary Reactor Containment Leakage Testing Requirements for Light-Water Cooled Power Reactors Option B Performance-Based Requirements; 61 FR 28610 (June 5, 1996)

For further details with respect to this action, see the amendment applications, and the licensee's letter dated December 23, 1996, which withdrew the 18 license amendment applications. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 17th day of March 1997.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office, Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 97–7337 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al.; Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 97 to Facility Operating License No. NPF–68 and Amendment No. 75 to Facility Operating License No. NPF–81, issued to the Georgia Power Company, et al., which revised the Technical Specifications, Licenses, Environmental Protection Plans and Antitrust conditions for operation of the Vogtle Electric Generating Plant (the facility), Units 1 and 2, located in Burke County, Georgia. The amendments were effective as of the date of issuance and shall be implemented within 60 days of the date of issuance and upon the official transfer of responsibilities between Georgia Power Company and Southern Nuclear.

The amendments modify the Facility Operating Licenses, Technical Specifications, Environmental Protection Plans, and Antitrust conditions to add Southern Nuclear Operating Company, Inc., as operator of the facility, with exclusive responsibility and control over its physical construction, operation, and maintenance. The Antitrust license conditions divorce Southern Nuclear from marketing or brokering power or energy from the Vogtle plant and holds Georgia Power Company accountable for the actions of its agent, Southern Nuclear, to the extent Southern Nuclear's actions contravene the Vogtle Antitrust license conditions. An Order Approving Southern Nuclear Operating Company, Incorporated, As Exclusive Operator was included along with the issuance of the amendments.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 14, 1992 (57 FR 47135). A request for a hearing was filed on October 22, 1992, by Allen L. Mosbaugh and Marvin B. Hobby.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendments have been issued and made immediately effective and any hearing will be held after issuance.

The Commission has prepared an Environmental Assessment (57 FR 49724), published on November 3, 1992, related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated March 1985.

For further details with respect to the action see (1) the application for amendments dated September 18, 1992, as supplemented by letters dated October 7 (two letters), 15, 23, and November 13, 1992, March 5, May 21, June 14, and December 17, 1993, April 6 and July 27, 1995, and September 11, October 1, December 12, 19, 23 and 30, 1996, (2) Amendment No. 97 to Facility Operating License No. NPF–68 and Amendment No. 75 to Facility Operating License No. NPF–81, and (3) the Commission's related Safety Evaluation and Order. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 17th day of March 1997.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Director II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–7334 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al., (Vogtle Electric Generating Plant, Units 1 and 2); Order Approving Southern Nuclear Operating Company, Inc., as Exclusive Operator

I.

Georgia Power Company (GPC), Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the Owners), are the holders of Facility Operating License No. NPF–68 for Vogtle Electric Generating Plant (Vogtle) Unit 1 and Facility Operating License No. NPF–81 for Vogtle Unit 2. These licenses generally authorize GPC to possess, use, and operate—and the other Owners to possess but not operate—the Vogtle facility in accordance with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the rules and regulations of the U.S. Nuclear Regulatory Commission (NRC). In its capacity as licensed operator, GPC acts for itself and on behalf of the Owners. The Vogtle facility is located in Burke County, Georgia.

II.

By letter dated September 18, 1992, as supplemented by letters dated October 7 (two letters), 15, 23, and November 13, 1992, March 5, May 21, June 14, and December 17, 1993, April 6 and July 27, 1995, and September 11, October 1, December 12, 19, 23 and 30, 1996, GPC requested approval, and amendments to the licenses for Southern Nuclear Operating Company, Inc. (Southern Nuclear), to become the operator of the Vogtle facility, and to have exclusive responsibility and control over its physical construction, operation, and maintenance. Southern Nuclear and GPC are wholly owned subsidiaries of The Southern Company. Southern Nuclear was formed in December 1990 for the purpose of consolidating into a single organization personnel within The Southern Company's electric system engaged in nuclear operation. Southern Nuclear is the exclusive operator of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located near Dothan, Alabama.

On October 14, 1992, the NRC noticed the proposed transfer of operating

authority and amendments and published in the **Federal Register** a Proposed Finding of No Significant Hazards Consideration and Opportunity for Hearing (57 FR 47135). By letter dated October 22, 1992, attorneys for two former employees of GPC filed with the NRC a ''Petition To Intervene and Request For Hearing Of Allen L. Mosbaugh and Marvin B. Hobby'' in opposition to the proposed action. Mr. Mosbaugh was admitted as a party with an issue regarding GPC character. Hearings were completed, but prior to a decision being issued, GPC and the Intervenor reached a settlement. The hearing Board dismissed the contention and terminated the proceeding.

III.

Pursuant to 10 CFR 50.80(a), the transfer, assignment, or disposal of any right under a license is subject to the NRC's written consent. On the basis of information provided by GPC and other information before the Commission, it is determined that the proposed transfer of authority under the Vogtle licenses to the extent Southern Nuclear becomes the operator of the Vogtle facility with exclusive responsibility and control over its physical construction, operation, and maintenance, subject to the conditions set forth herein, is consistent with applicable provisions of law, regulations, and orders issued by the Commission, and Southern Nuclear is qualified to hold the licenses to the extent described above. These findings are supported by a Safety Evaluation dated March 17, 1997, which contains a final no significant hazards consideration determination.

The staff has evaluated the application and relied on GPC and Southern Nuclear commitments in a letter dated December 30, 1996, which iterated commitments made in a licensee letter dated February 1, 1995, with respect to an enforcement action related to the Vogtle facility that, the Southern Nuclear employee who formerly served as the Vogtle General Manager through August 1990, will not hold a line management position involving NRC licensed activities at GPC and Southern Nuclear plants until the NRC is provided prior written notice and the individual has satisfactorily completed certain management training. That commitment is accordingly confirmed in this Order for Vogtle.

IV.

Accordingly, pursuant to Sections 103, 104b, 105, 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2133, 2134, 2135, 2201(b), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the request that Southern Nuclear be permitted to become the operator of the Vogtle facility and to have exclusive responsibility and control over the physical construction, operation, and maintenance of the facility, discussed above, is approved subject to the following conditions:

(1) The Southern Nuclear employee who formerly served as the General Manager-Vogtle through August 1990, will not hold a line management position at Vogtle until:

(a) Satisfactory completion of training in management communications and responsibilities; and,

(b) Written notice is provided to the NRC sixty (60) days prior to his assignment to such a position; and,

(2) If Southern Nuclear does not assume responsibility and control over physical construction, operation and maintenance of the facility within 60 days of the date of this Order, this Order shall become null and void. However, upon written application and for good cause shown, this date may be extended.

Pursuant to 10 CFR 51.35, an Environmental Assessment was prepared and published in the **Federal Register** on November 3, 1992 (57 FR 49724). As required by 10 CFR 51.32, this assessment documents the Commission's determination that this action will have no significant impact on the quality of the human environment and nothing has occurred since its publication to alter this finding.

This Order is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of March 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–7335 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–321 and 50–366]

Georgia Power Company, et al. (Edwin I. Hatch Nuclear Plant, Units 1 and 2) Order Approving Southern Nuclear Operating Company, Inc., as Exclusive Operator

I

Georgia Power Company (GPC), Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the Owners), are the holders of Facility Operating License No. DRP–57 for Edwin I. Hatch Nuclear Plant (Hatch) Unit 1 and Facility Operating License No. NPF–5 for Hatch Unit 2. These licenses generally authorize GPC to possess, use, and operate—and the other Owners to possess but not operate—the Hatch facility in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations of the U.S. Nuclear Regulatory Commission (NRC). In its capacity as licensed operator, GPC acts for itself and on behalf of the Owners. The Hatch facility is located in Appling County, Georgia.

II

By letter dated September 18, 1992, as supplemented October 6, 8, 15, 23, and November 13 and 20, 1992, March 5, May 24, June 10, and December 20, 1993, April 6 and July 28, 1995, and September 11, October 1, December 13, 19, and 23, 1996, GPC requested approval, and amendments to the licenses for Southern Nuclear Operating Company, Inc. (Southern Nuclear), to become the operator of the Hatch facility and to have exclusive responsibility and control over its physical construction, operation, and maintenance. Southern Nuclear and GPC are wholly owned subsidiaries of The Southern Company. Southern Nuclear was formed in December 1990 for the purpose of consolidating into a single organization personnel within The Southern Company's electric system engaged in nuclear operation. Southern Nuclear is the exclusive operator of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located near Dothan, Alabama.

III

Pursuant to 10 CFR 50.80(a), the transfer, assignment, or disposal of any right under a license is subject to the NRC's written consent. On the basis of information provided by GPC and other information before the Commission, it is determined that the proposed transfer of authority under the Hatch licenses to the extent Southern Nuclear becomes the operator of the Hatch facility with exclusive responsibility and control over its physical construction, operation, and maintenance, subject to the conditions set forth herein, is consistent with applicable provisions of law, regulations, and orders issued by the Commission, and Southern Nuclear is qualified to hold the licenses to the extent described above. These findings are supported by a Safety Evaluation, dated March 17, 1997.

The staff has evaluated the application and relied on GPC and Southern Nuclear commitments in a letter dated December 23, 1996, which iterated commitments made in a licensee letter dated February 1, 1995,

with respect to an enforcement action related to the Vogtle Electric Generating Plant that, the Southern Nuclear employee who formerly served as the Vogtle General Manager through August 1990, will not hold a line management position involving NRC licensed activities at GPC and Southern Nuclear plants until the NRC is provided prior written notice and the individual has satisfactorily completed certain management training. That commitment is accordingly confirmed in this Order for Hatch.

IV

Accordingly, pursuant to Sections 103, 104b, 105, 161b, 161i, and 184, of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2133, 2134, 2135, 2201(b), 2201(o), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the request that Southern Nuclear be permitted to become the operator of the Hatch facility and to have exclusive responsibility and control over the physical construction, operation, and maintenance of the facility, discussed above, is approved subject to the following conditions:

(1) The Southern Nuclear employee who formerly served as the General Manager—Vogtle through August 1990, will not hold a line management position at Hatch until:

(a) Satisfactory completion of training in management communications and responsibilities; and,

(b) Written notice is provided to the NRC sixty (60) days prior to his assignment to such a position; and,

(2) If Southern Nuclear does not assume responsibility and control over physical construction, operation and maintenance of the facility within 60 days of the date of this Order, this Order shall become null and void. However, upon written application and for good cause shown, this date may be extended.

Pursuant to 10 CFR 51.35, an Environmental Assessment was prepared and published in the **Federal Register** on November 3, 1992 (57 FR 49724). As required by 10 CFR 51.32, this assessment documents the Commission's determination that this action will have no significant impact on the quality of the human environment and nothing has occurred since its publication to alter this finding.

This order is effective upon issuance.

Dated at Rockville, Maryland this 17th day of March 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–7336 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–461]

Illinois Power Company, Soyland Power Cooperative (Clinton Power Station, Unit No. 1); Order Approving Transfer of License for Clinton Power Station, Unit No. 1

I

Illinois Power Company (IP) owns 86.79 percent of Clinton Power Station, Unit No. 1 (CPS), a single-unit nuclear power plant. Soyland Power Cooperative (Soyland) owns the remaining 13.21-percent interest in the facility. IP and Soyland are governed by Facility Operating License No. NPF–62 issued by the U.S. Nuclear Regulatory Commission (the Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) on April 17, 1987. Under this license, only IP has the authority to operate CPS. The CPS facility is located in DeWitt County, Illinois.

II

In an application originally submitted by letter dated October 17, 1996, and then supplemented and modified by letter dated December 13, 1996, IP requested NRC's consent to a proposed transfer of the 13.21-percent share of CPS currently owned by Soyland to IP. Upon completion of the sale, IP will remain the plant operator and will become sole owner of CPS. IP is a wholly owned subsidiary of Illinova Corporation and will remain so after completion of the sale. The proposed action constitutes a transfer of the license for CPS to the extent it is held by Soyland, and is subject to the license transfer provisions of 10 CFR 50.80.

III

On the basis of the information provided in IP's application, the staff finds that IP is financially qualified to contribute appropriately to the operation and decommissioning of CPS. In its letter of December 13, 1996, IP indicated that it would assume responsibility for the external trust fund established by Soyland for its share of the ultimate decommissioning expenses of CPS. IP also would remain an ''electric utility'' as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale, subject to the rate regulation of the Illinois Commerce Commission and the Federal Energy Regulatory Commission. Thus, pursuant to 10 CFR 50.33(f), IP is exempt from further financial qualifications review as an electric utility. However, since IP will become the sole entity responsible for operating and decommissioning expenses for the facility, the staff has concluded that approval of the application should be conditioned upon IP providing prior notice to the NRC of any asset transfer having a depreciated book value exceeding 10 percent of IP's consolidated net utility plant to its parent company or any affiliated company. Such a condition will help to ensure that IP will remain financially qualified to be the sole holder of the license.

IV

The proposed transfer does not involve any transfer of operating authority, which IP already possesses. There will be no change in the management or technical qualifications of IP's nuclear organization as a result of the license transfer. On the basis of the continuity of IP's nuclear organization and management previously described, the staff finds that the proposed license transfer will not adversely affect IP's technical qualifications or the management of CPS and does not otherwise raise any technical qualifications issues.

V

CPS underwent an antitrust review before issuance of the construction permit and antitrust license conditions were attached to the CPS operating license that still apply to IP. Thus, the application in this case does not involve a new owner or a licensee that has not undergone an antitrust review by the NRC. Under the Atomic Energy Act, no further review by the NRC is authorized.

VI.

IP makes the following statements in its letter of December 13, 1996: ''The shares of common stock of Illinova are publicly traded and widely held. IP and IPMI [Illinova Power Marketing, Inc.] are wholly owned subsidiaries of Illinova. The directors and officers of both these companies are U.S. citizens. Neither Illinova, IP, nor IPMI is owned, controlled, or dominated by any alien, foreign corporation, or foreign government.'' (IP letter, Attachment 2, p. 7.) The staff has no reason to believe otherwise.

VII

After reviewing the information submitted in the letters of October 17 and December 13, 1996, and other information before the Commission, and in consideration of the foregoing findings, the NRC staff has determined that IP is qualified to hold the license and that the transfer, subject to the conditions set forth herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, the Commission consents to the proposed transfer of the license described herein from Soyland to IP, subject to the following: (1) The issuance of approved amendments fully reflecting the transfer approved by this Order at the time such transfer is effected; (2) should the transfer not be completed by December 31, 1997, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended; and (3) IP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from IP to Illinova Corporation (its parent company) or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of IP's consolidated net utility plant.

This Order is effective upon issuance.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and a finding of no significant impact have been prepared and published in the **Federal Register** on February 5, 1997 (62 FR 5495). On the basis of the environmental assessment, the Commission has determined that the issuance of this Order will not have a significant effect on the quality of the human environment.

Notice of consideration of issuance of an order approving the transfer of the license and an opportunity for a hearing was published in the **Federal Register** on January 29, 1997 (62 FR 4337).

For further details with respect to this action, see IP's letters requesting approval of the transfer of the license dated October 17 and December 13, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 13th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–7332 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–245]

Northeast Nuclear Energy Company Notice of Withdrawal of Applications for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et. al (the licensee) to withdraw its July 28, 1994, and November 8, 1995, applications for proposed amendments to Facility Operating License No. DPR–21 for the Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The amendment proposed in the July 28, 1994, letter would have modified the facility technical specifications pertaining to seismic capability of the feedwater coolant injection system. The amendment proposed in the November 8, 1995, letter would have modified the facility technical specifications for the jet pumps in order to make the technical specifications consistent with the limiting conditions for operation and surveillance requirements in the NRC's Standard Technical Specifications for General Electric Plants (NUREG–1433).

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 15, 1995 (60 FR 14023) for the July 28, 1994, request, and March 27, 1996 (61 FR 13528) for the November 8, 1995, request. However, by letter dated February 27, 1997, the licensee withdrew the proposed changes.

For further details with respect to this action, see the applications for amendments dated July 28, 1994, and November 8, 1995, and the licensee's letter dated February 27, 1997, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 17th day of March 1997.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office, Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 97–7319 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–72]

University of Utah (University of Utah AGN–201 Research Reactor), Order Terminating Amended Facility Operating License No. R–25

By application dated July 17, 1990, as supplemented on July 18, 1990, and June 12, 1991, the University of Utah (the licensee) requested from the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorization to dismantle and dispose of the component parts of the AGN–201 Research Reactor (AGN–201 or the reactor) located on the licensee's campus in Salt Lake City, Utah. The letter of July 17, 1990, contained a request that upon successful completion of decommissioning, authorization be given for termination of Amended Facility Operating License No. R–25. A ''Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License,'' was published in the **Federal Register** on May 9, 1991 (56 FR 21508). No requests for a hearing were received. By Order dated August 1, 1991 (56 FR 37733), the Commission authorized dismantling of the reactor and disposition of component parts as proposed in the decommissioning plan of the licensee. By letter dated April 13, 1994, as supplemented on March 17 and 22, 1995, and February 6, 1996, the licensee submitted ''A Summary of the Decommissioning Process of the University of Utah AGN–201M Reactor No. 107.''

The reactor fuel has been removed from the core and shipped to a Department of Energy facility. The reactor has been completely dismantled, and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel

disposition have been met. By separate action, the NRC has granted in accordance with 10 CFR 50.12, upon its own initiative, a specific exemption to the part of the requirements in 10 CFR 50.82(b)(6)(ii) that requires as a condition of license termination a terminal radiation survey and associated documentation to demonstrate that the site is suitable for release. Because the AGN–201 is located in the same room as the University of Utah TRIGA Research Reactor (Docket No. 50–407, Facility Operating License No. R–126), the Reactor Room in the Merrill Engineering Building is not being released for unrestricted use by this Order and will continue to be subject to the terms of Operating License No. R–126 for the TRIGA Research Reactor. Only residual reactor components from the AGN–201 remaining on Amended Facility Operating License No. R–25 are being released for unrestricted use by this action.

The terminal radiation survey and associated documentation demonstrate that the remaining reactor components are suitable for release. Confirmatory radiological surveys verified that the reactor components meet the recommended regulatory guidance for release of the components for unrestricted use. Accordingly, the Commission has found that the decommissioning has been performed in accordance with the approved decommissioning plan in that the reactor has been dismantled and decontaminated pursuant to the Commission's Order dated August 1, 1991. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by the University of Utah, and pursuant to Sections 104 and 161 b, and i, of the Atomic Energy Act of 1954, as amended, and in accordance with 10 CFR 50.82(b)(6), Amended Facility Operating License No. R–25 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant environmental impact. The Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on March 13, 1997 (62 FR 11935).

For further details with respect to this action, see (1) the application for termination of Amended Facility Operating License No. R–25, dated July 17, 1990, as supplemented; (2) the Commission's safety evaluation related to the termination of the license; (3) the environmental assessment and finding of no significant impact; (4) the Commission's exemption to part of the requirements of 10 CFR 50.82(b)(6); and (5) the ''Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License,'' published in the **Federal Register** on May 9, 1991 (56 FR 21508). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, D.C. 20037.

Copies of items (2), (3), (4), and (5) may be obtained upon receipt of a request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Director, Division of Reactor Program Management.

Dated at Rockville, Maryland, this 14th day of March 1997.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Director, Division of Reactor Program Management Office of Nuclear Reactor Regulation

[FR Doc. 97–7320 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–72]

University of Utah (University of Utah AGN–201 Research Reactor); Exemption

I

The University of Utah (the licensee) is the holder of Facility Operating License Nos. R–25 and R–126, which authorize operation of the University of Utah AGN–201 Research Reactor (AGN–201) and the University of Utah TRIGA Research Reactor (TRIGA). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The reactors are located in the Reactor Room in the Merrill Engineering Building on the campus of the University of Utah in Salt Lake City, Salt Lake County, Utah.

II

By application dated July 17, 1990, as supplemented on July 18, 1990, and June 12, 1991, the licensee requested from the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorization to dismantle and dispose of the component parts of the AGN–201. The letter of July 17, 1990, contained a request that upon successful completion of decommissioning, authorization be given for termination of Amended Facility Operating License No. R–25. By Order dated August 1, 1991 (56 FR 37733), the Commission authorized dismantling of the AGN–201 and disposition of component parts as proposed in the decommissioning plan of the licensee. By letter dated April 13, 1994, as supplemented on March 17 and 22, 1995, and February 6, 1996, the licensee submitted ''A Summary of the Decommissioning Process of the University of Utah AGN–201M Reactor No. 107.'' As discussed in the University of Utah's decommissioning plan and letter of March 22, 1995, the site where the AGN–201 is housed is also under the license of the TRIGA and is a restricted environment.

As part of the license termination process, the NRC has decided to grant upon its own initiative a specific exemption in accordance with Title 10 of the Code of Federal Regulations, § 50.12 (10 CFR 50.12), to part of the requirements of 10 CFR 50.82(b)(6)(ii). The part of the regulation for which the staff is granting an exemption requires, as a condition of license termination, that a terminal radiation survey and associated documentation demonstrates that the site is suitable for release. The University of Utah operates the TRIGA (Docket No. 50–407, Facility Operating License No. R–126) in the same room (Reactor Room in the Merrill Engineering Building) where the AGN–201 is located. The Reactor Room will remain subject to the TRIGA license after termination of the AGN–201 license, and, therefore, a terminal survey of the site is not necessary for termination of the AGN–201 license. All that remains of the AGN–201 are reactor components that are to be released for unrestricted use. The Reactor Room will be considered for release in the future when the University of Utah requests termination of the TRIGA license.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security and (2) when special circumstances are present. Special circumstances are present, according to 10 CFR 50.12(a)(2)(ii), whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR 50.82(b)(6) is to describe the requirements that must be met for license termination, one of which is that the results of the terminal survey and other documentation show that the facility and site meet the requirements for release. These survey results and documentation form part of the basis for terminating the license. In this case, the remaining reactor components (the facility) will be released, but the site will not be released. Because the site will continue to be subject to the NRC license for the TRIGA reactor, application of the rule that the terminal survey and other documentation must show that the site is suitable for release is not necessary in order to terminate the license.

IV

For the foregoing reasons, the NRC staff has concluded that not requiring a terminal radiation survey and associated documentation that demonstrate that the site is suitable for release as a condition of license termination will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that application of part of 10 CFR 50.82(b)(6)(ii) is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.82(b)(6)(ii) that a terminal radiation survey and associated documentation demonstrates that the site is suitable for release are needed as a condition of Operating License No. R–25 termination.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 11936).

For further details with respect to this action, see (1) the application for termination of Amended Facility Operating License No. R–25, dated July 17, 1990, as supplemented; (2) the Commission's safety evaluation related to the termination of the license; (3) the environmental assessment and finding of no significant impact; and (4) the Commission's Order terminating Amended Facility Operating License No. R–25. Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, D.C. 20037.

Copies of items (2), (3), and (4) may be obtained upon receipt of a request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Director, Division of Reactor Program Management.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of March 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–7338 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

Nominations of New Members of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission is inviting nominations for three positions on the Advisory Committee on the Medical Uses of Isotopes (ACMUI) to fill current and upcoming committee vacancies. One position is for a physician practicing nuclear cardiology. The second position is for a patients' rights and care advocate. The third position is for an individual with State or local government perspective.

DATES: Nominations are due May 23, 1997.

ADDRESSES: Submit nominations to: The Office of Personnel, Attn: Ms. Jude Himmelberg, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: William B. McCarthy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–7894.

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee members possess the medical and technical skills needed to address evolving issues. Currently, the ACMUI membership consists of: (a) three practicing physicians; (b) a physician representing the U.S. Department of Health and Human Services, Food and Drug Administration; (c) a nuclear pharmacist; (d) two medical physicists (nuclear medicine and therapy); (e) a health care administrator; (f) a certified medical dosimetrist; and (g) a patients' rights and care advocate (whose term expires September 30, 1997). Presently, the specialties of the physicians on the ACMUI are: therapeutic radiology, with expertise in teletherapy and brachytherapy (two), and nuclear medicine research (one). The staff is in the process of finalizing the appointment of a nominee for the position of nuclear medicine physician.

The U.S. Nuclear Regulatory Commission is inviting nominations for three positions on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). One position is for a physician practicing nuclear cardiology. The second position is for a patients' rights and care advocate. The third position is for an individual with State or local government perspective.

Nominees must include four copies of their resumes, describing their educational and professional qualifications, and provide their current addresses and telephone numbers.

All new committee members will serve 3-year terms, with possible reappointment to an additional 3-year term.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses. Nominees will undergo a security background check and will be required to complete financial disclosure statements, to avoid conflict-of-interest issues.

Dated at Rockville, Maryland, this 18th day of March, 1997.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. 97–7316 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[NUREG–1600]

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement amendment; request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) regarding predecisional enforcement conferences that are based on findings of discrimination. For appropriate cases, this amendment will allow some degree of participation by the complainant in the predecisional enforcement conference.

DATES: This amendment is effective on March 24, 1997. Comments are due on or before April 23, 1997.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The Commission's Enforcement Policy was first issued on September 4, 1980. The Enforcement Policy is published as NUREG–1600, ''General Statement of Policy and Procedure for NRC Enforcement Actions (60 FR 34381; June 30, 1995).'' Section V of the current policy provides that, when the NRC learns of a potential violation for which escalated action may be warranted, the NRC will normally provide the licensee an opportunity for a predecisional enforcement conference prior to taking the enforcement action. These predecisional enforcement conferences are a means for the NRC to gain additional information that will assist in determining the appropriate course of action.

The Commission is modifying its Enforcement Policy for predecisional enforcement conferences in which the conference is based on an NRC Office of Investigations (OI) report finding that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred. In such cases, the OI report will normally be made public, subject to withholding certain information (i.e., after appropriate redaction), and any resulting predecisional enforcement conference will normally be open to public observation. In a case where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as ''complainant'') will normally be provided an opportunity to participate in the predecisional enforcement conference.

These enforcement conferences will normally be held in the NRC's regional offices. Participation in the conference in person will be at the complainant's own expense. This participation will normally be in the form of a complainant statement and presentation in followup to the licensee's presentation, followed in turn by an opportunity for the licensee to rebut the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written rebuttal to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit a written rebuttal to the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. As with any NRC meeting, the presiding officer of the conference may limit participation as necessary to control the conduct of the meeting.

This approach will give both the complainant and the licensee (or contractor) the opportunity to present their positions on the discrimination issue, and it should provide additional information on which the staff may base its initial enforcement decision. It may serve to address past concerns that the NRC bases its decision on enforcement action solely on the licensee's presentation. At the same time, it could lead to additional allegations and issues concerning false or misleading statements, and it could lengthen the process. This approach may also raise concerns that the licensee will have more extensive resources than the complainant, enabling it to better present its position. In any event, these enforcement conferences are not adjudicatory forums, but rather a means to obtain additional information from the perspective of both the licensee and the complainant. The Commission intends, therefore, to limit both the licensee and the complainant to simple presentations and rebuttals without allowing experts to testify on the issues or allowing cross-examination of witnesses by the licensee or complainant. As with other predecisional enforcement conferences, the NRC staff will, where appropriate, question licensee's supervisors and their representatives to understand as clearly as possible the circumstances of the case.

Finally, for cases in which there is a full adjudicatory record before the Department of Labor, the NRC may not need to hold a predecisional enforcement conference. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Paperwork Reduction Act Statement

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC 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.

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, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy, Section V, ''Predecisional Enforcement Conferences,'' is amended as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

V. Predecisional Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) A common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings, ''Staff Meetings Open to Public,'' published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800–952–9674, (3) a toll-free electronic bulletin board at 800–952–9676, and on the World Wide Web at the NRC Office of Enforcement homepage (www.nrc.gov/OE). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the ''Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings,'' published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18″ be permitted, and that disruptive persons may be removed. The open conferences will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report will be made public, subject to withholding certain information (i.e., after appropriate redaction), and any resulting predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as ''complainant'') will normally be provided an opportunity to participate in the predecisional enforcement conference. This participation will normally be in the form of a complainant statement and presentation in followup to the licensee's presentation, followed in turn by an opportunity for the licensee to rebut the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written rebuttal to the

licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit a written rebuttal to the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

* * * * *

Dated at Rockville, Maryland, this 17th day of March, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–7315 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al. Vogtle Electric Generating Plant, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated September 11, 1990, by Michael D. Kohn, Esquire, on behalf of Messrs. Marvin Hobby and Allen Mosbaugh (Petitioners), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition was supplemented by submittals made on September 21 and October 1, 1990, and July 8, 1991. The Petition pertains the Vogtle Electric Generating Plant, Units 1 and 2.

The Petition contained allegations regarding: the management of the Georgia Power Company (GPC) nuclear facilities; illegal transfer of GPC operating licenses to Southern Nuclear Operating Company (SONOPCO); intentional false statements to the NRC regarding GPC's organizational chain of command and the reliability of a diesel generator; perjured testimony submitted by a GPC executive during a DOL proceeding under Section 210 of the Energy Reorganization Act; repeated abuse at the Vogtle facility of Technical Specification 3.0.3; repeated willful technical specification violations at the Vogtle facility; repeated concealment of safeguards problems from the NRC; operation of radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements; routine nonconservative and questionable management practices; and retaliation by GPC against managers who make their regulatory concerns known to GPC or SONOPCO management. The supplements to the Petition of September 21 and October 1, 1990, forwarded exhibits and provided additional information regarding the alleged illegal transfer of operating licenses. Based on these allegations, Petitioners requested that the NRC institute proceedings and take swift and immediate action.

The July 8, 1991, supplement to the Petition repeated several of the earlier allegations, and also alleged that GPC's Executive Vice President made material false statements in GPC's April 1, 1991, submittal to the NRC that responded to allegations in the original Petition. The supplement also alleged that false statements had been made to the NRC by the same individual during a transcribed meeting on January 11, 1991, to discuss the formation and operation of SONOPCO. Based on these allegations, Petitioners requested the NRC to take immediate steps to determine if GPC's current management has the requisite character, competence, fundamental trustworthiness, and commitment to safety to continue operating a nuclear facility.

Several issues in the Petition were further defined and reviewed in connection with the licensing proceeding before the Atomic Safety and Licensing Board (Docket Nos. 50–424–OLA–3; 50–425–OLA–3) regarding GPC's application for license amendments to transfer operating authority of the Vogtle facility to Southern Nuclear Operating Company (SONOPCO), and proceedings before the U.S. Department of Labor (DOL) as a result of separate discrimination suites filed by Messrs. Hobby (DOL Case No. 90–ERA–30) and Mosbaugh (DOL Case Nos. 91–ERA–001 and 91–ER–A–011). Although the licensing proceeding concluded without a final Board decision when the parties settled and Mr. Mosbaugh withdrew as sole intervenor, the NRC staff has considered the evidence for the common issues in reaching decisions on the 10 CFR 2.206 Petition. The NRC staff recognizes that Mr. Mosbaugh has withdrawn his interest in the Petition. Nevertheless, the interest of Mr. Hobby in the joint Petition remains and is the purpose for the Acting Director's action to address the Petition. The decisions of the Secretary of Labor regarding the discrimination suites of Messrs. Hobby and Mosbaugh have been addressed by the NRC by means of enforcement action.

As discussed in the Director's Decision, certain concerns raised by the Petitioners are partially substantiated. Violations of regulatory requirements have occurred in the operation of the Vogtle facility. A number of violations were identified and three civil penalties have been issued to GPC for certain of these violations. The three civil penalties resulted from (1) opening a valve when it was required to be closed by the Vogtle Technical Specifications to protect against a potential ''boron dilution'' event (2) providing inaccurate and incomplete information to the NRC regarding diesel generator testing, and (3) violating 10 CFR 50.7, ''Employee Protection,'' by discriminating against Messrs. Hobby and Mosbaugh for engaging in protected activities. The NRC has issued letters to GPC and to several GPC and SONOPCO individuals reminding them of their obligations to provide information to the NRC that is complete and accurate in all material respects, and of the need to ensure a proper environment in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination. The licensee has committed to provide special training and notify the NRC before the individual who in 1990 was the Vogtle General Manager will be permitted to participate in licensed activities. As previously mentioned, Petitioner's request for proceedings has been

accomplished in large measure through the licensing transfer proceeding and through separate actions before DOL, the results of which are recognized by the NRC. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is granted.

However, it has been determined that no unauthorized transfer of the Vogtle operating licenses has occurred, and that the GPC nuclear facilities are being operated in accordance with NRC regulations and do not endanger the health and safety of the public. Additionally, based on the staff's review of extensive information available to date, including the results of relevant enforcement actions, it is concluded that none of the issues call into question the licensee's character, competence, fundamental trustworthiness, or commitment to safety in the operation of its nuclear facilities. Therefore, the Acting Director for the Office of Nuclear Reactor Regulation declines to take any further action with respect to the issues raised in the Petition. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied.

The reasons for this denial are explained in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–06), a summary of which follows this notice. The complete text of DD–97–06 is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 18th day of March 1997.

For The Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

Summary of Director's Decision Under 10 CFR 2.206

I. Introduction

This is a summary of the final Director's Decision on the petition of Messrs. Marvin B. Hobby and Allen L. Mosbaugh (Petitioners) dated September 11, 1990, as supplemented October 1, 1990, and July 8, 1991, pursuant to 10 CFR 2.206 (Petition). In CLI–93–15, 38 NRC 1 (1993), the Commission vacated and remanded a partial decision on the Petition, DD–93–8, 37 NRC 314 (1993), dated April 23, 1993, and directed that the NRC staff consider the outcome of a pending licensing transfer proceeding on the Vogtle facility before acting on the Petition, due to the overlap in issues. After closure of the evidentiary record and before issuance of a decision, the Licensing Board terminated the Vogtle licensing transfer proceeding based upon a settlement agreement between Georgia Power Company (GPC or the licensee) and the sole intervenor, Mr. Mosbaugh. The final Director's Decision addresses the matters considered in the partial Director's Decision and the balance of the Petition in light of the information disclosed in the licensing transfer amendment proceeding, in NRC inspections, investigations, and enforcement actions, and decisions by the Department of Labor.

Although Mr. Mosbaugh has withdrawn his interest in the 10 CFR 2.206 Petition, Mr. Hobby's request is still pending before the NRC. Inasmuch as the Petition was jointly filed by Messrs. Mosbaugh and Hobby and it is difficult to segregate their concerns, the final Director's Decision addresses all matters raised in the Petition, as supplemented by the hearing record.

II. Discussion

The Petitioners made a number of allegations about the management of the GPC nuclear facilities (Hatch and Vogtle). Specifically, they alleged that:

1. GPC illegally transferred its operating licenses to Southern Nuclear;
2. GPC knowingly included misrepresentations in its response to concerns of a Commissioner about the chain of command for the Vogtle facility;
3. GPC made intentional false statements to the NRC about the reliability of a diesel generator (DG) whose failure had resulted in a Site Area Emergency (SAE) at Vogtle;
4. A GPC executive submitted perjured testimony during a DOL proceeding under Section 210 of the Energy Reorganization Act;
5. GPC repeatedly abused Technical Specification (TS) 3.0.3 at the Vogtle facility;
6. GPC repeatedly and willfully violated Technical Specifications (TSs) at the Vogtle facility;
7. GPC repeatedly concealed safeguards problems from the NRC;
8. GPC operated radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements;
9. GPC routinely used nonconservative and questionable management practices at its nuclear facilities; and,
10. GPC retaliated against managers who made their regulatory concerns known to GPC or Southern Nuclear management.

Mr. Mosbaugh had previously informed NRC's Office of Investigations (OI) of some of these allegations. The Petitioners requested the NRC to institute proceedings and take swift and immediate action based on these allegations. On October 23, 1990, Dr. Thomas E. Murley, who was then the Director, NRR, acknowledged receiving the Petition and concluded that no immediate action was necessary regarding these matters. He made this determination based on completed and continuing NRC inspections and investigations of the licensee and particularly of the operation of the Vogtle facility.

On July 8, 1991, the Petitioners submitted ''Amendments to Petitioners Marvin Hobby's and Allen Mosbaugh's September 11, 1990, Petition; and Response to Georgia Power Company's April 1, 1991, Submission by its Executive Vice President, Mr. R. P. McDonald'' (Supplement). In the Supplement the Petitioners alleged that:

1. GPC's Executive Vice President made material false statements in GPC's April 1, 1991, submittal to the NRC regarding the participants in an April 19, 1990, telephone conference call; and,
2. This same Executive Vice President made false statements to the NRC at a transcribed meeting on January 11, 1991, which discussed the formation and operation of Southern Nuclear.

The Petitioners requested that the NRC take immediate steps to determine if GPC's current management has the requisite character and competence to operate a nuclear facility. On August 26, 1991, Dr. Murley acknowledged receiving the Supplement and informed the Petitioners that no immediate action was required and that the specific issues raised in the Supplement would be addressed in a Director's Decision (DD).

On October 22, 1992, in response to a **Federal Register** notice of the proposed issuance of these license amendments (57 FR 47135, October 14, 1992), Messrs. Mosbaugh and Hobby filed a petition for leave to intervene and request for hearing. Mr. Hobby was denied intervenor status for lack of standing. In LBP–93–5, 37 NRC 96 (February 18, 1993), Mr. Mosbaugh was admitted as an intervenor along with a single contention:

> The license to operate the Vogtle Electric Generating Plant, Units 1 and 2, should not be transferred to Southern Nuclear Operating Company, Inc., because it lacks the requisite character, competence and integrity, as well as the necessary candor, truthfulness and willingness to abide by regulatory requirements.

The bases for the admitted contention alleged that (1) the license transfers had already taken place because Southern Nuclear had assumed control of the

operation of the Vogtle facility without prior approval from the NRC, and (2) officials of the SONOPCO Project (the predecessor organization to Southern Nuclear) conspired to submit false information to the NRC concerning safety-related information regarding DG testing following the March 1990 SAE.

On April 23, 1993, the Director, NRR, issued DD–93–8, NRC 314, in which he resolved several matters. In summary, the Director determined that:

1. No unauthorized transfer of the Vogtle licenses had occurred;

2. There is no information beyond the Petitioners' opinions to support the position that GPC's omission from a description of their chain of command at a Commission meeting on March 30, 1989, was intentional;

3. GPC does not routinely threaten the safe operation of the Vogtle facility by allowing entry into TS 3.0.3;

4. Although TS violations had occurred, Petitioners' claim that they were willful was not substantiated;

5. Failures to make timely reports to the NRC of safeguards problems were due to GPC's cumbersome system for evaluating security findings, rather than being due to any willful attempt to impede the reporting process;

6. The relevant facts do not support a conclusion that GPC wilfully violated NRC requirements or wilfully operated the radioactive waste system in a manner to endanger public health and safety; and,

7. The GPC nuclear facilities were being operated in accordance with NRC regulations and do not endanger public health and safety.

Decisions on the Petitioners' issues of intentional false statements to the NRC regarding DG reliability, perjured testimony by a GPC executive in a DOL proceeding, and discrimination against managers who raised regulatory concerns were deferred pending the completion of OI investigations and the issuance of a DOL decision.

In CLI–93–15, 38 NRC 1 (July 14, 1993), the Commission vacated and remanded DD–93–8, and directed that the staff consider the outcome of the Vogtle license amendment proceeding before acting on the Petition due to the overlap in issues.

Several extensive reviews of the above concerns have been conducted by the NRC. The NRC performed special inspections, OI performed investigations, an Atomic Safety and Licensing Board (ASLB) held hearings on the contention challenging Southern Nuclear's character, and the Department of Labor (DOL) held hearings concerning alleged discrimination against Messrs. Hobby and Mosbaugh by licensee management.

Litigation concerning the contention in the license amendment proceeding was extensive and included over 35 prehearing depositions, over 12,500 pages of hearing transcripts, and nearly 600 documentary exhibits. After the hearings were completed and prior to issuance of an ASLB decision on the contention, Mr. Mosbaugh and licensee arrived at a settlement agreement that resulted in, among other things, Mr. Mosbaugh withdrawing his contention and filing a joint motion (with the licensee) requesting that the Board terminate the proceeding without issuance of a Board order setting forth its findings and conclusions. The Board granted the request and dismissed the contention (LBP–96–16, 44 NRC 59 (August 19, 1996)).

The dismissal of the contention did not address the potential safety implications of the 2.206 Petition as supplemented by the hearing record. The staff has considered the testimony of staff witnesses, including staff engineers, supervisors, and senior managers, the technical issues raised, and the staff's observations and assessments of licensee performance to resolve the issues raised by the Petition. The following is a summary of the conclusions in the Director's Decision.

A. Illegal License Transfers, and Misrepresentations of Management Control

1. Illegal License Transfers

The Petition alleged that GPC improperly transferred control of its nuclear licenses to Southern Nuclear in that Mr. Joseph M. Farley (who was an officer of GPC's parent company, Southern Company, and its subsidiary, Southern Company Services) acted as Chief Executive Officer (CEO) of SONOPCO and was responsible for operating the GPC nuclear facilities and made or influenced budget and hiring decisions, beginning with the first of three phases in the planned transition to Southern Nuclear. The Petitioners state that the nuclear officers in SONOPCO Project reported to Mr. Farley, rather than to Mr. Dahlberg, GPC's CEO, and that Mr. Farley controlled the Vogtle facility based upon his involvement in (1) controlling daily operations, (2) establishing and implementing nuclear policy decisions, (3) employing, supervising, and dismissing nuclear personnel, and (4) controlling costs. Intervenor also asserts that numerous documents and statements provided to the NRC regarding the organizational structure and responsibilities for managerial control of the Vogtle facility were inaccurate or incomplete because they do not show Mr. McDonald reporting to Mr. Farley or Mr. Farley functioning as the de facto Chief Executive Officer of the SONOPCO Project.

The staff's review concluded that Intervenor's assertion that Mr. Farley functioned as the de facto Chief Executive Officer of the SONOPCO Project is not supported by the record. Mr. McDonald did not report to Mr. Farley regarding GPC licensed activities. The items cited do not demonstrate that Mr. Farley exercised control over licensed activities at GPC's nuclear facilities during his involvement in the SONOPCO Project. Rather, the record shows that GPC controlled the daily operations of the Vogtle facility in accordance with a chain of command extending from the Vogtle General Manager, through the Vice President of the Vogtle facility, through the Senior Vice President—Nuclear Operations, through the Executive Vice President—Nuclear Operations, to the President and CEO of GPC. A Nuclear Operations Overview Committee of the GPC Board of Directors conducted periodic reviews of the regulatory and operational performance of GPC's nuclear plants. The hearing record shows that nuclear policy decisions for the Vogtle facility were established and implemented by GPC, and there was no evidence that Mr. Farley established the outage philosophy or any other operational policies for the Vogtle facility. Mr. Farley's limited involvement in a 1989 rate case matter before the Georgia Public Service Commission (i.e., his review of draft testimony regarding alternative performance standards) did not indicate any control of GPC's nuclear operations or licensed activities. Intervenor also provided no information that The Southern Company Management Council acted as the SONOPCO Project board of directors until the Project was incorporated.

Regarding the assertions that Mr. Farley controlled the Vogtle facility through personnel decisions, the record does not show that Mr. Farley controlled GPC nuclear facilities by employing, supervising, and dismissing nuclear personnel, or that GPC provided inaccurate information to the NRC regarding Mr. Farley's involvement with personnel matters.

The hearing record does not support a conclusion that GPC misrepresented its budgets affecting the operation of GPC licensed facilities. There is no basis to conclude that the particular process GPC used to develop its budget showed that Mr. Farley, The Southern Company,

or SONOPCO Project controlled the operation of the Vogtle facility. Rather, the record shows that GPC was responsible for the costs of the Vogtle facility. After review by GPC's Management Council, the operating and capital budgets were approved by GPC's President and CEO, and the capital budget was also approved by the GPC Board of Directors. The record does not support that Messrs. Farley and Edward L. Addison, the President and CEO of The Southern Company, approved GPC's nuclear budgets. As an Executive Vice President of The Southern Company, Mr. Farley was involved in reviewing the nuclear budgets as part of the normal process for preparing annual budgets in the Southern system. Given The Southern Company's holding company status, Mr. Addison's involvement in reviewing and providing guidelines and requirements for adequate earnings and reasonable capital needs was appropriate.

The record shows that GPC provided some inaccurate or incomplete information to the NRC when describing its organization and plans to form Southern Nuclear, and when responding to the Petition. This information involved (1) the omission of Mr. Hairston when Mr. McDonald described the Vogtle chain of command during a March 30, 1989, meeting, (2) a 1989 FSAR organizational chart showing the position of Mr. Dahlberg as ''Chairman and CEO'' rather than ''President and CEO'', and (3) GPC's April 1991 written response to the Petition indicating that the GPC Management Council included all Senior Vice Presidents (which was inaccurate because Mr. Hairston was not a member), and indicating Mr. Farley's title in 1988 to be Executive Vice President—Nuclear of The Southern Company (a position he did not assume until March 1, 1989). This inaccurate or incomplete information was of minor safety significance in terms of NRC understanding of the proposed transfers, did not mislead the NRC, and was not sufficient to warrant NRC enforcement action nor conclusions that (1) GPC concealed an unauthorized role of Mr. Farley or a de facto, unauthorized organization for control of GPC nuclear facilities, or (2) GPC lacks the requisite character and integrity to be a licensee.

The staff has reviewed the Vogtle Final Safety Analysis Report (FSAR), the Vogtle licenses, records of an NRC Special Inspection conducted to review the SONOPCO management organization, and testimony of key officials taken under oath in the license amendment proceeding, as well as the evidence proffered by the Intervenor in the license amendment proceeding. This information established that the responsibility for decisions affecting the operation of the GPC plants rested with GPC's Senior Vice President—Nuclear Operations, who at the time was Mr. Hairston. The Petitioners' concerns do not warrant the conclusion that SONOPCO was in control. Rather, the staff finds that during the period of time in question, the chain of command was from the respective vice presidents for the Vogtle and Hatch facilities to Mr. Hairston. Mr. Hairston reported to Mr. McDonald, who reported to Mr. Dahlberg, President of GPC. Each of these individuals was an elected officer of GPC, and the reporting chain at that time progressed up to the President of GPC.

Therefore, the staff concludes that GPC did not transfer control of the operating licenses for the Vogtle facility without the prior consent of the NRC and that GPC did not mislead the NRC in any material respect regarding control of the operation of the Vogtle facility.

2. Chain of Command Misrepresentations at a Commission Meeting

The Petitioners stated that during a Commission meeting to vote on the full power operating license for Vogtle Unit 2 on March 30, 1989, GPC misled the Commission about the chain of command from the Vogtle Plant Manager to the CEO during their response to a question from one of the Commissioners.

Shortly after reading the transcript of the meeting, Mr. W.G. Hairston, on May 1, 1989, sent the NRC a letter that corrected the meeting transcript, and noted that GPC had inadvertently omitted him in the management chain in their reply to the Commissioner. The letter further stated that the organization was as described on figures 13.1.1–1 and 13.1.1–2 of the FSAR. The NRC previously had been apprised of the GPC organization, including Mr. Hairston's position, by an FSAR amendment dated November 23, 1988, and NRC staff members present at the Commission meeting were aware of the correct information. The staff has no basis to conclude that GPC's omission of the Senior VP position in their oral remarks was intentional. The staff concluded, after consultation with the Commission, that GPC's omission was not significant because the information would not likely have caused the Commission to reach a different decision regarding the Unit 2 license application. In addition, the staff had previously been provided and was aware of the correct information. Thus, enforcement action was not appropriate.

3. Misrepresentations Concerning the SONOPCO Project

The Petition asserted that GPC (Mr. McDonald) falsely stated during a transcribed meeting with the staff on January 11, 1991, that Mr. Farley had no responsibilities for administrative matters related to the SONOPCO Project. Mr. Farley claims he had been involved in SONOPCO administrative matters since the SONOPCO Project was formed in November 1988.

Based on the meeting transcript and his testimony during the ASLB hearing, Mr. McDonald's January 11, 1991, statement was not inaccurate in terms of the functions depicted on the charts discussed during the meeting. Mr. McDonald testified during the hearing that his statement was that prior to the incorporation of Southern Nuclear, Mr. Farley had been performing as a Vice President of The Southern Company, had been providing certain services to him under a contract with SCS, and had no responsibility for certain other administrative support that was depicted on organization charts discussed during the meeting. Administrative support was being performed by the Southern Company Services Vice President for Administrative Services (Mr. McCrary) for Mr. McDonald pursuant to the April 24, 1989, agreement. While Mr. McCrary provided administrative services to support Mr. Farley's role in guiding the formation of Southern Nuclear and Mr. Farley's general industry activities, Mr. McCrary did not report to Mr. Farley with respect to the administrative support function for the Vogtle facility.

B. Reporting of DG Reliability

The Petitioners alleged that GPC made intentional false statements to the NRC about the reliability of a DG whose failure had resulted in an SAE at Vogtle. OI conducted an investigation and issued a report on December 17, 1993. Based on its evaluation of the evidence gathered by OI, and other information, the NRC staff determined that, contrary to the requirements of 10 CFR 50.9, the licensee had failed on four occasions to provide information concerning DG start counts (and the reasons for errors in those counts) to the NRC that was complete and accurate in all material respects. An examination of how the performance failures of licensee staff, supervisors and managers contributed to these errors resulted in the violations being judged by the NRC to collectively represent a very significant regulatory concern. Enforcement action was taken by the issuance of a Modified Notice of Violation and Imposition of Civil

Penalties (Notice) (EA 93–304, February 13, 1995) which characterized the violations as a Severity Level II problem. The licensee paid a $200,000 civil penalty on March 1, 1995. Corrective actions taken by licensee management have included:

1. Making the initial notice of violation available to all employees and committing to posting an NRC Order if one is issued;
2. A letter from the Senior Vice President to the Vice Presidents for Hatch and Vogtle regarding the importance of thorough record keeping during off-normal hours;
3. Counseling of specific individuals by the Senior Vice President, and the issuance of an ''Oral Reminder'' pursuant to the licensee's Positive Discipline System;
4. A letter from the Executive Vice President—Nuclear Operations to nuclear operations employees that stressed the importance of effective communications and the effective resolution of concerns;
5. Posting copies of 10 CFR 50.9 and encouraging employees to read it;
6. Meetings held by the Senior Vice President—Nuclear Operations with employees at the Hatch and Vogtle sites to discuss GPC's policy of open, complete and accurate communications with the NRC, and a letter to all employees on the same subject;
7. Management observation of communications with the NRC to ensure that the enforcement action does not adversely affect the completeness of statements; and,
8. Posting a notice to all employees of the availability of GPC's reply to the initial notice of violation.

The staff reviewed the licensee's corrective actions and concluded that the actions were sufficient.

The staff's evaluation also resulted in Demands for Information (DFIs) being issued to the licensee and six individuals who acknowledged their roles and responsibilities in the activities that were the bases for the enforcement action. The performance of the Vogtle General Manager (GM) through August 1990 contributed directly to each of the failures to meet 10 CFR 50.9. GPC and that individual acknowledged his role and responsibility in the events underlying the enforcement action and informed the staff in separate letters dated February 1, 1995, that the individual had requested, and his current employer (Southern Nuclear) had agreed to implement a personal training program to strengthen his ability to perform any future line management role in support of licensed activities. Southern Nuclear and GPC committed that the former GM would not assume a line management position for a GPC or Southern Nuclear plant unless he had satisfactorily completed training in management communications and responsibilities, and the NRC received 60 days prior written notice of the assignment. As documented in the February 13, 1995, Modified Notice of Violation and Imposition of Civil Penalties, the staff concluded that, in light of these commitments, the staff had no present concerns with the character and integrity of the individuals or the licensee arising out of these events, and no further enforcement action was necessary.

C. DOL Testimony

The Petitioners asserted that (1) GPC's Executive Vice President knowingly submitted false testimony in a DOL proceeding involving the discrimination complaints of two GPC employees and (2) that Mr. Hobby advised GPC's counsel before the DOL hearing that the proposed testimony was false and that GPC's counsel responded by advising him that the testimony would have to be changed.

The DOL case resulted in a Decision and Remand Order (Decision) by the Secretary of Labor (Secretary) on August 4, 1995. The Secretary found that GPC had discriminated against Mr. Hobby for engaging in protected activities, and stated, in relevant part: ''Because I found other evidence sufficient to establish that Complainant [Mr. Hobby] engaged in protected activity on January 2, [1989 (the pre-hearing meeting),] it was unnecessary to consider at that juncture whether counsel attempted to suborn Complainant to perjury. Even if counsel did, that evidence would not alter this decision.''

As discussed more fully below, based on the Secretary's Decision, and a similar Decision in a proceeding regarding an alleged unlawful termination of Mr. Mosbaugh's employment, the staff issued two Severity Level I Notices of Violation to GPC. The staff also issued individual letters to certain senior corporate managers admonishing them to ensure that a proper environment is maintained in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination.

D. Use of TS 3.0.3

The Petitioners asserted that GPC engaged in unsafe practices in that (1) GPC repeatedly allowed the Vogtle facility to enter TS 3.0.3 by rendering both trains of safety-related load sequencers for the DGs inoperable, (2) GPC did not make the required notifications to the NRC when TS 3.0.3 was entered, and (3) GPC failed to recognize that the loss of a load sequencer resulted in entry into TS 3.0.3.

The staff reviewed entries into TS 3.0.3 through inspections conducted by region-based inspectors and the observations of the resident inspectors. The staff also reviewed the completed maintenance work orders performed on the load sequencers and the related surveillance tests. The staff found several instances in which the work performed would have required the load sequencers to be de-energized. However, the associated unit was found not to have been in Modes 1, 2, 3, or 4 at the time this work was performed and thus, no TS LCO applied. The surveillance test review did not reveal any examples of the load sequencers having been de-energized while in Modes 1 through 4 at the time the test was performed and thus, no TS LCOs applied. Based on its review, the staff concluded that GPC did not routinely allow the Vogtle facility to enter TS 3.0.3 by rendering both trains of safety-related load sequencers for the DGs inoperable.

In accordance with 10 CFR 50.72, Immediate Notification Requirements for Operating Nuclear Power Reactors, licensees are required to make immediate (i.e., within 1 or 4 hours, depending on the circumstances) reports to the NRC of any declaration of an emergency class specified in the Emergency Plan, and certain non-emergency events. Non-emergency events include such items as the initiation of any nuclear plant shutdown required by the TS, any deviation from the TS authorized by 10 CFR 50.54(x), any condition where the nuclear power plant (including its principle safety barriers) becomes seriously degraded, and any natural phenomenon or other external condition that poses an actual threat to the safety of the nuclear plant or significantly hampers site personnel in the performance of duties necessary for the safe operation of the plant. In 10 CFR 50.73, Licensee Event Report System, events are identified for which written reports will be made to the NRC within 30 days. These events include several of the events requiring immediate reports pursuant to 10 CFR 50.72, plus additional events such as any event or condition that alone could have prevented the fulfillment of the safety function of certain structures or systems. The Commission's regulations do not contain an explicit requirement that an entry into TS 3.0.3, in and of itself, be reported. Licensees are

required by 10 CFR 50.72 to notify the NRC within 1 hour of the initiation of any plant shutdown required by the plant's TS. Thus, the NRC is promptly notified of entries into TS 3.0.3 if the plant initiates a shutdown as a result of the problem that caused entry into the TS. There is no requirement to notify the NRC of entries into TS 3.0.3 if a shutdown is not initiated. The staff has no basis to conclude that the licensee's activities constituted unsafe practices or that these activities indicated that the character of the licensee, including those GPC individuals who will be employed by Southern Nuclear after the licenses are transferred, was unsuitable for operating a nuclear power plant.

E. Willful TS Violations

The Petitioners stated that GPC willfully and knowingly violated Vogtle Unit 1 TSs during the October 1988 refueling outage by opening boron dilution valves required to be locked closed by TSs. The Petitioners claimed that (1) the valves were opened while the coolant level in the reactor vessel was lowered to the mid-loop level, and that this placed the plant in an unanalyzed condition creating the risk of an uncontrolled boron dilution accident and an inadvertent criticality, (2) the valves were opened to expedite the outage so the plant could be placed back on line according to the schedule, and (3) the violation of TSs to stay on schedule was due, in part, to a senior management philosophy that outages must be scheduled assuming that everything goes right and that contingency or extra time is not to be included in the schedule.

After reviewing OI Report 2–90–001 and responses to four DFIs, and after an enforcement conference, the staff sent letters to the Operations Manager, the Operations Superintendent, and the Shift Supervisor stating that no actions would be taken regarding their individual NRC licenses. The staff also stated that, although their actions did not meet NRC expectations, the evidence was insufficient to support a conclusion that their actions constituted an attempt to intentionally circumvent the TSs. On December 31, 1991, after consultation with the Commission, the staff issued a Severity Level III Notice of Violation and Proposed Imposition of Civil Penalty (EA 91–141). GPC paid a $100,000 civil penalty on July 9, 1992.

With respect to the placement of the plant in a condition that could have resulted in an uncontrolled dilution event and inadvertent reactor criticality, the staff reviewed an analysis of this event that Westinghouse later performed for GPC. The staff concluded that, although the TSs in effect at the time were violated, the actual opening of the valves was of insufficient duration to create a criticality event and did not endanger public health and safety.

With respect to the Petitioners' claim that the valves were opened to expedite the outage, the staff, based on its review, did not find sufficient basis to conclude that this evolution had been performed to meet the outage schedule. The NRC did not require chemical cleaning before the utility restarted the reactor, and cleaning expended time during the outage.

On February 26, 1990, the staff found that the dilution valves identified above were required to be locked closed, but were not locked while at mid-loop as required by the TSs. The Petitioners assert that this is another example of a willful violation of TSs by Vogtle senior management. Instead of installing a mechanism to mechanically secure this valve, the licensee had placed a hold tag on the valve, which provided only administrative control to preclude valve operation. GPC subsequently agreed that this method was unacceptable and took action to install a mechanical locking device. On April 26, 1990, the staff issued Notice of Violation, 50–424,425/90–05–01, ''Failure to Mechanically Secure Valve 1–1208–U4–176 During Mode 5 As Required By TS 3.4.1.4.2.C'' (Severity Level IV). The staff concluded that, although a violation occurred, the error in TS interpretation was not an example of a willful violation of TSs by Vogtle senior management. Thus, there is no basis to conclude that GPC willfully and knowingly violated the TSs.

F. Safeguards Problems

The Petitioners alleged that (1) GPC personnel, including a Vice President and General Manager, and a Southern Company Services Manager, knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with reporting requirements, (2) the GPC Vice President made false statements to the NRC during an Enforcement Conference about the status of safeguards materials, and that the false statements probably influenced a subsequent civil penalty action taken by the NRC, (3) on July 23, 1990, plant and SONOPCO senior management prevented the Site Security Manager from making a notification within 1 hour as required by 10 CFR 73.71, and (4) the manager was prevented from making the call in order to delay or defuse the NRC's knowledge of programmatic problems on the part of the licensee regarding the handling of safeguards documents.

OI investigated the allegation that GPC knowingly and repeatedly hid safeguards problems from the NRC and willfully refused to comply with mandatory reporting requirements. OI also investigated the allegation that the GPC Vice President made false statements to the NRC in an Enforcement Conference concerning the status of safeguards material. The investigations did not substantiate that GPC withheld pertinent information from the NRC at the time of the Enforcement Conference or that GPC management impeded the reporting of safeguards events. On the basis of the OI investigations, the staff concluded that the Severity Level II violation and $50,000 civil penalty issued by the staff on June 27, 1990, for failing to properly secure safeguards information was appropriate for the volume and content of the safeguards information involved. GPC paid the civil penalty on July 27, 1990.

OI also investigated the allegation that plant and SONOPCO senior management prevented the Site Security Manager from making notifications within 1 hour as required by 10 CFR 73.71 in two instances. After reviewing OI's investigation results, the staff concluded that both of the failures to make timely reports were due to the GPC's cumbersome system for evaluating corporate security findings through the site security organization, rather than due to any willful attempt to impede the reporting process.

G. Operation of Radioactive Waste Systems

The Petitioners asserted that GPC endangered public health and safety by operating a temporary radioactive waste system known to be in gross violation of NRC requirements. The Petitioners also state that Vogtle's General Manager (GM) had intimidated the members of the Plant Review Board (PRB) when they attempted to consider if the use of the waste system should be resumed.

An NRC Special Inspection Team reviewed these items and discussed its findings in Supplement 1 to Inspection Report 50–424,425/90–19, dated November 1, 1991. The licensee's operation of the radwaste systems was found to be acceptable. The inspection team concluded that although the system was originally installed without an adequate safety evaluation and did not meet regulatory guidance, the subsequent safety evaluations were acceptable for the system's use. One issue was identified in the inspection report as warranting further review by the licensee under the provisions of 10 CFR 50.59.

Regarding the assertion that the GM had intimidated PRB members, the inspection team found one case where a voting PRB member felt intimidated and feared retribution because the GM was present at the meeting. The staff concluded that the allegation was substantiated. However, the PRB member stated that he did not change his vote in response to GM pressure, and the GM subsequently met with the PRB members to allay their fears. Since the level of intimidation perceived by the PRB member was insufficient to have any affect on the PRB member's safety decision, and the GM subsequently addressed the intimidation concern with the PRB, further regulatory action based on this event was not warranted.

H. GPC Statement On Management Participation in a Telephone Call

The Intervenor contended that GPC, in their April 1, 1991, response to the Petition, intentionally tried to conceal the participation of the Senior VP—Nuclear Operations in an April 19, 1990, conference call regarding a Licensee Event Report (LER).

The Senior VP participated in one of at least two conference calls known to have taken place on April 19, 1990, before the LER was issued that same day. However, there is no evidence that the GPC corporate official who signed the April 1, 1991, Petition response (the GPC Executive Vice President) was aware of the fact that the Senior VP had participated in one of the April 19 conference calls. The staff review of a transcript of Mr. Mosbaugh's surreptitiously recorded audio tape of the calls, that was admitted as evidence in the licensing proceeding, shows that the Senior VP joined one call after decisions were made on how to convey the DG start count information in the LER, and the Senior VP did not participate in a second conference call that finalized the LER language. The staff has determined that there is insufficient basis to conclude that GPC, in their April 1, 1991, response to the Petition, intentionally tried to conceal the participation of the Senior VP—Nuclear Operations in an April 19, 1990, conference call regarding the preparation of the LER.

I. Management Retaliation

The Petition alleged that GPC retaliated against managers who made their regulatory concerns known to GPC or SONOPCO management.

As noted previously, in 1990, Messrs. Hobby and Mosbaugh each filed a complaint with DOL alleging, in part, that their employment terminations constituted unlawful discrimination against them for engaging in protected activities (i.e., expressing safety concerns). The Secretary found that the terminations of employment resulted from unlawful discrimination by senior licensee management personnel. The NRC reviewed the Secretary's decisions and determined that violations of 10 CFR 50.7, (Employee Protection) had occurred. Two Severity Level I Notices of Violation were issued to the licensee as provided for by the NRC's Enforcement Policy. Although the NRC took no enforcement actions directly against the individuals involved, the NRC did issue letters to several senior management personnel to emphasize that harassment, intimidation and discrimination against licensee employees for engaging in protected activities is unacceptable.

GPC corrective actions included emphasizing to employees that they are encouraged to raise safety concerns and that harassment, intimidation and discrimination against employees for raising those concerns is contrary to a strongly supported management policy prohibiting such retaliatory measures. Licensee corporate management communicated this message in writing, and at special meetings with site employees to focus on this concern.

The staff concludes that the significant enforcement action by the NRC, in addition to ASLB hearing activities and the DOL Orders, is likely to sensitize licensee management to the seriousness of problems of this nature and ensure a proper environment in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination.

J. Management Practices

The Petitioners stated that GPC routinely used nonconservative and questionable management practices at its nuclear facilities. Examples provided by the Petitioner include the improper use of TS 3.0.3 (see D. above), willful TS violations (see E. above), safeguards problems (see F. above), and operation of a radioactive waste system known to be in violation of NRC requirements (see G. above). To address the Petitioners' general characterization of licensee management practices as being nonconservative and questionable, NRC witnesses, including staff engineers, supervisors, and senior managers provided testimony during the ASLB proceeding on several technical issues in addition to observations and assessments of GPC's performance from several perspectives.

The staff concluded that GPC's performance problems were not sufficient to establish that Southern Nuclear (and the GPC employees who will work for that company if the transfers were granted) lack the requisite character to be a licensee. The staff cited GPC's overall performance in keeping the NRC informed of DG post-repair and trouble shooting activities, GPC's technical competence in addressing those matters and the efforts of the GPC Senior Vice President—Nuclear Operations to keep the NRC informed of errors as GPC became aware of them.

In a letter, dated December 23, 1996, Southern Nuclear and GPC iterated their 1995 commitment that the former GM would not assume a line management position for a GPC or Southern Nuclear plant unless he had satisfactorily completed training in management communications and responsibilities, and the NRC received 60 days prior written notice of the assignment. The staff has relied on this commitment in evaluating the proposed transfers. A condition has been included in the Order authorizing these license transfers that the staff will receive 60 days prior written notice of the licensee's intent to assign the individual to a line management position at Vogtle.

The staff has concluded that, although significant violations were identified against GPC in the past, corrective actions have been implemented. There has been no showing that Southern Nuclear or GPC (including the GPC employees who will work for Southern Nuclear if the transfers were granted) lacks the requisite character to be a licensee. In light of the various regulatory actions that have already been taken by the NRC on issues raised in the Petition, including the Order provision regarding the former Vogtle General Manager, and corrective actions taken by the licensee, no further action is necessary.

III. Conclusion

As summarized above, NRC has conducted several inspections, investigations, and technical reviews regarding the concerns in the Petition, and proceedings before NRC and DOL have been conducted regarding most of the concerns. Some of the concerns raised by the Petitioners were substantiated. Violations of regulatory requirements have occurred. Notices of Violation and civil penalties have been issued to the licensee, letters have been issued to several individuals, and certain conditions regarding one individual are being imposed by NRC in conjunction with the license transfers. To this extent, the Petitioners' request

for action pursuant to 10 CFR 2.206 has been granted.

On the basis of the NRC staff's review and the record of the Vogtle license transfer amendment proceeding, I conclude that no unauthorized transfer of the Vogtle or Hatch operating licenses occurred, and that the GPC nuclear facilities are being operated in accordance with NRC regulations and do not endanger the health and safety of the public. On balance, the evidence does not support the conclusion that GPC, SONOPCO Project, or Southern Nuclear deliberately provided false or misleading information to the NRC or that Southern Nuclear or GPC (including the GPC employees that would be employed by Southern Nuclear if the proposed license transfer is authorized) lack the requisite character and integrity to be an NRC licensee as required by section 182 of the Atomic Energy Act, 42 U.S.C 2232, and 10 CFR 50.80. Thus, there is no basis upon which to grant Petitioners' request that the operation of the facility be modified, suspended or revoked.

With respect to Petitioners' request that the NRC institute proceedings and impose civil penalties based on the matters addressed in the Petition, the issues in the Petition that give rise to substantial health and safety issues have, in fact, been the subject of a lengthy proceeding and escalated enforcement actions by the NRC. Also, based upon the findings of the DOL, the NRC has addressed both Petitioners' specific concerns that they were discriminated against for engaging in protected activities (and the associated allegation that GPC retaliates against managers who make their regulatory concerns known) by taking escalated enforcement actions against GPC. Based on actions already taken by the NRC staff and the licensee, there is reasonable assurance that the GPC facilities operate with adequate protection of the public health and safety. Therefore, I decline to take any further action with respect to matters raised in the Petition. To this extent, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied.

A complete copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 18th day of March 1997.

[FR Doc. 97–7317 Filed 3–21–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22569; 812–10524]

Nations Fund Trust et al.; Notice of Application

March 17, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Nations Funds Trust (''NFT''), Nations Fund, Inc. (''NFI''), NationsBanc Advisors, Inc. (''NBAI''), The Pilot Funds (''Pilot''), and Boatmen's Trust Company (''Boatmen's'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order under section 17(b) for an exemption from section 17(a) to permit certain series of NFT and NFI to acquire all of the assets and assume all of the stated liabilities of certain series of Pilot. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on February 13, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: NFT, NFI, NBAI, and Boatmen's One NationsBank Plaza, Charlotte, North Carolina 28255; Pilot, 3435 Stelzer Road, Columbus, Ohio, 43219.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Staff Attorney, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. NFT, a Massachusetts business trust, is registered under the Act as an open-end management investment company. NFT currently consists of thirty-two series, seven of which are the subject of this application: Nations Strategic Fixed Income Fund, Nations Disciplined Equity Fund, Nations Value Fund, Nations Intermediate Municipal Bond Fund, Nation Short-Intermediate Government Fund, Nations Tax Exempt Fund, and Nations Municipal Income Fund. NFI, A Maryland corporation, is registered under the Act as an open-end management investment company. Three of NFI's existing five series and three shell funds are the subject of this application: Nations Equity Income Fund, Nations Prime Fund, Nations Treasury Fund, Nations Small Company Growth Fund (shell), Nations U.S. Government Bond Fund (shell), and Nations International Growth Fund (shell) (collectively, these thirteen funds are referred to as the ''Acquiring Funds'').

2. Pilot, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Pilot currently offers fourteen series: Pilot Diversified Bond Income Fund, Pilot Equity Income Fund, Pilot Growth Fund, Pilot Growth and Income Fund, Pilot Intermediate Municipal Bond Fund, Pilot Intermediate U.S. Government Securities Fund, Pilot International Equity Fund, Pilot Missouri Short-Term Tax-Exempt Fund, Pilot Municipal Bond Fund, Pilot Municipal Bond Fund, Pilot Short-Term U.S. Treasury Fund, Pilot Small Capitalization Equity Fund, Pilot U.S. Government Securities Fund, Pilot Short-Term Diversified Assets Fund, and Pilot Short-Term Tax-Exempt Diversified Fund (collectively, the ''Acquired Funds'').

3. The investment objectives of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund.

4. NBAI is the investment adviser to the operating Acquiring Funds. NBAI is

a wholly-owned subsidiary of NationsBank, N.A., which is a wholly-owned subsidiary of NationsBank Corporation (''NationsBank''). Boatmen's is the investment adviser to the Acquired Funds.

5. On August 29, 1996, Boatmen's Bancshares, Inc. (''Bancshares''), the former parent of Boatmen's, entered into an Agreement and Plan of Merger (the ''Merger Agreement'') with NationsBank. The Merger Agreement provided that Bancshares will merge with and into a wholly-owned subsidiary of NationsBank (the ''Holding Company Merger''). The Holding Company Merger was consummated on January 7, 1997.

6. Currently, Boatmen's and its affiliates, which are under common control with NBAI, hold of record in their name and in the names of their nominees more than 25% of the outstanding voting Securities of the Pilot class of shares of a minority of the Acquired Funds. Except as noted below, all such securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity. Except for Boatmen's ownership for its own account as of December 31, 1996, of more than 5%, but less than 10% of the Pilot class of the Pilot Municipal Bond Fund, neither Boatmen's, NBAI, or any affiliate of NBAI owns an economic interest in these securities.

7. Shares of Nations Prime Fund, Nations Tax Exempt Fund, and Nations Treasury Fund (the ''Nations Money Market Funds'') are divided into six classes of shares: Primary A Shares, Primary B Shares, Investor A Shares, Investor B Shares, Investor C Shares, and Daily Shares. Shares of all other Acquiring Funds (the ''Nations Non-Money Market Funds'') are divided into five classes of shares: Primary A Shares, Primary B Shares. Investor A Shares, Investor C Shares, and Investor N Shares. Primary A Shares, Daily Shares, and Investor B Shares are the only share classes of Nations Money Market Funds involved in the proposed reorganization. Primary A Shares, Investor A Shares, and Investor N Shares are the only share classes of Nations Non-Money Market Funds involved in the proposed reorganization.

8. Shares of the Acquiring Funds are distributed by Stephens Inc. (''Stephens''), a registered broker-dealer. Stephens receives no compensation in connection with the distribution of Primary A Shares of the Acquiring Funds. Each Acquiring Fund's Investor A Share class has adopted a distribution plan pursuant to rule 12b–1 under the Act. This distribution plan provides for a payment of up to 0.25% (on an annualized basis) of the average daily net asset value of the Investor A Shares of the Non-Money Market Funds. The Acquiring Funds have approved shareholder servicing plans and distribution plans with respect to Investor B and Daily Shares of the Nations Money Market Funds and Investor N Shares of the Nations Non-Money Market Funds. Payments under the shareholder servicing plans may not exceed 0.25% (on an annualized basis) of the average daily net asset value of these shares. Payments under the distribution plans may not exceed 0.75% of the average daily net asset value of each Nations Non-Money Market Fund's Investor N Shares, or 0.10% of the Investor B Shares and 0.45% of the Daily Shares of the Nations Money Market Funds.

9. Shares of Pilot Missouri Short-Term Tax-Exempt Fund, Pilot Short-Term Diversified Assets Fund, Pilot Short-Term Tax-Exempt Fund, and Pilot Short-Term U.S. Treasury Fund (the ''Pilot Money Market Funds'') are divided into three classes of shares: Pilot Shares, Investor Shares, and Administration Shares. The other Acquired Funds (the ''Pilot Non-Money Market Funds'') are divided into three classes of shares: Pilot Shares, Class A Shares, and Class B Shares.

10. Shares of the Acquired Funds are distributed by Pilot Fund Distributors, Inc. (''PFD''), a registered broker-dealer. Certain classes of the Acquired Funds have adopted distribution plans pursuant to rule 12b–1 under the Act. Under these plans, PFD receives payments for distribution and support services. Payments under the distribution plan for Class A Shares may not exceed 0.25% (on an annual basis) of the average daily net assets. Payments under the distribution plan for Class B Shares may not exceed 1.00% (on an annual basis) of the average daily net assets.[1] Pilot Administration Shares have an account administration fee of 0.25% and Pilot Investor Shares have a rule 12b–1 fee of 0.50% to be paid to PFD in connection with distribution and administration of such shares. Pilot Shares are not subject to any rule 12b–1 fees.

11. Pilot Shares, Administrative Shares, and Investor Shares of the Acquired Funds are offered at net assets value. Class A Shares of the Acquired Funds are offered at a public offering price that includes a maximum front-end sales load between 4.00% and 4.50%. Class B Shares of the Acquired Funds are offered at net asset value with a sliding-scale deferred sales load. The Acquired Funds' shareholders will pay no front-end or contingent deferred sales charges after the reorganization. Shares of all classes of the Acquiring Funds are offered at net asset value.

12. Pilot has entered into a separate agreement and plan of reorganization (each a ''Plan'' and, collectively, the ''Plans'') with each of NFT and NFI, providing for the transfer of all of the assets (and subject to the assumption of the stated liabilities) of each of Pilot Diversified Bond Income Fund, Pilot Equity Income Fund, Pilot Growth Fund, Pilot Growth and Income Fund, Pilot Intermediate Municipal Bond Fund, Pilot Intermediate U.S. Government Securities Fund, Pilot International Equity Fund, Pilot Municipal Bond Fund, Pilot Short-Term U.S. Treasury Fund, Pilot Small Capitalization Equity Fund, Pilot U.S. Government Securities Fund, and Pilot Short-Term Diversified Assets Fund to Nations Strategic Fixed Income Fund, Nations Equity Income Fund, Nations Disciplined Equity Fund, Nations Value Fund, Nations Intermediate Municipal Bond Fund, Nations Short-Intermediate Government Fund, Nations International Growth Fund (shell), Nations Municipal Income Fund, Nations Treasury Fund, Nations Small Company Growth Fund (shell), Nations U.S. Government Bond Fund (shell), and Nations Prime Fund, respectively, in exchange for shares of designated classes of each corresponding Acquiring Fund. Pursuant to these Plans, both Pilot Missouri Short-Term Tax-Exempt Fund and Pilot Short-Term Tax-Exempt Diversified Fund will be reorganized into the Nations Tax Exempt Fund. Pilot Money Market Fund shareholders of Pilot Shares, Investor Shares, and Administration Shares will receive Primary A, Daily, and Investor B Shares, respectively, of Nations Money Market Funds. Shareholders of Pilot Non-Money Market Fund Pilot Shares, Class A Shares, and Class B Shares will receive Primary A, Investor A, and Investor N Shares, respectively, of Nations Non-Money Market Funds. The aggregate net asset value of Acquiring Fund shares to be issued to shareholders of an Acquired Fund will equal the value of the aggregate net assets of the Acquired Fund as of the close of business on the business day immediately prior to the closing. Shares of the Acquiring Funds will be

[1] Not more than 0.25% of such assets will be used to compensate service organizations for personal services provided to Class B shareholders and/or the maintenance of shareholder accounts. Not more than 0.75% of such assets will be paid to PFD as reimbursement for distribution activities.

distributed *pro rata* to shareholders of each Acquired Fund in liquidation of the Acquired Fund. Thereafter, each of the Acquired Funds and Pilot will be dissolved.

13. The board of trustees of NFT and the board of directors of NFI, including the disinterested trustees/directors, considered and unanimously approved the respective Plan on February 6, 1997. The board of trustees of Pilot, including the disinterested trustees, considered and unanimously approved the Plans at meetings held on January 31, 1997 and February 5, 1997. Each of the boards has determined, with respect to their funds, that participation in the reorganizations is in the best interests of each of the Acquired Funds and the Acquiring Funds, and that the interests of shareholders will not be diluted as a result of the reorganizations.

14. Each board based its decision to approve the Plans on a number of factors, including: (a) The compatibility of each Acquired Fund's investment objective, policies and restrictions with those of its corresponding Acquiring Fund; (b) the terms and conditions of the reorganizations and whether they would result in a dilution of the existing shareholders' interests; (c) the conditioning of the reorganizations on receipt of a legal opinion confirming the absence of any adverse federal tax consequences to the Acquired Funds or their shareholders resulting from the reorganizations; (d) the similarities between the Acquired Funds' and the Acquiring Funds' respective distribution, administrative, transfer agency, shareholder service and custody arrangements, and the relative performance of each of the Acquired and Acquiring Funds; (e) the potential expense savings, economies of scale, reduced per-share expenses, and benefits to the portfolio management process that could result from combining the assets and operations of the Acquired Funds and the Acquiring Funds; and (f) information regarding expense ratios of the Acquired Funds and the Acquiring Funds.

15. Combined prospectus/proxy statements describing the relevant reorganizations were filed with the SEC on February 20, 1997, and will be mailed to shareholders of each Acquired Fund on or about March 20, 1997. Applicants anticipate that special meetings of shareholders of the Acquired Funds will be held on or about April 21, 1997 and, subject to shareholder approval, the reorganizations will be completed on or about May 2, 1997.

16. Approximately $450,000 of the expenses incurred in connection with the reorganizations will be allocated to the Acquiring Funds following consummation of the reorganizations (the ''Allocated Amount''). NBAI will absorb all expenses of the reorganizations other than the Allocated Amount. In addition, NBAI has committed to maintain current (after waiver) expense ratios for all Acquiring Fund classes for a period of at least two years after the closing, absent extraordinary circumstances or a reduction in fund assets that impacts fee levels (the Expense Commitment). This Expense Commitment will cause NBAI, in effect, to absorb approximately $320,000 of the Allocated Amount through additional fee waivers. NBAI also will absorb the portion of the remaining Allocated Amount that otherwise would be borne by current Pilot Fund shareholders by making a capital contribution of $31,000 to the Pilot Funds prior to the closing. After NBAI absorbs this $351,000, approximately $99,000 of expenses will be borne by current Nations Fund shareholders.

17. Applicants agree not to make any material changes to the Plans that affect representations in the application without the prior approval of the SEC staff.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly (a) to sell any security or other property to such registered company, or (b) to purchase from such registered company any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

2. Section 2(a)(3) of the Act, in pertinent part, defines the term ''affiliated person'' of another person to include (a) any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are owned, controlled, or held with the power to vote by such other person; (c) any person controlling, controlled by, or under common control with, such other person; and (d) if such other person is an investment company, any investment adviser thereof.

3. Rule 17a–8 under the Act exempts from section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that may be affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers provided that certain conditions are satisfied.

4. The reorganizations may not be exempt from the prohibitions of section 17(a) pursuant to rule 17a–8 because the Acquiring Funds and the Acquired Funds may be affiliated for reasons other than those set forth in the rule. As a result of the Holding Company Merger, Boatmen's and NBAI are both under common control of NationsBank. Currently, Boatmen's and its affiliates hold of record in their name and in the names of their nominees more than 25% of the outstanding voting securities of the Pilot class of a minority of the Acquired Funds. Because of this record ownership and the beneficial ownership of more than 5% of the Pilot Class of the Pilot Municipal Bond Fund, each Acquiring Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquired Fund, and vice versa, for reasons not based solely on their common adviser, common directors/trustees, and/or common officers.

5. Applicants believe that the terms of the proposed reorganizations satisfy the standards of section 17(b). The boards of trustees and directors of NFT, NFI, and Pilot have determined that participation in the reorganizations is in the best interests of the Acquiring Funds, the Acquired Funds and their shareholders, and that the interests of the shareholders will not be diluted as a result of the reorganizations. Applicants further submit that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any party; the investment objectives, policies, and restrictions of each Acquired Fund are compatible with and substantially similar to each respective Acquiring Fund's investment objectives, policies, and restrictions; and, the reorganization and the granting of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7282 Filed 3–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38379; File No. SR–Amex–97–12]

Self-Regulatory Organizations; Notice of Filing of, and Order Granting Accelerated Approval to, Proposed Rule Change by the American Stock Exchange, Inc. Relating to Execution of Specialists' Liquidating Transactions

March 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 28, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. Subsequently, the Exchange submitted Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing permanent approval of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,[3] in the case of a ''long'' position, or a zero plus tick,[4] when covering a ''short'' position, without Floor Official approval. The pilot program also amended Exchange Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of land basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 18, 1997, the Commission approved an extension until March 7, 1997 of a pilot program that amended exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval.[5] The Rule continues to require that Floor Official approval be obtained prior to effecting a liquidating transaction on a straight destabilizing tick (*i.e.*, a minus tick in the case of a ''long'' position or a plus tick when covering a ''short'' position). The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has carefully monitored compliance with the requirements of the Rule. The Amex believes that the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction has been strengthened. The Exchange is therefore proposing permanent approval of the amendments to Amex Rule 170.

In addition, the Exchange is proposing to adopt a formal policy to address its enforcement with respect to ''non-substantive'' (*i.e.*, if the approval would have been granted if it had been sought) violations of the requirement that specialists obtain Floor Official approval for reliquidating transactions on straight destabilizing ticks. Absent unusual circumstances, the Exchange will, at a minimum, take the following action:

—The Exchange staff will issue a cautionary letter to the specialist for an initial violation, during a ''rolling'' twelve-month period.

—Any subsequent violation(s) by the same specialist during the ''rolling'' twelve-month period will be referred to the Minor Floor Violation Disciplinary Committee for appropriate action. Pursuant to Rule 590 and its commentary, the Committee has the authority to issue a cautionary letter to the specialist or impose fines ranging from $500 to $2,500 ($1,000 to $5,000 for member organizations).

Of course, the Exchange, even for an initial violation, has the authority to take more stringent action either pursuant to Rule 590 or in accordance with the Exchange's formal disciplinary procedures. In addition, the Exchange's policy with respect to ''substantive'' violations of this rule (*e.g.*, failure to properly re-enter the market or failure to obtain the required Floor Official approval when such approval, if sought, would not have been granted) remains unchanged. Such instances of noncompliance will be dealt with according to the Exchange's formal disciplinary procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] 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, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the pubic interest. The Exchange also believes the proposed rule change is consistent with Section 11(b) of the Act[8] which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from Claudia Crowley, Special Counsel, Amex, to Anthony Pecora, Attorney, Division of Market Regulation, SEC, dated March 4, 1997 (''Amendment No. 1''). Amendment No 1 added a paragraph explaining the Exchange's enforcement policy concerning ''substantive'' violations of Amex Rule 170 and included an interpretation of that rule in the form of an information circular that the Exchange has represented to be binding on it.

[3] A zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

[4] A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price.

[5] Securities Exchange Act Release No. 38299 (Feb. 18, 1997), 62 FR 8464 (''February 1997 Approval Order'') (approving File No. SR–Amex–97–01).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–97–12 and should be submitted by April 14, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval to the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) and Section 11 of the Act.[9] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with Section 11(b) of the Act[11] and Rule 11b–1[12] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and the Exchange's rules reflect the crucial role played by specialists in providing stability, liquidity, and continuity in the Exchange's auction market. Recognizing the importance of the specialist to the auction market, the Act and the Exchange's rules impose stringent obligations upon specialists.[13] Primary among these obligations is the requirement to restrict a specialist's dealings to those that are ''reasonably necessary'' to maintain a fair and orderly market.[14]

The importance of specialist performance to the quality of exchange markets was highlighted during the 1987 and 1989 market breaks. In the Division of Market Regulation's (''Division'') 1987 Market Break Report, the Division examined specialist performance on the Amex on October 19 and 20, 1987.[15] Although some Amex specialists performed well under the adverse conditions, the Division found that others appeared to perform inadequately.[16]

The Division also examined Amex specialist performance during the volatile conditions of October 13 and 16, 1989. It found that specialist performance during that time was similar in many respects to the pattern of specialist performance during the October 1987 Market Break.[17] Specifically, the Division found that specialists were confronted with extreme volume and volatility.[18]

Both the 1987 Market Break Report and the 1989 Market Analysis Report reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the Amex's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such periods.[19]

One area of specialist performance specifically reviewed by the 1989 Market Analysis Report involved specialists' compliance with the negative obligations imposed by Amex Rule 170.02. Prior to the implementation of the Amex's pilot program, this rule stated that, unless the specialist had the prior approval of a Floor Official, he or she should avoid liquidating all or substantially all of a dealer position on a destabilizing tick (*i.e.,* purchases on plus or zero plus ticks and sales on minus or zero minus ticks) unless the transaction was reasonably necessary in relation to the specialist's overall position in the stocks in which he or she was registered. The Division requested in the 1989 Market Analysis Report that the Amex examine the language of this rule[20] because it appeared to provide specialists with unnecessarily broad latitude for effecting transactions on destabilizing ticks.[21]

The proposed rule change is responsive to the request regarding Amex Rule 170.02, as well as the conclusions of the two market reports.

[9] 15 U.S.C. 78f(b) and 78k.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k(b).

[12] 17 CFR 240.11b–1.

[13] In general specialists' activities are circumscribed by Section 11 of the Act and the rules thereunder and by the rules of the exchange where the specialist is registered. *See* 15 U.S.C. 78k (prohibiting members of a national securities exchange from effecting transactions on such exchange for their own accounts but allowing, among other things, market making transactions). Rule 11b–1(a)(2), which sets forth the primary responsibilities of a specialist, states that a specialist's course of dealings for his or her own account must assist in the maintenance of a fair and orderly market, so far as practicable. 17 CFR 240.11b–1(a)(2). Rule 11b–(a)(2) also states, however, that a specialist should restrict his or her dealings, so far as practicable, to those reasonably necessary to permit him or her to maintain a fair and orderly market. *Id.* See also Amex Rule 170(c) (prohibiting a specialist from effecting purchases or sales of any security in which that specialist is registered for any account in which that specialist is directly or indirectly interested, unless such dealings are reasonably necessary to maintain a fair and orderly market in such security); Amex Rule 170(d) (stating that transactions effected by a specialist on the Exchange for his or her own account in the securities in which he or she is registered are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and minimize the effects of temporary disparities between supply and demand).

[14] 17 CFR 240.11b–1(a)(2).

[15] *See* SEC, Division of Market Regulation, The October 1987 Market Break 4–29 to 4–41 (Feb. 1988) [hereinafter 1987 Market Break Report].

[16] *Id.* at 4–40 to 4–41.

[17] See SEC, Division of Market Regulation, Market Analysis of October 13 and 16, 1989, at 33 (Dec. 1990) [hereinafter 1989 Market Analysis Report].

[18] See 1987 Market Break Report, *supra* note 15, at 4–30; 1989 Market Analysis Report, *supra* note 17, at 27.

[19] A specialist's dealer responsibilities consist of ''affirmative'' and ''negative'' obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and depth in the market. Conversely, specialists, pursuant to their negative obligations, are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined by the movements of the incoming orders that initiate the trades, not by a specialist's proprietary trading activity.

[20] 1989 Market Analysis Report, *supra* note 17, at n.56.

[21] 1989 Market Analysis Report, *supra* note 17, at n.31.

The Amex, recognizing that market conditions may necessitate that a specialist participate heavily in a rapidly declining market, proposed amendments to Amex Rule 170.02 to provide specialists with flexibility in liquidating specialty stock positions in order to facilitate a specialist's ability to maintain fair and orderly markets, particularly during unusual market conditions. At the same time, the amendments were designed to strengthen the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction. The Commission approved the proposed amendments as a one-year pilot program, and subsequently extended the pilot on several occasions.[22]

The Exchange is requesting permanent approval of the pilot program procedures. Under the proposal, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but would continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In the prior approval orders concerning this pilot program, the Commission requested that the Amex submit a report setting forth the criteria developed by the Exchange to determine whether any reliquidating transactions by specialists were necessary and appropriate in connection with fair and orderly markets. The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidating transactions effected by specialists on any destabilizing tick. In particular, the Commission asked the Amex to report any noncompliance with the rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in January 1997, April 1996, and May 1995. As noted above, the Amex believes that the pilot procedures appear to be working well in enabling specialists to reliquidate appropriately to meet the needs of the market.

After careful review, the Commission finds that it is appropriate to approve the amendments to Amex Rule 170.02 on a permanent basis. In making this determination, the Commission notes that the pilot period has provided the Commission and the Exchange an opportunity to monitor the operation of the amendments during unusual or volatile market conditions. The Commission believes that the experience with the pilot indicates that specialists, for the most part, have been meeting their obligations under the Rule and are properly assuming their responsibilities of re-entering the market following liquidating transactions.

In sum, the Commission believes the amendments to Amex Rule 170.02 reinforce a specialist's obligation to maintain a fair and orderly market by providing stabilizing dealer participation to the marketplace, especially during periods of volatile or unusual market activity. For example, during periods of high market volatility, not only would specialists continue to be obligated to temper disparities between supply and demand, but specialists would specifically have to re-enter the market at a specified rate after a liquidating transaction. Similarly, the amendments to Amex Rule 170.02 reinforce the negative market making obligations of specialists. For example, a specialist is not permitted to reliquidate in the absence of a large dealer position; rather, he or she is able to do so only if reasonably necessary to enable him or her to maintain a fair and orderly market. Thus, the amendments to Amex Rule 170.02 do not allow the specialist to use the rule as a vehicle for trading.

The Commission recognizes that future periods of market volatility accompanied by increasing volume and selling pressure may place specialists under extreme duress to keep the markets orderly and continuous by entering the market as buyers. In these instances, the Commission believes the amendments should assist specialists in tempering sudden price movements and keeping any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with Section 6 and Section 11 of the Act.[23]

Finally, the Commission believes aggressive enforcement of this rule is warranted given the negative effect noncompliance has on the market. Therefore, the Commission expects the Exchange to continue to carefully monitor specialist compliance with Amex Rule 170's procedures as required under Section 19(g) of the Act.[24] In particular, the Exchange should continue to ensure that specialists are meeting their market making obligations and appropriately re-entering the market as required under the Rule.[25] If a specialist fails to properly enter the aftermarket or fails to seek Floor Official approval where such approval, if sought, would not have been granted, the Commission expects the Exchange to bring full disciplinary procedures.

In addition, the Commission expects the Exchange to address all ''nonsubstantive'' violations of this rule (*i.e.*, instances where a specialist fails to seek Floor Official approval where such approval, if sought, would have been granted). The Commission recognizes that most, if not all, ''nonsubstantive'' violations of these procedures will be inadvertent. Nevertheless, given the crucial role that specialists play in providing stability to the Exchange's market, it is important to reinforce the specialists' obligations. Thus, consistent with the interpretation adopted by the Amex in conjunction with its request for

[22] See Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 (approving File No. SR–Amex–92–26) (''1994 Approval Order''); Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 (approving File No. SR–Amex–95–11) (''April 1995 Approval Order''); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 38870 (approving File No. SR–Amex–95–19) (''July 1995 Approval Order''); Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 38487 (approving File No. SR–Amex–96–16); Securities Exchange Act Release No. 37704 (Sept. 19, 1996), 61 FR 50525 (approving File No. SR–Amex–96–33); Securities Exchange Act Release No. 37958 (Nov. 15, 1996), 61 FR 59476 (approving File No. SR–Amex–96–42); February 1997 Approval Order, *supra* note 5.

[23] 15 U.S.C. 78f and 78k.

[24] 15 U.S.C. 78s(g) (requiring every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder, and its own rules).

[25] Although liquidating transactions are not precluded during periods of significant price movements, the Commission emphasizes that such transactions should be accompanied by the necessary dealer participation against the trend of the market, even in situations where continuity and depth reflect variations that normally may be experienced in the stock.

permanent approval, the Commission expects, at a minimum, that the Exchange's staff will issue a cautionary letter to a specialist for an initial ''nonsubstantive'' violation during a rolling twelve-month period and to refer any subsequent ''nonsubstantive'' violations by the same specialist during this period to the Minor Floor Violation Disciplinary Committee (''Committee'') for a fine pursuant to the Amex's Minor Rule Plan (''MRP'').[26]

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange will continue to use the identical procedures contained in the pilot program. These procedures have been published in the **Federal Register** on several occasions for the full comment period, and no comments have ever been received. Furthermore, the Commission approved a similar rule change for the NYSE, also without receiving comments on that proposal.[27] For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 6, Section 11, and Section 19(b)(2) of the Act.[28]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–97–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7342 Filed 3–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38398; File No. SR–NASD–97–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Transfer of Limited Partnership Securities

March 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 29, 1997 the 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. 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 Rules 11580 and 11870 of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to expand the current exceptions to the requirement that members use the Limited Partnership Transfer Forms for the transfer of limited partnership securities and require that the Forms be used by members in account transfers of limited partnerships.

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

On January 29, 1996, the Commission approved new NASD Rule 11580 (formerly, Section 73) to the NASD's Uniform Practice Code requiring members to use Standardized Transfer Forms when transferring limited partnership securities.[2] Use of the forms became mandatory for NASD members on May 15, 1996. NASD Regulation is proposing two amendments related to the use of the Standardized Transfer Forms. The first is an amendment to NASD Rule 11580 to expand the current exceptions to include limited partnerships that trade in the non-Nasdaq over-the-counter market that are in a depository. The second amendment is to NASD Rule 11870 (formerly, Section 65) to require that the Standardized Transfer Forms be used by members in account transfers of limited partnerships.

i. *Amendment to Rule 11580.* This rule includes an exception for limited partnership securities that are listed on an exchange or the Nasdaq Stock Market. The exception does not cover those limited partnership securities that are quoted on the OTC Bulletin Board that trade with such frequency that use of the Standardized Transfer Forms would not be appropriate. In order to broaden the exception, NASD Regulation is proposing to amend subparagraph (a) of NASD Rule 11580 to except from the requirements of the rule those limited partnership securities that are in a depository and that settle regular way.[3] It is believed that the proposed criteria of depository eligibility and regular way settlement identify that group of non-Nasdaq over-the-counter limited partnership securities that do not need the Standardized Transfer Forms to facilitate settlement. The Forms were specifically adopted to address problems associated with the settlement of limited partnership interests that are generally illiquid and where the transfer requirements contained in the General Partnership Agreement vary widely as to the type of information and documents necessary for a valid transfer of a interest.

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[26] See Amex Rule 590(h). Although Amex Rule 590 states that the Committee ''may'' impose a fine, the Commission believes the use of such ''prosecutorial discretion'' to issue a cautionary letter in lieu of a fine for ''nonsubstantive'' violations of this rule should be exercised only in extraordinary circumstances. This position is bolstered by the fact that the specialist, at a minimum, already would have received such a letter from the Amex's staff in connection with its first ''nonsubstantive'' violation of this rule within the last twelve months.

In addition, each instance of noncompliance should be addressed individually. Although instances of noncompliance by a specialist that occur between regularly scheduled meetings of the Committee may be presented as a single bundle, each infraction should be considered a separate offense for calculating the appropriate fine. For example, if a specialist fails to properly obtain Floor Official approval 15 times during a 5 month period, that specialist should be fined for 15 violations, instead of the minimum amount for a first offense simply because all 15 violations were presented to the Committee at the same meeting.

[27] See Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR–NYSE–92–20).

[28] 15 U.S.C. 78f, 78k, and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 36783 (Jan. 29, 1996), 61 FR 3955 (Feb. 2, 1996).

[3] The Commission notes that the proposal requires that the securities be physically present in a depository to qualify for this exception. Simply being ''eligible for deposit'' in a depository is not enough.

ii. *Amendment to Rule 11870.* Since the adoption of NASD Rue 11580, members have inquired as to whether the Standardized Transfer Forms can be used to accomplish account transfers under NASD Rule 11870. In order to clarify this issue, NASD Regulation is proposing to amend Rule 11870 to provide that in the case of limited partnership securities, members must use the Standardized Transfer Forms unless exempted by that rule.[4]

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that the proposed rule change is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation believes the proposed rule change will 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

NASD Regulation has neither solicited nor received written comments.

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 those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–97–05 and should be submitted by April 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7281 Filed 3–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38406; File No. SR–NYSE–96–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other Shareholder Communication

March 14, 1997.

I. Introduction

On December 6, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 451 and 465, which establish guidelines for the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other issuer communications to security holders whose securities are held in street name.

The proposed rule change was published for comment in Securities Exchange Act Release No. 38058 (Dec. 18, 1996), 61 FR 68082 (Dec. 26, 1996). Thirty-nine comment letters were received on the proposal, which include a letter submitted by the NYSE in response to the Commission's request for comment.[3] On March 7, 1997, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] This order approves, on a one-year pilot basis, the proposed rule change, as amended, and Amendment No. 1 on an accelerated basis.

II. Background

NYSE member organizations holding securities in street name solicit proxies and deliver communications to and from beneficial owners of securities on behalf of issuers.[5] For this service, issuers reimburse member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution. NYSE Rules 451 and 465 provide guidelines for the reimbursement of these expenses.

Since the late 1960's, NYSE member firms increasingly have used an outside contractor for these types of services

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[4] The Commission notes that use of the Forms will supplement, rather than replace, the current forms utilized by members, when effecting an account transfer. NASD Regulation represents that the use of the Forms is necessary because these securities are held in the member's name for the benefit of the investor. Thus, it is necessary to notify the general partner of the ''change in ownership'' when an investor transfers its account to a different member so the general partner may adjust its records accordingly. Telephone conversation between Suzanne E. Rothwell, Dorothy Kennedy, NASD Regulation, and Anthony P. Pecora, Division of Market Regulation, SEC (Mar. 7, 1997).

[5] 15 U.S.C. 78*o*–3.

[6] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1997 (''NYSE Letter'').

[4] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated March 5, 1997. In Amendment No. 1, the NYSE changes the proposal to a one-year pilot and represents that, following the 1997 proxy season, a certified public accounting firm will audit the results of the pilot period. The NYSE states that the independent accountant will report to the Commission and the NYSE no later than October 31, 1997. As discussed below, the independent accounting firm must conduct an audit of the results of operations of ADP Investor Communication Services, the division of Automatic Data Processing, Inc. (''ADP'') that performs proxy intermediary services for approximately 200 NYSE member firms.

[5] Street ownership encompasses shares purchased through a broker or bank (referred to as a nominee). The shares are then registered in the name of that nominee, or in the nominee name of a depository such as The Depository Trust Company (''DTC''). According to a recent NYSE analysis, on average, approximately 70 to 80 percent of all outstanding shares are held in street name.

rather than handling proxy processing internally. For example, a firm would contract with a division of Automatic Data Processing, Inc. (''ADP''), ADP Investor Communication Services, the only intermediary offering these services to broker-dealers, for the solicitation of proxy voting instructions and the distribution of reports to shareholders.[6]

In submitting this rule proposal, the Exchange explains that there have been changes in the market since the last review of the reimbursement guidelines in 1986 that prompt the Exchange to reevaluate its current fee reimbursement schedule. First, the Exchange believes that proxy solicitation and report distributions costs have increased since 1986, in large part, because of the general cost increases in the economy. For example, the Exchange notes that the cost of postage has doubled since 1979. The Exchange believes that the brokers pass these costs through to the issuers, directly or through ADP.

Second, the Exchange believes that the aggregate costs also have increased for issuers because there has been a substantial increase in the number of beneficial owners, a result of the increased participation of individual investors in the securities market. The Exchange further notes that the percentage of holdings of securities through institutional investors, mutual funds, pension and savings plans also has increased.[7]

Third, the Exchange believes that, in addition to the changing stock ownership patterns, stock holdings continue to migrate from registered to street or nominee ownership.[8] Currently, street name holdings are concentrated with approximately 1,000 nominees, and the Exchange believes that an efficient infrastructure is necessary to coordinate these nominees and their customers and that service bureaus, as agents of nominees, should build and maintain such systems.

Finally, the Exchange notes that there have been significant technological advances in the corporate governance process. For example, nominees and their agents have developed communication systems for obtaining shareholder votes electronically rather than through a physical proxy. To accommodate this development, the Exchange amended its rules to permit telephone voting. The Exchange is concerned, however, that the current fee structure does not recognize the value that some of these systems provide to issuers in reducing the costs of coordination and solicitation. Despite the progress that has been made in the distribution and proxy solicitation process, the Exchange states that the issuers often express their belief that mailing fees are unnecessarily high and that the procedures are not responsive to the needs of the issuers.

In proposing a revised fee reimbursement structure, the Exchange believes that the current fee structure does not provide incentives for nominees and other intermediaries to use the most current and efficient technology. The Exchange believes that without financial incentives, it is unlikely that new cost-reducing technology will be implemented. The Exchange also believes that the current fee structure ignores the economies of scale and costs of coordinating multiple nominees and the value that consolidating material distribution and voting collection provides to issuers.[9]

III. Description of Proposal

The Exchange proposes to reduce the suggested rate of reimbursement from $.60 or $.70 to $.55 for each set of proxy materials, *i.e.*, proxy statement, form of proxy and annual report, when mailed as a unit. The Exchange proposes to eliminate the current distinction between proposals that require beneficial owner instructions and those that do not. The Exchange believes that this change will produce substantial savings for all issuers.

The Exchange also proposes to reduce the rate for mailing other reports from $.20 to $.15. The rate of reminder notices would remain at $.40 unless a proxy fight is involved. The Exchange proposes to eliminate the special fee of $.60 for mailing only to shareholders who have not voted.

For mailings involving proxy fights, the Exchange proposes to include a new fee of $1.00 for each set of proxy materials mailed. The Exchange believes that proxy contests require significant efforts by all participants in the proxy process and can occur under difficult circumstances.

The Exchange also proposes to implement a new $20 fee per nominee (applicable to each proxy solicitation) to compensate an intermediary for coordinating a series of functions across a multitude of nominees. These services include:

- *Searches:* Rule 14a–13 under the Act requires an issuer to inquire of each record holder to determine the number of beneficial owners holding shares through nominees. Issuers would only incur the expense of performing one ''search'' for all the nominees if an intermediary coordinates multiple nominees.
- *Search responses:* Nominees must respond to an issuer's search request within seven business days of receipt. An intermediary can consolidate responses where there are multiple levels of entities and save administrative expenses for issuers.
- *Delivering materials:* Providing material to hundreds of nominees requires an issuer to sort and ship a parcel to each nominee. An intermediary can reduce the cost to issuers if it can make one material delivery for hundreds of nominees.
- *Use of bulk mail:* If intermediaries combine nominees, issuers could qualify for bulk discounts.
- *Preliminary voting information:* To help issuers determine whether they have a quorum, many brokers currently report a discretionary vote 10 or 15 days before a meeting in accordance with NYSE Rule 451(b)(1), and again at the time of the meeting. For example, ADP sends daily consolidated vote reports 15 or 10 days before a meeting, and then every business day until the night before the meeting. Issuers may save certain expenses if issuers obtain the vote from a single source for hundreds of nominees.

The Exchange believes that the coordination fee is consistent with current Exchange rules that authorize the payment of a coordination fee for agents that coordinate providing information regarding non-objecting

[6] The identity of the soliciting broker remains on all communications.

[7] According to the Exchange, these institutions have an obligation, or, in some cases, a statutory duty, to vote the shares being held and that institutions have developed mechanisms to vote their shares in conformity with their own internal policies and governing regulations. The Exchange believes that many institutional investors have difficulty voting on a timely basis during the spring proxy season where over 40% of all annual meetings occur within a few weeks and some large institutions vote close to the meeting date, particularly during the proxy season because of the increase in paperwork.

[8] ''Nominees'' are those names that appear on either the list of record shareholders or on an omnibus proxy sent to the issuer on the record date by a depository, but who are, in fact, acting for someone else. In practice, they are self-clearing brokers, banks, or other financial institutions participating in DTC or some other depository.

[9] These services, which are not expressly required by any regulation, include: (i) Sending a single search card for multiple nominees; (ii) coordinating multiple nominees to generate a single material request for each issuer; (iii) delivering material to a single place for multiple nominees; (iv) sorting bulk mail across multiple nominees for maximum discounts; (v) daily reporting of votes for multiple broker and bank nominees; and (vi) consolidating multiple nominees into a single invoice. As discussed *infra* note 111, however, the NYSE has indicated that the voting-related services described in the preceding textual paragraph—electronic and telephonic voting services now offered by member firms and/or ADP acting as their agent—will not be covered by the new fee structure.

beneficial owners (''NOBOs'').[10] The Exchange estimates that the smallest 4,000 U.S. issuers would pay, on average, an intermediary nominee coordination fee of $800, which partially would be offset by the lower basic rate and lower expenses.

The Exchange also proposes to clarify the policy with respect to out-of-pocket expenses by providing for reimbursement only of actual costs, such as outgoing postage (plus third class sorting fee), envelopes and business reply envelopes, and custom printing of envelopes and ballots. The exchange proposes that the business reply postage would be billed at the Business Mailing Accounting System (''BRMAS'') rate. The Exchange believes that additional savings are possible by sorting mail to obtain postal discounts as well as through other efforts undertaken by nominees or their agents to reduce issuers' postage expenses, which could be shared between the issuer and the processor.

The Exchange also is proposing a new incentive fee to compensate member organizations and/or intermediaries for eliminating the need to send materials in paper form. The Exchange believes that this fee will encourage member organizations to apply technology to sort materials so that multiple proxy instruction forms are included in a single envelope with a single set of materials to be mailed to the same household. The Exchange is encouraging ''householding,'' whereby the member firm or intermediary could earn the paper elimination fee by distributing multiple proxy instruction forms electronically or by distributing all material to a household electronically. Therefore, the Exchange is proposing a fee of $.50 ($.10 for a quarterly report) for each set of material that is not mailed.

Finally, the Exchange clarifies the manner in which the fees are collected. The Exchange notes that ADP is the agent for many of the brokerage firms that are Exchange members, and that these firms subcontract the data processing functions of the proxy solicitation process to ADP but retain all the obligations to comply with the relevant Exchange rules as well as the Commission's proxy rules (*e.g.*, Rule 14b–1). ADP has developed a ''single invoice'' procedure for all brokers with whom they have subcontracted to avoid issuers having to pay multiple brokers. Under this procedure, ADP bills issuers on behalf of brokers and banks and remits to their clients the amounts specified in their contracts, which the firms will retain to cover their own costs. The Exchange believes that this billing procedure does not affect issuer costs. If the broker billed issuers directly, the issuers would pay the same amount but to several brokers rather than to a central data processor. The Exchange believes that there is no economic difference in the brokerage firms retaining part of the costs paid by the issuers or such firms receiving the same amount paid by ADP through the single invoice system and that issuers benefit from this procedure because they are able to pay a single processor rather than multiple brokerage firms.

The Exchange proposes the new fee structure for a one-year pilot term. Following the 1997 proxy season, the NYSE proposes that a certified public accounting firm audit the results of the pilot period by examining the costs and experiences of the issuers, NYSE member organizations and intermediaries during the pilot. The Commission expects this audit to encompass ADP's results of operations for the one-year pilot period. The independent accountant will present a written report detailing the methodology and results of its audit to the Commission and the NYSE, respectively, no later than October 31, 1997 so that appropriate changes, if necessary, may be made for a second pilot.

IV. Summary of Comments

The Commission received a total of 38 comment letters on the NYSE's proposal.[11] The NYSE also submitted a letter in response to the comments requested by the Commission.[12] A substantial majority of the letters

[10] See NYSE Rule 451.92.

[11] See letters from William A. Bowen, Vice-President, Finance, AAON, Inc., to Margaret H. McFarland, Deputy Secretary, SEC, dated January 30, 1997 (''AAON Letter''); John D. Quinn, Vice President, A.G. Edwards & Sons, Inc., to Margaret H. McFarland, Deputy Secretary, SEC, dated February 5, 1997 (''A.G. Edwards Letter''); Patricia A. Bell, Second Vice President, Shareholder Services, AFLAC Incorporated, to Secretary, SEC, dated February 6, 1997 (''AFLAC Letter''); Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, SEC, dated February 21, 1997 (''ABA Letter''); Sari L. Macrie, Vice President, Investor Relations Ameritech, to Secretary, SEC, dated January 31, 1997 (''Ameritech Letter''); Brian T. Borders, President, Association of Publicly Traded Companies, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1997 (''APTC Letter''); Carol A. Gasson, Senior Financial Analyst, Apollo Group, Inc., to Margaret H. McFarland, SEC, dated January 15, 1997 (''Apollo Letter''); Carl T. Hagberg, Cart T. Hagberg and Associates, to Secretary, dated February 11, 1997 (''Hagberg Letter''); John Finegan, Chief Financial Officer, Cornerstone Imaging, Inc., to Richard Grasso, Chairman and Chief Executive Officer, NYSE, dated September 11, 1996 (''Cornerstone Letter''); James T. Huffman, President, Credo Petroleum Corporation, to Secretary, SEC, dated February 7, 1997 (''Credo Letter''); Gordon G. Garney, President, Corporate Transfer Agents Association, Inc. to Secretary, SEC, dated February 3, 1997 (''CTA Letter''); Thomas E. Ross, Manager, Shareholder Relations Department, DQE, to Secretary, SEC, dated February 5, 1997 (''DQE Letter''); H. John Sauer III, Principal/Operations, Edward Jones, to SEC, dated January 15, 1997 (''Edward Jones Letter''); Glynn E. Williams, Jr., Vice President, Finance, Goodrich Petroleum Corporation, to Margaret McFarland, Deputy Secretary, SEC, dated January 17, 1997 (''Goodrich Letter''); James P. Owens, V.P. Finance, Gradco (USA) Inc., to Margaret McFarland, Deputy Secretary, SEC, dated January 14, 1997 (''Gradco Letter''); David S. Ruksznis, Director, Shareholder Operations and Securities Services, GTE Service Corporation, to SEC, dated February 3, 1997 (''GTE Letter''); James R. Klucharits, Controller, Isomedix Inc., to Secretary, SEC, dated January 15, 1997 (''Isomedix Letter''); Rene Vanguestaine, Managing Director, JP Morgan, to Jonathan G. Katz, Secretary, SEC, dated February 14, 1997 (''JP Morgan Letter''); Nancie W. LaDuke, Vice President, Secretary, Kmart Corporation, to SEC, dated February 6, 1997 (''Kmart Letter''); Robert Donovan, Senior Vice President, Legg Mason Wood Walker, Incorporated, to Secretary, SEC, dated January 31, 1997 (''Legg Mason Letter''); Sophia G. Vergas, Assistant Secretary, The Liberty Corporation, to Secretary, SEC, dated February 6, 1997 (''Liberty Letter''); Rhonda Anderson, Director, Corporate Secretary's Department, Lucent Technologies, to Secretary, SEC, dated February 10, 1997 (''Lucent Letter''); Martin J. McDermott, Senior Assistant Secretary, Merck & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated February 11, 1997 (''Merck Letter''); Gordon G. Garney, Senior Assistant Secretary, Mobil Corporation, to Secretary, SEC, dated February 6, 1997 (''Mobil Letter); John T. Wall, Executive Vice President, The Nasdaq Stock Market, Inc., to Jonathan G. Katz, Secretary, SEC, dated March 13, 1997 (''Nasdaq Letter''); Kathryn G. Casparian, Managing Director, Oppenheimer & Co., Inc., to SEC, dated January 29, 1997 (''Oppenheimer Letter''); John Howell Bullion, Chief Executive Officer, Orphan Medical, to Secretary, SEC, dated January 14, 1997 (''Orphan Medical Letter''); Nancy R. Kyle, Director, Investor Relations, PepBoys, to Secretary, SEC, dated February 7, 1997 (''PepBoys Letter''); Faye Widenmann, Vice President, Corporate Relations & Administration and Secretary, Pinnacle West Capital Corporation, to Jonathan G. Katz, Secretary, SEC, dated February 5, 1997 (''Pinnacle West Letter''); Patrick J. Callans, Corporate Counsel, Price Costco, Secretary, SEC, dated February 11, 1997 (''Price Costco Letter''); Donna Dabney, Secretary and Assistant General Counsel, Reynolds Metals Company, to Jonathan G. Katz, Secretary, SEC, dated February 7, 1997 (''Reynolds Metals Letter''); Donald D. Kittell, Executive Vice President, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1997 (''SIA Letter''); Jerome J. Clair, Senior Vice President, Smith Barney, to Margaret H. McFarland, Deputy Secretary, SEC, dated February 5, 1997 (''Smith Barney Letter''); George M. Holston, Assistant General Manager and Assistant Secretary, Texaco Inc., to Jonathan G. Katz, Secretary, SEC, dated February 6, 1997 (''Texaco Letter''); Robert J. Agnich, Senior Vice President, Secretary and General Counsel, Texas Instruments Incorporated, to Secretary, SEC, dated January 31, 1997 (''Texas Instruments Letter''); James T. Anderson, Vice President and Treasurer, US West, to Arthur Levitt, Chairman, SEC, dated February 5, 1997 (''US West Letter''); Jennifer LaGrow, Manager, Shareholder Services, the Walt Disney Company, to Secretary, SEC, dated January 17, 1997 (''Walt Disney Letter''); John W. Hetherington, Vice President and Corporate Secretary, Westvaco, to Secretary, SEC, dated February 7, 1997 (''Westvaco Letter'').

[12] See NYSE Letter, *supra* note 3.

support the proposal,[13] although several commenters do not support the proposal.[14] Some commenters support the proposal overall, but express concern about one or two aspects of the proposal.[15]

Most of the commenters express general support for the NYSE's proposed rule change. Many commenters believe that the proposal would provide incentives to the industry to continue to explore and develop new technologies that would help issuers achieve greater economies while improving communications with the shareholders.[16] Several commenters believe that the proposed rule change should improve the timeliness, accuracy and participation rate of proxy tabulation for the issuer.[17] Two commenters believe that the application of advanced technology will result in decreased costs to all corporate issuers, both large and small, and better service for all investors.[18]

Moreover, several commenters argue that the proposed fees are fair and equitable to all parties.[19] One commenter believes that, although the proposed fee structure represents a departure from the original concept of ''reimbursement,'' the proposed fee structure represents a step in the right direction to establish fees that are truly more representative of actual costs.[20] Two commenters support the proposed fee structure although the new fee structure may increase its fees.[21]

One commenter also believes that the proposed fee structure is consistent with the obligations of issuers to reimburse brokers for processing proxy and other materials.[22] In its comment letter, the NYSE reiterates that the proposed fee structure is consistent with the obligations of issuers to reimburse brokers for processing proxy and other materials.[23] The NYSE explains that the proposed fees resulted from consultations with listed companies, member firms and other industry organizations involved in the proxy solicitation process and that the proposal contains compromises intended to address the interests and concerns of all participants.[24]

Several commenters express general concern about the proposed fee structure. Several commenters question why costs to distribute proxy materials to street accounts remain significantly higher than to registered owners.[25] One commenter also argues that advancing technology should reduce, not increase, servicing costs, and that the increasing level of beneficial ownership should reduce, not increase, per unit servicing costs.[26] Moreover, this commenter believes that the brokerage houses should pay the majority of the servicing cost of beneficial ownership because they encourage and derive the major benefit from beneficial ownership.[27]

One commenter argues that at least one study shows that the proposed fee structure will increase proxy mailing costs from 20% to 30%, with no recognizable offsetting benefit.[28] Another commenter notes that the proposal would increase its costs by over 450%.[29] One commenter argues that the proposed fees are higher than what an issuer would pay in a ''free market environment.''[30]

One commenter believes that the NYSE should ensure that the proxy fees offer only reimbursement of costs to the nominees.[31] This commenter believes that the nominees have some obligation to enhance and improve the proxy process, whether they perform the proxy solicitation process in house or through an intermediary.[32] The commenter argues that the NYSE should encourage the free market to develop and implement new technologies by allowing individual issuers to choose whether to take advantage of a new process or procedure and to make their own decisions based on internal cost/benefit analysis.[33]

Several commenters address specific aspects of the NYSE's rule proposal. Two commenters support the reduction of the suggested rate of reimbursement to $.55 for each set of proxy materials when mailed as a unit.[34] Specifically, one commenter notes that the reduced rate would still be sufficient for the broker-dealers to handle all of the functions relating to proxy materials.[35] Another commenter, however, is not convinced that $.55 is the right number for enclosing and tabulating proxy materials and notes that it pays a much lower fee to vendors for its registered accounts.[36]

Several commenters endorse the recommendation that actual cost for all out-of-pocket expenses be passed along to the issuers and that issuers share in postage discounts.[37] One commenter believes that all out-of-pocket expenses should be passed along to the issuers at cost.[38] One commenter suggests that all postal discounts should be passed on to the issuers.[39] Another commenter suggests that there be an annual review of out-of-pocket expenses.[40]

Several commenters specifically address the proposed $.50 incentive fee.

[13] See AAON Letter, A.G. Edwards Letter, ABA Letter, Ameritech Letter, Apollo Letter, Cornerstone Letter, CTA Letter, Edward Jones Letter, Goodrich Letter, Gradco Letter, GTE Letter, Isomedix Letter, Kmart Letter, Legg Mason Letter, Liberty Letter, Merck Letter, Mobil Letter, Oppenheimer Letter, Orphan Medical Letter, PepBoys Letter, Price Costco Letter, Smith Barney Letter, Texaco Letter, Texas Instruments Letter, US West Letter, Walt Disney Letter, Westvaco Letter, *supra* note 11. See also APTC Letter (not opposing proposal as pilot program and recognizing it as a necessary first step toward improving upon the effectiveness and the efficiency of the overall issuer/shareholder communication system), SIA Letter (supporting the reimbursement fees, nominee fee and householding fee because they are the result of open and extensive negotiations between issuer representatives and broker dealers that process independently and through an intermediary), *supra* note 11.

[14] See Credo Letter, Hagberg Letter, Pinnacle West Letter, *supra* note 11.

[15] See *e.g.*, ABA Letter, APTC Letter, Lucent Letter, *supra* note 11.

[16] See Apollo Letter, Cornerstone Letter, Goodrich Letter, Isomedix Letter, see also Edward Jones Letter, Gradco Letter, Nasdaq Letter, PepBoys Letter, *supra* note 11.

[17] See Apollo Letter, Cornerstone Letter, Goodrich Letter, Isomedix Letter, *supra* note 11.

[18] See Orphan Medical Letter, Walt Disney Letter, *supra* note 11. Several commenters note a related issue of late proxy voting by pension funds and institutions that arises with the application of new technology in the proxy voting process. These commenters explain that these funds and institutions have used advancements in technology to vote later than before the introduction of these services. See Mobil Letter, Pinnacle West Letter, US West Letter, *supra* note 11.

[19] See Orphan Medical Letter, Walt Disney Letter, *supra* note 11; see also Legg Mason Letter, *supra* note 11.

[20] See Texaco Letter, *supra* note 11.

[21] See Liberty Letter, PepBoys Letter, *supra* note 11.

[22] See Smith Barney Letter, *supra* note 11.

[23] NYSE Letter, *supra* note 3.

[24] See NYSE Letter, *supra* note 3. One commenter agrees with the NYSE that the current fee structure does not recognize the value that service bureaus, such as ADP, provide through their coordinated system of distribution and proxy solicitation and that the proposal would recognize the services provided and upon which many member firms rely. This commenter believes that without an incentive to invest in enhanced technology, service bureaus could not effectively build the infrastructure necessary to support sophisticated applications. See Oppenheimer Letter, *supra* note 11. Another commenter notes that ADP offers services that small issuers use and appreciate although small issuers do not utilize certain sophisticated services because many shareholders lack the equipment and/or sophistication to take advantage of modern technology. See Liberty Letter, *supra* note 11.

[25] See Pinnacle West Letter and US West Letter, *supra* note 11.

[26] See Credo Letter, *supra* note 11.

[27] See Credo Letter, *supra* note 11.

[28] See Pinnacle West Letter, *supra* note 11.

[29] See Credo Letter, *supra* note 11.

[30] See Hagberg Letter, *supra* note 11.

[31] See DQE Letter, *supra* note 11.

[32] See DQE Letter, *supra* note 11.

[33] See DQE Letter, *supra* note 11.

[34] See CTA Letter, Mobil Letter, *supra* note 11.

[35] See CTA Letter, *supra* note 11.

[36] See Lucent Letter, *supra* note 11.

[37] See AAON Letter, Ameritech Letter, Apollo Letter, Cornerstone Letter, Goodrich Letter, Isomedix Letter, *supra* note 11.

[38] See US West Letter, *supra* note 11.

[39] See DQE Letter, *supra* note 11.

[40] See AFLAC Letter, *supra* note 11.

One commenter supports this fee because it would not only help to reduce further the proxy fee, postage, and printing costs for the annual report and proxy statement but also reduce stockholder frustration caused by multiple mailings.[41] Another commenter believes that the proposal would provide an incentive for the elimination of duplicate mailings.[42] One commenter believes that the ''householding'' incentive fee will result in net savings to the company.[43] This commenter believes that the fee should be structured so that mailing list reductions are quantified prior to the print date for annual reports and other proxy materials to maximize the potential savings to issuers.[44]

One commenter, however, questions how issuers would determine the savings realized by using the householding process and whether householding would cause a further delaying getting the vote to the issuer.[45] Another commenter argues that the NYSE should require that all recordkeepers minimize the number of duplicate mailings or should ensure that any consolidation fee permitted is based on direct cost savings to issuers, payable only in the first year of savings, and shared between the issuers and the intermediary.[46]

One commenter believes that the paper and postage elimination fees are significantly higher than what most transfer agents charge for these same services and that it would be appropriate to pass these charges on to issuers only if the fees are market driven and comparable to what other companies in the marketplace are charging for similar activity.[47] Another commenter believes that any fee paid to a broker for assistance in eliminating duplicate mailings should be based on actual reasonable costs incurred by the broker.[48] One commenter also notes that the proposed incentive fee would increase fees for foreign issuers with a relatively small U.S. float.[49]

Several commenters address the $20 per nominee fee. One commenter believes that the per nominee fee is fair compensation for the services of an intermediary and would provide the proper incentives to focus on technology initiatives that will save the issuer community additional money in the long term.[50] In its comment letter, the NYSE further explains that the nominee coordination fee represents reimbursement for coordination costs incurred by ADP and that the fee is a reasonable attempt to provide compensation for new services being offered under the current proxy solicitation process.[51] Moreover, the NYSE believes that coordination of nominees reduces costs for issuers.[52]

Two commenters request a description of services included in the $20 per nominee fee.[53] Specifically, one commenter believes that such a breakdown would help the issuers determine if the amounts charged for the fees are justified and comparable to free-market costs.[54] Another commenter believes that the $20 nominee fee should be followed by establishing new rules to govern the various services handled by intermediaries.[55] Two commenters express concern about the impact of the proposed new nominee fee on small issuers.[56] Specifically, one commenter suggests that the NYSE and the Commission review the market data during the pilot period to ensure that small issuers are not being disadvantaged unfairly under the proposed fee structure.[57]

Several commenters object to the $20 nominee fee because it would increase the costs of transmitting proxy materials even though no new or additional services would be provided.[58] One commenter notes that the proposed structure unduly penalizes smaller companies that do not have large institutional share concentrations but have numerous nominees who represent only a few beneficial owners.[59] One commenter suggests that a progressive nominee service fee based on the number of shareholder accounts would be more equitable.[60] Another commenter argues that before a per nominee fee can be considered, there must be an independent way to confirm the number of nominees associated with an issuer.[61]

Several commenters address the Commission's request for comment on what should be deemed as ''reasonable expenses'' under the Commission's proxy rules. Some commenters believe that reasonable expenses should include an intermediary's cost to coordinate an issuer's proxy mailing to multiple nominees and the expenses of operating an electronic proxy voting system.[62] One commenter, however, believes that only member organizations or intermediaries that perform extra functions relating to coordinating the mailing and voting of proxy material to multiple nominee accounts should be entitled to receive fair and reasonable compensation for their associated efforts.[63] Another commenter believes that the ''[c]osts to develop and operate an electronic proxy voting system, which appears to be designed primarily to facilitate ADP and the institutions and not the industry as whole, should not be passed along to issuers.''[64] One commenter believes the definition of reasonable expenses should include actual out-of-pocket expenses and not represent a profit item for the broker-dealers, banks and nominees.[65]

With respect to the Commission's request for comment on whether the determination of ''reasonableness'' should vary with the size of the issuer, one commenter believes that the determination of reasonableness should not vary based on issuer size or any other criteria.[66] Two commenters support varying reasonable fees with the size of the issuer.[67] Specifically, one believes that a tiered pricing structure that properly recognizes the true

[41] See Texas instruments Letter, *supra* note 11.

[42] See Westvaco Letter, *supra* note 11.

[43] See Reynolds Metal Letter, *supra* note 11.

[44] See Reynolds Metal Letter, *supra* note 11.

[45] See Pinnacle West Letter, *supra* note 11.

[46] See DQE Letter, *supra* note 11.

[47] See US West Letter, *supra* note 11. This commenter also disagrees with the NYSE's contention that it is impracticable to develop reimbursement guidelines that vary based on the size of one's mailing because this method is standard procedure in a number of industries.

[48] See GTE Letter, *supra* note 11.

[49] See JP Morgan Letter, *supra* note 11. This commenter argues that the NYSE should amend its rules to exempt non-U.S. issuers from NYSE's proxy requirements.

[50] See Legg Mason Letter, *supra* note 11.

[51] See NYSE Letter, *supra* note 3. The Commission notes, again, that the NYSE has indicated that the costs of electronic and/or telephonic voting will not be passed through to issuers under the new fee structure. See *supra* note 9; *infra* note 111.

[52] See NYSE Letter, *supra* note 3.

[53] See AFLAC Letter, CTA Letter, *supra* note 11.

[54] See CTA Letter, *supra* note 11.

[55] See Mobil Letter, *supra* note 11.

[56] See ABA Letter and Nasdaq Letter, *supra* note 11.

[57] See ABA Letter, *supra* note 11.

[58] See DOE Letter, Reynolds Metal Letter and Pinnacle West Letter, *supra* note 11.

[59] See Credo Letter, *supra* note 11.

One commenter expresses concern that the proposed nominee fee would increase fees for foreign issuers with relatively small U.S. float. See JP Morgan Letter, *supra* note 11. This commenter argues that the NYSE should amend its rules to exempt non-U.S. issuers from NYSE's proxy requirements.

[60] See Reynolds Metal Letter, *supra* note 11.

[61] See DOE Letter, *supra* note 11.

[62] See CTA Letter, Mobil Letter, Smith Barney Letter, US West Letter (commenting only on coordinating an issuer's proxy mailing to multiple nominees), *supra* note 11.

[63] See Texaco Letter, *supra* note 11.

[64] See US West Letter, *supra* note 11.

[65] See Mobil Letter, *supra* note 11.

[66] See Smith Barney Letter, *supra* note 11.

[67] See Hagberg Letter, Lucent Letter, *supra* note 11.

economies of scale would be appropriate.[68]

In its comment letter, the NYSE explains that the NYSE Committee on Shareholder Communications has not been able to reach a consensus on tiering because of the different service requirements of companies of different sizes.[69] To illustrate, the NYSE explains that, although large issuers may believe that they subsidize smaller issuers, larger issuers drive more of the cost of infrastructure such as vote processing.[70]

Several commenters address whether the reasonableness determination should take into account any fee sharing arrangements between an intermediary and its broker-dealer clients. Several commenters argue that reasonable expenses should not include reimbursement to subsidize revenue sharing or a rebate system.[71] Moreover, several of these commenters believe that revenue sharing and rebates artificially inflate expenses charged to issuers and create an unnecessary barrier to entry for competition in the business.[72] One commenter argues that the rebates available only to a single, dominant provider have made it impossible for new providers who might otherwise be able to offer lower fees or money saving technologies to enter the business.[73]

Another commenter states that issuers have no way of knowing how much of their fees are actually being rebated to member organizations and that rebates should be only made to cover a broker's actual costs.[74] One commenter questions why revenue sharing occurs.[75] Another commenter believes that the rebate process should be fully investigated to determine if it is in the best interests of the capital markets and is consistent with the goal of free and fair competition.[76]

One commenter explicitly supports the fee sharing arrangement between broker-dealers and intermediaries as appropriate within the fee structure.[77] This commenter notes that when a broker-dealer outsources to an intermediary, it does not typically outsource 100% of the activities covered by the fees.[78] The commenter believes that the amount of the fee sharing should be determined by negotiation between each broker-dealer and its intermediary.[79]

A few broker-dealer commenters also explain that nominee does not eliminate all costs by outsourcing their proxy mailings.[80] These commenters note certain costs that nominees must bear as it: (1) Continues to maintain proxy personnel in its office to answer broker and customer questions as well as to handle the operational aspects of balancing positions and voting totals; (2) transmits data each day to and from ADP; (3) writes and maintains programs to support and enhance the transmission and continue to do so; and (4) has other overhead and administrative costs.[81] The NYSE agrees with these commenters that broker-dealers continue to incur some costs in the proxy solicitation process and that it would be reasonable that the fees issuers pay be split between the intermediary and the broker-dealer.[82] During the pilot, such costs would be identified more fully and assessed by the independent accounting firm.

Several commenters support the formation of an industry committee to evaluate the effectiveness of the proposal during the pilot period.[83] Moreover, one commenter suggests that unresolved issues can be addressed by an industry committee during the pilot period.[84] One commenter suggests that if a pilot program is implemented, the intermediary should be required to send two invoices to customers over the pilot period, with one under the old billing arrangement and one under the new.[85]

Several commenters address the issue of whether an independent audit during the pilot period would be helpful in assessing the reasonableness of the costs passed through to issuers. Most of these commenters support an independent audit.[86] One commenter suggests that to be truly meaningful, the independent audit should include all reasonable costs incurred by the issuers, broker-dealers, ADP, and nominees in mailing proxy material to beneficial holders and the processing of votes back to the issuer's vote tabulator.[87] Another commenter believes that auditing of actual cost of material such as envelopes will lead to even more savings and make it easier for stockholders to register their votes.[88] Two commenters suggest that profit sharing arrangements should be audited to determine the reasonableness of these costs.[89]

Other commenters believe that the expense of an independent audit is not necessary.[90] Specifically, one commenter believes that there should be some definite reason to believe that an independent audit is worth the expense.[91] The NYSE also believes that, although an audit would be useful in determining whether member firms and intermediaries accurately implemented the new fees and for some elements of the costs to be tested in an audit, an audit would not be useful to determine the ''right'' fee.[92]

With regard to the Commission's request for comment on whether the proposed NYSE nominee fee and incentive fee should be deemed to apply to reimbursement by non-NYSE issuers to NYSE member firms, two commenters believe that the new fee structure should apply to all issuers and not be limited to NYSE listed companies.[93] Specifically, one believes that these fees should apply to all issuers because the covered activities are the same for all issuers, regardless of the listing.[94] Two commenters argue that the fees should apply to all domestic corporations when dealing with NYSE members.[95] The NYSE agrees with these commenters in that limiting fees to NYSE issuers would result in confusion and an increase of expenditure of scarce resources to duplicate efforts.[96]

One commenter, however, believes that the proposed NYSE nominee fee and incentive fees should not necessarily apply to non-NYSE issuers because the non-NYSE issuers should be permitted to negotiate lower proxy fees from other stock exchanges.[97]

V. Discussion

The Commission finds that the proposed rule change is consistent with

[68] See Hagberg Letter, *supra* note 11.

[69] See NYSE Letter, *supra* note 3.

[70] See NYSE Letter, *supra* note 3.

[71] See CTA Letter, GTE Letter, Lucent Letter, Mobil Letter, Smith Barney Letter, US West Letter, *supra* note 11.

[72] See CTA Letter, GTE Letter, Mobil Letter, US West Letter, *supra* note 11.

[73] See Hagberg Letter, *supra* note 11.

[74] See Texaco Letter, *supra* note 11.

[75] See AFLAC Letter, *supra* note 11.

[76] See DOE Letter, *supra* note 11.

[77] See SIA Letter, *supra* note 11.

[78] See SIA Letter, *supra* note 11.

[79] See SIA Letter, *supra* note 11.

[80] See A.G. Edwards Letter, Legg Mason Letter, Oppenheimer Letter, *supra* note 11.

[81] See A.G. Edwards Letter, Legg Mason Letter, *supra* note 11.

[82] See NYSE Letter, *supra* note 3.

[83] See Apollo Letter, Cornerstone Letter, Goodrich Letter, GTE Letter, Isomedix Letter, *supra* note 11.

[84] See CTA Letter, *supra* note 11.

[85] See DQE Letter, *supra* note 11.

[86] See CTA Letter, Lucent Letter, Mobil Letter, Orphan Medical Letter, Reynolds Metal Letter, Texaco Letter, US West Letter, Walt Disney Letter, *supra* note 11.

[87] See CTA Letter, *supra* note 11.

[88] See Texas Instruments Letter, *supra* note 11.

[89] See Mobil Letter, Texaco Letter, *supra* note 11.

[90] See A.G. Edwards Letter, Legg Mason Letter, Smith Barney Letter, *supra* note 11.

[91] See A.G. Edwards Letter, *supra* note 11.

[92] See NYSE Letter, *supra* note 3.

[93] See SIA Letter, Smith Barney Letter, *supra* note 11.

[94] See SIA Letter, *supra* note 11.

[95] See A.G. Edwards Letter, Legg Mason Letter, *supra* note 11.

[96] See NYSE Letter, *supra* note 3.

[97] See Texaco Letter, *supra* note 11.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[98] Section 6(b)(4) requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange.[99] Section 6(b)(5) requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers.[100] Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[101] Based on the record adduced by the NYSE, the Commission believes that the fees under the proposed reimbursement schedule are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition. The Commission will re-evaluate this preliminary determination in light of the results of the pilot program and the independent accounting firm's report.

The Commission believes that the NYSE's proposal to amend the suggested rate of reimbursement for the distribution of materials and to impose certain incentive and nominee fees are consistent with the Act because the proposal reflects changes in the market, such as advances in technology and increases in distribution costs, and changes in the corporate governance process since the last update of the fee reimbursement schedule in 1986. The Commission also believes that the proposed fee reimbursement structure should promote the application of advanced technology to the shareholder communication process and is a reasonable accommodation of the interests of various market participants involved in the proxy solicitation process. A majority of the commenters also support the proposal, believing that it would provide the industry with incentives to continue to develop new technologies that would help issuers reduce costs while improving communications with shareholders.

Moreover, the proposal also reduces the basic rates of reimbursement for the first time since the adoption of the rules. The proposal reduces the fees for mailing each set of proxy materials from $.60 or $.70 to $.55 and reduces the rate for mailing other reports from $.20 to $.15. The Commission believes that these reductions should produce substantial savings for issuers.

The NYSE has examined the cost increases of its issuers under the proposed fee structure and believes that, in general, most of the issuers would receive a cost reduction with this proposal. There may be some increases for small issuers, but the new nominee cost may be partially offset by the lower basic rates and lower expenses. Moreover, there may be other costs savings, particularly ''out-of-pocket savings,'' and the new incentive fees may result in fewer mailings, decreasing printing and mailing costs.[102]

The Commission believes that the new reimbursement schedule is the result of the NYSE's careful balancing of interests of issuers and broker-dealers. The Commission has, nevertheless, determined to approve the NYSE's proposed fee structure on a one-year pilot basis to allow the Exchange and the Commission to review the progress and effect of the fee structure. The Commission believes that the experience with the proposed fee structure during the one-year pilot period would be valuable to the NYSE and to the Commission in determining whether any modifications are necessary. The Commission notes that the NYSE has committed to an independent audit, at the conclusion of the 1997 proxy season, of the new fee structure to assess the reasonableness of the costs passed through to issuers with a report of the findings made to the Commission.[103]

A. Commenters' Concerns

AS discussed above, the NYSE is proposing to adopt two new fees for the first time—the nominee fee and the automation incentive fee. These fees are different from the other mailing reimbursement fees set forth in the NYSE rules in that they are related costs other than actual mailing costs. As a result, several commenters express specific concern about these fees.

Several commenters also express general concern that the proposed fee structure may increase costs to issuers. The Commission believes that, although in certain instances costs to issuers may increase under the proposed fee structure, the reduction of mailing fees and the design of the structure to encourage savings in the long term should be beneficial to all market participants.

One commenter argues that the proposed fees are higher than what an issuer would pay in a ''free market'' environment.[104] The Commission notes that, in adopting the direct shareholder communications rules, it left the determination of reasonable costs to the self-regulatory organizations (''SROs'') because, as representatives of both issuers and brokers, the SROs were deemed to be in the best position to make a fair evaluation and allocation of the costs associated with the distribution of shareholder materials. The Commission believes that, at this time, it is appropriate for the NYSE to propose the amount for each fee in the fee reimbursement structure, with the Commission reviewing the fee schedule to ensure its compliance with the standards of the Act. As discussed below, however, the Commission encourages the NYSE and the issuer and broker-dealer communities to initiate dialogue so that competition may play a greater role in this process.

Another commenter argues that NYSE's fee schedule should offer only reimbursement of costs to the nominees and that the NYSE should encourage a free market to develop and implement new technologies by allowing individual issuers to choose whether to take advantage of a new process or procedure.[105] The Commission believes, however, that because the current fee schedule only provides for reimbursement of costs, service providers do not have any incentive to develop and implement new technologies. As discussed in more detail below, the Commission believes that certain incentive fees are necessary to encourage these service providers to develop cost effective methods of distributing shareholder materials.

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[98] 15 U.S.C. 78f(b).

[99] 15 U.S.C. 78f(b)(4).

[100] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[101] 15 U.S.C. 78f(b)(8).

[102] The NYSE conducted an analysis of the proposed fee reimbursement structure on several small issuers based on the figures from the 1996 proxy season. For example, for one small issuer, although the proxy costs under the proposed fee structure would increase by $2,766, this issuer could realize savings in the range of $630 to $2,520 by suppressing proxy mailings by householding, which could offset the increase in proxy costs.

[103] Although several commenters support the formation of an industry committee to evaluate the proposal over the pilot period, the Commission believes that an independent audit would better alleviate concerns of market participants with varying interests regarding the reasonableness of the proposed fee structure in relation to the services provided.

The NYSE has represented to the Commission that the report of the independent accountant will be provided to the Commission and the NYSE no later than October 31, 1997. The Commission will review the report to determine whether any change would be appropriate for the 1998 proxy season.

[104] See Hagbert Letter, *supra* note 11.

[105] See DQE Letter, *supra* note 11.

1. Nominee Fee

As discussed above, the NYSE proposes a new $10 nominee fee for intermediaries that provide coordination for a series of functions across a multitude of nominees. Several commenters object to the nominee fee because it may increase costs to smaller issuers. The NYSE represents that the fee is intended to be reimbursement for coordination costs incurred by intermediaries and that the fee is a reasonable attempt to provide compensation for services that are being currently offered. Moreover, the NYSE believes that coordination by nominees should reduce costs for issuers.

The Commission has considered the NYSE's representations as to the effect of the new ''nominee fee'' of $20 per nominee for their potential impact on issuers. The Commission recognizes that, although these fees may have a greater impact on small issuers than large and mid-sized issuers, the combined effect of the reduced rates of reimbursement for mailing proxy and other materials along with the imposition of these new fees could result in greater benefit to all issuers in general, depending, of course, on the results of the pilot. Based on the information provided by the NYSE and the supportive comment letters, the Commission believes—subject, again, to the results of the pilot—that the nominee fee would appear to constitute reasonable compensation for the services provided by an intermediary that could produce savings for issuers in the long term. The Exchange estimates that the smallest U.S. issuers would pay, on average, an intermediary nominee fee of $800. This is a relatively small sum and is designed to compensate for the services provided by the intermediary.

The Commission also believes that the new fees will provide incentives for intermediaries to develop technologically innovative ways to communicate with issuers and to lower costs overall. Although these fees may have relatively greater impact on small issuers, the new fee structure reflects economies of scale and may more accurately reflect the actual distribution and proxy solicitation costs. Moreover, the Commission believes that these fees, by encouraging the use of technology for shareholder communications, could help to promote further improvement of the corporate governance process.

Commenters also express concern about whether any new or additional services are being provided by an intermediary for the $20 nominee fee and ask, in any case, whether such services are being provided at free-market cost. First, the Commission notes that the NYSE has provided a list of coordinating functions that would qualify a nominee for the reimbursement of the $20 fee. Any intermediary that coordinates these functions for multiple nominees would be entitled to the fee. Although ADP is the only intermediary currently offering these services to broker-dealers, there is nothing in the NYSE proposal that would restrict the payment of this fee to another entity providing similar services and thus the rule is not anti-competitive in application.

Second, the Commission notes that an intermediary coordinating multiple nominees could result in reduced costs to issuers in printing, posting and administrative costs.[106] Although this has not been quantified specifically by the NYSE in its rule proposal, during the one-year pilot, the Exchange and the Commission can review the results of the pilot program, including but not limited to the independent accounting firm's report, to ensure that no issuers are unfairly disadvantaged under the proposed fee structure, and that the nominee fee is a reasonable expense incurred to distribute proxy and other shareholder material. At the conclusion of the pilot, if necessary, the Exchange can propose further modifications to the fee structure to avoid any unintended adverse effects.

2. Automation Incentive Fee

The NYSE proposes a new incentive fee to compensate member organizations for eliminating materials in paper form (*i.e.*, additional fee of $.50 ($.10 for a quarterly report) for each set of material that is not mailed). One commenter believes that incentive fees should be based on actual reasonable costs incurred by the broker for eliminating duplicate mailings.[107] Another believes that the incentive fees should be passed on to issuers only if the fees are market driven and comparable to what other companies in the marketplace are charging for similar activity.[108]

The Exchange has represented to the Commission that the householding fee is intended to encourage members firms to apply technology to distribute materials electronically. The Commission believes that, if the incentive fee only reimburses the cost of eliminating the duplicate mailings, nominees would have no incentive to provide these services because nominees would be reimbursed for their costs regardless of whether they provide these types of services. Moreover, the Commission notes that the fee would produce the unquantifiable benefit of reducing shareholder frustration and confusion by eliminating duplicate mailings to shareholders.

One commenter expresses concern that the proposed incentive fee as well as the nominee fee would increase fees for foreign issuers with a relatively small U.S. float and argues that the NYSE should amend its rules to exempt non-U.S. issuers from NYSE's proxy requirements.[109] The Exchange states, and the Commission agrees, that in this context there are no compelling reasons to treat non-U.S. issuers and U.S. companies differently. Although non-U.S. issuers are exempt from most of the Commission's proxy rules pursuant to Rule 3a12–3 under the Act, non-U.S. issuers generally do provide U.S. shareholders with proxy and related information and seek votes of their U.S. holders. The Exchange, therefore, states that broker-dealers and other intermediaries face the same reimbursement issues with non-U.S. companies as they do with U.S. companies.

Finally, the Commission notes that the independent audit should help to assess whether the householding incentive fee has had the intended effect of eliminating duplicate mailings and is providing cost savings to issuers.

B. Reasonableness Determination

The Commission also requested comments on what should be deemed ''reasonable expenses'' within the meaning of the Commission's proxy rules. As summarized above, the Commission received a variety of responses to this issue. Among them are that reasonable expenses should include an intermediary's cost to coordinate an issuer's proxy mailing to multiple nominees,[110] an intermediary's expense of operating an electronic proxy voting system,[111] and actual out-of-pocket expenses that do not represent a profit

[106] See NYSE Letter, *supra* note 3.

[107] See GTE Letter, *supra* note 11.

[108] See US West Letter, *supra* note 11.

[109] See JP Morgan Letter, *supra* note 11.

[110] See Mobil Letter, Smith Barney Letter, US West Letter, *supra* note 11.

[111] See Mobil Letter, Smith Barney Letter, *supra* note 11.

Another commenter believes that the costs to develop and operate an electronic proxy voting system should not be passed along to issuers because the electronic system appears to be designed primarily to facilitate ADP and the institutions. See US West Letter, *supra* note 11. See also *supra* note 64 and accompanying text. In response, the NYSE states that it has not been led to believe that the fees should cover such a system and, therefore, such costs are not included in the proposal. See NYSE Letter, *supra* note 3. See also *supra* notes 9 and 51.

item for the broker-dealers, banks and nominees.[112]

Finally, in response to the issue of fee sharing arrangements between brokers and intermediaries, several commenters believe that reasonable expenses should not include such arrangements because revenue sharing and rebates artificially inflate expenses charged to issuers and create an unnecessary barrier to entry for competition in the business.[113] At least one commenter, however, believes that fee sharing arrangements are appropriate because when a broker-dealer outsources to an intermediary, it does not typically outsource 100% of the activities covered by the fees.[114]

Although the Commission has carefully considered these comments regarding ''reasonable expenses,'' it has reached no final resolution of the issues noted by commenters. Rule 14a–13(a)(5) requires issuers to reimburse broker-dealers, banks, and other nominees for the reasonable expenses they incur in mailing proxy soliciting materials and annual reports to beneficial holders of such issuers' voting securities. As noted by the NYSE, the fee structure that surrounded the development of the reimbursement of such fees was devised prior to the use of intermediaries by many broker-dealers. In addition, the current fee structure does not recognize the benefits from enabling more shareholder communications to be received through the technological advances made over the past decade. The one-year pilot and the audit that will cover the results of ADP's operations for this period should provide the NYSE and the Commission with the information necessary to determine whether the fee structure needs to be further revised. The Commission will continue to consider the comments during the one-year pilot period and reevaluate these comments before approving a permanent fee schedule.

Finally, with regard to whether the proposed NYSE nominee fee and incentive fee should be deemed to apply to reimbursement by non-NYSE issuers to NYSE firms, the Commission believes that it is preferable that the new fees apply to reimbursement by NYSE issuers to NYSE member firms. At the same time, as the NYSE has noted, member firms, non-member firms and banks historically have used the NYSE guidelines for all mailings, which provide uniformity in the industry. The Commission, however, believes that the reimbursement structure apply to member firms and not to issuers and Section 19(b) does not provide the NYSE with the authority to enforce the reimbursement of these fees on issuers that are not listed on the NYSE and do not use its facilities. This approach is consistent with Section 6(b)(4) of the Act, which allows an exchange to adopt equitable fees for its members, issuers, and other persons using its facilities.

In determining to approve the NYSE's proposal for a one-year pilot period, the Commission has had to assess whether the proposal provides for the equitable allocation of fees among issuers consistent with Section 6(b)(4) of the Act, as well as ensure that it is consistent with Sections 6(b)(5) and 6(b)(8) of the Act by not unfairly discriminating among issuers and imposing a burden on competition that is not necessary under the Act.

As noted above, the proposal has raised a number of concerns about whether the effect of the new fee structure would unduly increase the costs to small issuers and whether both the nominee and householding incentive fees are related to the reasonable expenses of mailing proxy soliciting materials. Although the Commission recognizes that the quantitative material submitted by NYSE to support its proposal is not conclusive on this issue, we believe that that NYSE has made a reasonable case that the fee changes taken together could have a beneficial effect on the costs for mailing proxy material for many issuers. Moreover, to the extent that the nominee fee and household incentive fee encourage the use of new technologies for the electronic distribution of proxy materials, overall mailing costs of issuers could be reduced. As a result, although the Commission recognizes that some issuers may, in the short run, experience an increase in costs, on balance, the Commission believes that the overall effect of the changes may be positive and provide some cost savings.

In conclusion, the Commission believes that the proposal to amend the suggested rate of reimbursement for the distribution of materials and to impose certain new fees is consistent with the Section 6(b)(4) requirement that exchange rules provide for the equitable allocation of fees among its members and issuers. The proposed fee structure appears to provide for reasonable fees and does not appear to discriminate between issuers, brokers or dealers in contravention of Section 6(b)(5). Moreover, the Commission believes that the proposed reimbursement schedule does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as required by Section 6(b)(8).

The pilot period and independent audit should help the Commission assess whether the potential benefits of the fee structure change do, in fact, have a positive effect overall on the proxy fee reimbursement structure. Indeed, during this period, the Commission encourages the Exchange, issuers, and member firms to consider a long term solution to determining reasonable expenses in connection with broker-dealers' mailing of proxy soliciting materials and annual reports to beneficial holders. In doing so, the Commission notes that in adopting the direct shareholder communications rules in the early 1980s the Commission left the determination of reasonable costs to the SROs, because they were deemed to be in the best position to make fair evaluation and allocations of costs associated with these rules. The Commission believes that ultimately market competition should determine ''reasonable expenses'' and recommends that issuers, broker-dealers and the NYSE develop an approach that may foster competition in this area. Rather than having the rates of reimbursement set by the SROs, the Commission suggests that the NYSE and other SROs explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This amendment merely changes the length of the pilot from three years to one year. Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of Amendment No. 1.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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[112] See Mobil Letter, *supra* note 11.

[113] See CTA Letter, GTE Letter, Mobil Letter, US West Letter, *supra* note 11.

[114] See SIA Letter, *supra* note 11. The NYSE also agrees

Several broker-dealer commenters also explain that a nominee does not eliminate all costs by outsourcing their proxy mailings. See *supra* note 80 and accompanying text. The NYSE also agrees with these commenters. See NYSE Letter, *supra* note 3.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–36 and should be submitted by April 14, 1997.

VII. Conclusion

For the foregoing reasons, 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 Sections 6(b)(4), 6(b)(5), and 6(b)(8) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[115] that the proposed rule change (SR–NYSE–96–36) is approved on a pilot basis ending May 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[116]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7280 Filed 3–21–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38410; File No. SR–OCC–96–18]

Self-Regulatory Organizations: The Option Clearing Corporation Order Granting Approval of a Proposed Rule Change To Revise Rules To Include Limited Cross-Guarantee Agreement

March 17, 1997.

On December 9, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–96–18) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] Notice of the proposal was published in the **Federal Register** on January 28, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change revises OCC's by-laws and rules to authorize OCC to execute ''Limited cross-guarantee agreements'' with other clearing agencies. A limited cross-guarantee agreement is an agreement between two or more clearing agencies that provides that if the parties to the agreement must liquidate the assets of an entity that is a member of two or more of the agencies (''common member'') and at least one of the clearing agencies liquidates the assets of the common member in its control to a loss and at least one liquidates the assets of the common member to a gain, each clearing agency liquidating to a gain will make the excess assets of the common member in its control available to each clearing agency liquidating to a loss up to the amount of the loss. If all of the parties to a limited cross-guarantee agreement liquidate the assets of a common member in their respective control to a gain or if all liquidate to a loss, the agreement provides that no assets will be made available by any party to the agreement to any other party. The cross-guaranties established in a limited cross-guarantee agreement are limited in the sense that each part to the agreement guarantees funds to the other parties only if it liquidates the assets of a common member in its control to a net gain and only up to the amount of the net gain.

The effect of a limited cross-guarantee agreement is to enable each part to the agreement to have recourse to the assets of a defaulting common member in the control of the other parties to the agreement. Therefore, a limited cross-guarantee agreement should reduce the risk of each of the clearing agencies which is a party to such an agreement because a defaulting common member may have positions spread across markets in such a manner that its net asset position at one clearing agency is positive even though its net asset position at another clearing agency is negative.

OCC is currently pursuing discussion of the terms of a limited cross-guarantee agreement with other clearing agencies. OCC anticipates that it will be filing with the Commission one or more limited cross-guarantee agreements to which it has become a party following the conclusion of those discussions.

The Commission has generally stated its support of the use of limited cross-guarantee agreements as a mean of reducing the exposure of clearing agencies to loss as a result of the default of common members.[3]

As part of its rules revision to provide for limited cross-guarantee agreements, OCC will add definitions of ''common member,'' ''cross guarantee party,'' and ''limited cross-guarantee agreement'' to Article I of its by-laws. OCC will add new paragraph (i) to Section 5 of Article VIII of its by-laws to provide explicitly that OCC may use the clearing fund contributions of a clearing member to satisfy its limited cross-guarantee obligations to other clearing agencies with respect to that clearing member. New paragraph (i) provides that the amount charged against a clearing member's contributions to the stock clearing fund and non-equity securities clearing fund will be in proportion to the clearing member's contributions to the stock clearing fund and the non-equity securities clearing fund as fixed at the time of the suspension of the clearing member. New paragraph (i) does not provide OCC with any authority to use the clearing fund contributions of other clearing members (*i.e.*, other than the defaulting clearing member) to satisfy any limited cross-guarantee obligation that OCC has to another clearing agency because OCC will not have any obligation pursuant to a limited cross-guarantee agreement which could require recourse to the clearing fund contributions of other clearing members.

OCC also will add new paragraph (j) to Section 5 of Article VIII of its by-laws to establish a rule for allocating funds received by OCC pursuant to a limited cross-guarantee agreement where OCC has charged, or will charge, the stock clearing fund and the non-equity securities clearing fund. The new paragraph provides that the funds will be credited to the stock clearing fund and the non-equity securities clearing fund in proportion to the computed contributions of the suspended clearing member to the two clearing funds as fixed at the time of the suspension of the clearing member. If one of the two clearing funds is made whole then the remainder of the funds will be credited entirely to the other clearing fund.

OCC will add three new interpretations to Article VIII, Section 5 of its by-laws. New interpretation .03 states explicitly that if OCC has a deficiency after the application of all available funds of a suspended clearing member and if OCC cannot determine

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[115] 15 U.S.C. 78s(b)(2).

[116] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38188 (January 21, 1997), 62 FR 4089.

[3] Securities Exchange Act Release No. 37616 (August 28, 1996), 61 FR 46887 [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04] (order approving proposed rule changes seeking authority to enter into limited cross-guaranty agreements).

whether or in what amount it will be entitled to receive funds from a cross-guarantee party or when it will receive such funds, with respect to the clearing member, OCC may, in its discretion, make a charge against other clearing members' contributions to the stock clearing fund and/or the non-equity securities clearing fund. New interpretation .04 states explicitly that if OCC determines that it is likely to receive funds from a cross-guarantee party with respect to the clearing member, OCC may in anticipation of receipt of the funds from the cross-guarantee party, forego making a charge, or make a reduced charge against other clearing members' contributions to the stock clearing fund and/or the non-equity securities clearing fund. If OCC does not receive the anticipated funds or receives funds in a smaller amount than anticipated, OCC may make a charge or an additional charge against other clearing members' contributions to the stock clearing fund and/or the non-equity securities clearing fund. New interpretation .05 states explicitly that if OCC were ever to be required to refund funds which it had received from a cross-guarantee party back to the cross-guarantee party, OCC could make a charge or an additional charge against other clearing members' contributions to the stock clearing fund and/or the non-equity securities clearing fund to make itself whole. The charge would be based on the other clearing members' computed contributions as fixed at the time of the refund and not at the time of the suspension of the clearing member.

OCC also will add new paragraph (d) to its Rule 1104 to state explicitly that OCC may use any positive balance remaining in a clearing member's liquidating settlement account to satisfy any obligation with respect to that clearing member which OCC may have to any other clearing agency pursuant to a limited cross-guarantee agreement. The new paragraph is needed to assure that OCC's use of the assets of a clearing member in this manner is authorized by OCC's rules because Rule 1104(a) states that funds of a suspended clearing member subject to OCC's control shall be placed in the clearing member's liquidating settlement account and used ''for the purposes hereinafter specified.''

II. Discussion

Seciton 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes the rule change is consistent with OCC's obligation to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible because cross-guarantee agreements among clearing agencies are a method of reducing clearing agencies' risk of loss due to a common member's default. Furthermore, the Commission has encouraged the use of cross-guarantee agreements and other similar arrangements among clearing agencies.[5] Consequently, cross-guarantee agreements should assist clearing agencies in assuring the safeguarding of securities and funds in their custody or control.

The Commission also believes the rule change is consistent with OCC's obligation to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that by entering into such cross-guarantee agreements, clearing agencies can mitigate the systemic risks posed to an individual clearing corporation and to the national clearance and settlement system arising from the default of a common member.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7341 Filed 3–21–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] Securities Exchange Act Release Nos. 36431 (October 27, 1995), 60 FR 55749 [File No. SR–GSCC–95–03] and 36597 (December 15, 1995), 60 FR 66570 [File No. SR–MBSCC–95–05] (orders approving proposed rule changes authorizing the release of clearing data relating to participants).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice 2521]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations (22 CFR Parts 120–130) (ITAR) for all export license applications and other requests for approval involving the Armaments Corporation of South Africa, Ltd. (Armscor); Kentron (Pty) Ltd. (Kentron); the Denel Group (Pty) Ltd. (Denel); and, any divisions, subsidiaries, associated companies, affiliated persons, and successor entities.

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the Arms Export Control Act (22 U.S.C. 2778) (AECA) prohibits licenses and other requests for approval for the export of defense articles and the furnishing of defense services to be issued to a person, or any party to the export, convicted of violating or conspiring to violate the AECA. This notice is provided in order to make the public aware that the following entities are prohibited from participating directly or indirectly in the export from the United States of defense articles, related technical data, or defense services for which a license or other approval is required from the Department of State under the AECA:

1. The Armaments Corporation of South Africa, Ltd., (Armscor), Private Bag X337, 0001 Pretoria, South Africa
2. The Denel Group (Pty) Ltd. (Denel), P.O. Box 8322, 0046 Hennopsmeer, South Africa
3. Kentron (Pty) Ltd., P.O. Box 7412, 0046 Hennopsmeer, South Africa.

Effective June 8, 1994, the Department of State implemented a policy of denial pursuant to Sections 38 and 42 of the AECA and Sections 126.7(a) (1) and (a)(2) of the ITAR for Armscor, Denel, Kentron, and, any divisions, subsidiaries, associated companies, affiliated persons, and successor entities in response to an indictment returned in the U.S. District Court for the Eastern

District of Pennsylvania charging Armscor and Kentron with violating and conspiring to violate the AECA. Denel, which is related to Armscor, was included in the policy of denial (see 59 FR 33811, June 30, 1994).

Armscor and Kentron have entered pleas of nolo contendere to charges of violating the AECA. Pursuant to the Agreement between the Government of the United States and the Government of the Republic of South Africa concerning cooperation of defense trade controls, Armscor, Denel, and Kentron will be subject to statutory debarment until further notice.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: March 12, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 97–7272 Filed 3–21–97; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2522]

Office of Defense Trade Controls; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State's policy of denial for all export license applications and other requests for approval involving Fuchs Electronics (Pty) Ltd. (Fuchs), and, any divisions, subsidiaries, associated companies, affiliated persons, and successor entities, is rescinded, and is replaced by statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations (22 CFR Parts 120–130) (ITAR).

EFFECTIVE DATE: February 27, 1997.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the Arms Export Control Act (22 U.S.C. 2778) (AECA) prohibits licenses and other requests for approval for the export of defense articles and the furnishing of defense services to be issued to a person, or any party to the export, be issued to a person, or any party to the export, convicted of violating or conspiring to violate the AECA. This notice is provided in order to make the public aware that the following entities are prohibited from participating directly or indirectly in the export from the United States of defense articles, related technical data, or defense services for which a license or other approval is required from the Department of State under the AECA: Fuchs Electronics (Pty) Ltd., 15 Combrinck Street, Alrode, Gauteng, South Africa, including the Fuchs Electronics Division of Reunert Limited.

Effective June 8, 1994, the Department of state implemented a policy of denial pursuant to Sections 38 and 42 of the AECA and Sections 126.7(a)(1) and (a)(2) of the ITAR for Fuchs and any divisions, subsidiaries, associated companies, affiliated persons, and successor entities in response to an indictment returned in the U.S. District Court for the Eastern District Court of Pennsylvania charging Fuchs with violating and conspiring to violate the AECA (see 59 Federal Register 33811, June 30, 1994).

Fuchs pleaded guilty on February 27, 1997, to charges of violating the AECA. Pursuant to a Consent Agreement between Fuchs and the Department of State, and an Order signed by the Assistant Secretary for Political-Military Affairs, Fuchs, including the Fuchs Electronics Division of Reunert Limited, will be subject to statutory debarment and its licensing privileges will be reinstated in accordance with the terms of the Consent Agreement entered into by Fuchs and the Department on January 24, 1997. At such time, a further notice will be published herein.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: February 12, 1997.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 97–7273 Filed 3–21–97; 8:45 am]

BILLING CODE 4710–25–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting (Meeting No. 1493)

TIME AND DATE: 10 a.m. (CST), March 26, 1997.

PLACE: Ramada Inn Convention Center, Room 4, 854 North Gloster Street, Tupelo, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on February 19, 1997.

Discussion Items

1. Lowndes, Mississippi, Substation

2. TVA Customer Service Centers

New Business

E—Real Property Transactions

E1. Deed modification affecting approximately 0.065 acre of former TVA land on Kentucky Lake in Stewart County, Tennessee (Tract No. XGIR–259).

E2. Grant of easement affecting approximately 330 square feet of TVA's Summer Place Building and Parking Garage property in Knox County, Tennessee (Tract No. XKOC–1B).

E3. Abandonment of a portion of the right-of-way easement affecting approximately 3.02 acres of land on the Lonsdale-Alcoa transmission line in Blount County, Tennessee (Tract No. NA–188).

Unclassified

F1. Filing of condemnation cases.

Information Items

1. Revision to the price schedule for commodity-based power arrangements with SKW Metals an Alloys, Inc.

2. Joint marketing agreement with Tata Electric Companies.

3. Business Practice 9, Management of TVA's Supply Chain Process.

4. Grant of easement affecting approximately 1 acre of land on Norris Lake for a fire station in Union County, Tennessee (Tract No. XTNR–111B).

5. New investment managers and management agreements between the TVA Retirement System and Wellington Management Company, LLP, and Goldman Sachs Asset Management.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: March 19, 1997.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 97–7447 Filed 3–20–97; 11:07 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–12]

WTO Dispute Settlement Proceeding Regarding Section 609 of Public Law 101–162

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the governments of Malaysia, Thailand, Pakistan and India have requested the establishment of dispute settlement panels under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine certain measures of the United States pursuant to Section 609 of Public Law 101–162 (Section 609). Section 609 is intended to promote the conservation of certain sea turtle species by restricting the importation of shrimp or shrimp products harvested by methods harmful to sea turtles.

DATES: Although USTR will accept any submissions received during the course of the dispute settlement proceedings, comments should be submitted on or before April 15, 1997 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Office of Monitoring and Enforcement, Room 501, Attn.: Dispute Regarding U.S. Sea Turtle Conservation Law, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Laura Kneale Anderson, Director for Trade and Environment, (202) 395–9590, or William L. Busis, Associate General Counsel, (202) 395–3150.

SUPPLEMENTARY INFORMATION: At the meeting of the WTO Dispute Settlement Body (''DSB'') held on February 25, 1997, a panel was established to examine claims of the governments of Malaysia, Thailand and Pakistan with respect to U.S. sea turtle conservation measures pursuant to Section 609. The European Communities and the governments of Australia, Colombia, Guatemala, Hong Kong, India, Japan, Mexico, Nigeria, Singapore and Sri Lanka indicated their interest to participate in the dispute as third parties. Members of the panel are currently being selected. Under normal circumstances, panels are expected to issue reports detailing their findings within six to nine months after a panel is established.

By letter dated February 25, 1997, the government of India requested the establishment of a panel to examine claims of the government of India with respect to U.S. sea turtle conservation measures pursuant to Section 609. The request of the government of India for the establishment of a panel is on the agenda for the next meeting of the DSB, scheduled for March 20, 1997.

Major Issues Raised by Malaysia, Thailand, Pakistan, and India, and Alleged Legal Basis of Complaint

The government of Malaysia, Thailand, Pakistan and India have asserted that U.S. measures affecting the importation of shrimp pursuant to Section 609 are inconsistent with U.S. obligations under the Marrakesh Agreement Establishing the World Trade Organization, including the General Agreement on Tariffs and Trade 1994 (GATT). In particular, they assert that the U.S. measures are inconsistent with at least (a) GATT Article XI:1 (regarding prohibitions or restrictions on imports); (b) GATT Article I (regarding most-favored-nation treatment); and (c) GATT Article XIII:1 (regarding the non-discriminatory application of import restrictions or prohibitions).

Requirements for Comments

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

A person requesting that information or advice contained in a submission by that person, other than business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2155(g)(2)):

(1) must so designate that information or advice;

(2) must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; and the submissions, or non-confidential summaries of the submissions, to the panel received from other parties to the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the file (Docket No. WTO/D–12, ''U.S. Sea Turtle Conservation Law'') may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–7361 Filed 3–21–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 3/14/97

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2208.

Date filed: March 12, 1997.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Reso 024f—Botswana, Local Currency Fare Changes, Intended effective date: upon government approval.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–7323 Filed 3–21–97; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 14, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2196.

Date filed: March 10, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 7, 1997.

Description: Application of Air Comet, S.A., pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, apply for a foreign air carrier permit to enable AC to operate charter foreign air transportation of persons, property and mail between points in the Kingdom of Spain and points in the United States and authority to operate charter service between the United States and points in other countries pursuant to Part 212 of the Departments Regulations.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–7324 Filed 3–21–97; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 540X)]

CSX Transportation, Inc.—Abandonment Exemption—in Logan County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 10.83-miles of its line of railroad between milepost CLF–51.76 at Sharples and milepost CLF–62.59 at Kelly, in Logan County, WV.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the 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 April 23, 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 1152.29[3] must be filed by April 3, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 14, 1997, with: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423.[4]

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT 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 March 28, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. 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.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by March 28, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 14, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–7370 Filed 3–21–97; 8:45 am]

BILLING CODE 4915–00–P

[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] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

[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.

[4] This is the Board's address after March 16, 1997.

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice.

SUMMARY: In order to comply with the requirements of the Paperwork Reduction Act of 1995, concerning new information collection requirements, the Financial Crimes Enforcement Network (FinCEN) is soliciting comments concerning Internal Revenue Service (IRS) Form 8852, Currency Transaction Report by Casinos—Nevada (''CTRC–N'') which will be filed for currency transactions conducted by, at, or through Nevada casinos.

DATES: Written comments must be received on or before May 23, 1997.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Regulatory Policy and Enforcement, Attn.: CTRC–N Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536. Comments may also be submitted by

Internet e-mail to RegComments@fincen.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to Leonard Senia, Senior Financial Enforcement Officer; Office of Regulatory Policy and Enforcement, (703) 905–3931, or by inquiry to the Internet e-mail address shown above. A copy of the CTRC–N form, as well as all other forms required by the Bank Secrecy Act, can be obtained through the Internet at http://www.irs.ustreas.gov/prod/forms-pubs/forms.html.

SUPPLEMENTARY INFORMATION: The Currency and Foreign Transactions Reporting Act (commonly known as the Bank Secrecy Act) Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5326, 5328–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (BSA) (codified at 31 U.S.C. 5311–5314, 5316–5326, 5328–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA regulations has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically authorizes the Secretary to issue regulations that require a report when ''a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes * * *'' See 31 U.S.C. 5313(a). The BSA also defines casinos as financial institutions. 31 U.S.C. 5312(a)(2)(X). *See* 31 CFR 103.11(n)(7)(i). The authority of 31 U.S.C. 5313(a) to require domestic financial institutions to report certain transactions has been implemented through regulations promulgated at 31 CFR 103.22(a)(2) and 31 CFR 103.45(c)(2)(ii) and, in part, through instructions to the CTRC–N, IRS Form 8852.

Information collected on the CTRC–N is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is used for regulatory purposes and in investigations involving international and domestic money laundering, tax violations, fraud, and other financial crimes.

This notice proposes a new information collection requirement, on Form 8852 and its accompanying instructions, which will replace existing currency reporting requirements for Nevada casinos. Currently, Nevada casinos meet reporting requirements by filing reports on state forms entitled ''Currency Transaction Report'' (CTR) and ''Currency Transaction Incidence Report'' (CTIR). Form 8852 will ensure greater consistency between currency transaction information to be reported by Nevada casinos on the new form, and that to be reported by other state and tribal casinos on revised Form 8362, Currency Transaction Report by Casinos. Form 8362 is used by all casinos, with gross annual gaming revenue in excess of $1 million, except for those in Nevada. However, Form 8852 also was designed to take into account, among other things, that some of the transaction types reportable on Form 8362 are prohibited by Nevada Regulation 6A, ''Cash Transactions Prohibitions, Reporting and Recordkeeping'' and thus would not lend themselves to reporting.

FinCEN has requested that a different OMB Control Number be assigned for this collection requirement than the OMB Control Number assigned for Form 8362. This will facilitate FinCEN's oversight over its Bank Secrecy Act information collection requirements by obtaining a unique OMB Control Number for each specific form.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on Form 8852 is presented to assist those persons wishing to comment on the information collection. The estimates below are based on 1996 filings of Nevada CTRs and CTIRs.

Title: Currency Transaction Report by Casinos—Nevada.

Form Number: IRS Form 8852.

OMB Number: To be assigned.

Description of Respondents: All Nevada casinos, with gross annual gaming revenue in excess of $10 million and having an annual table games statistical win in excess of $2 million.

Estimated Number of Respondents: 94.

Estimated Number of Annual Responses: 70,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate=22,167 hours; recordkeeping burden estimate=5,833 hours. Estimated combined total of 28,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $560,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Request: New information collection.

REQUEST FOR COMMENTS: FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Responses to the questions posed by this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: March 17, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–7365 Filed 3–21–97; 8:45 am]

BILLING CODE 4820–03–P

Federal Register

Monday
March 24, 1997

Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1300, et al.

Consolidation, Elimination, and Clarification of Various Regulations; Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, and 1316

[DEA Number 139F]

RIN NUMBER 1117–AA33

Consolidation, Elimination, and Clarification of Various Regulations

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Acting Deputy Administrator of the Drug Enforcement Administration to institute the proposed changes to Title 21, Code of Federal Regulations, Parts 1300 through 1316, published in the **Federal Register** on March 5, 1996 (61 FR 8503). In concert with the President's National Performance Review, Regulatory Reinvention Initiative (NPR), DEA proposed to consolidate, eliminate, and clarify many of its regulations; to address areas of confusion frequently raised by the pharmaceutical, chemical, and health care industries; and to correct inaccurate citations, office designations, and typographical errors.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On March 5, 1996, DEA published in the **Federal Register** a notice of proposed rule making (NPRM) entitled Consolidation, Elimination, and Clarification of Various Regulations (61 FR 8503). This NPRM was the culmination of a comprehensive review of Title 21, Code of Federal Regulations (21 CFR), parts 1300 through 1316. Title 21 contains the rules and regulations by which DEA implements the Controlled Substances Act, the Narcotic Addict Treatment Act, the Controlled Substances Import/Export Act, the Chemical Diversion and Trafficking Act, and the Domestic Chemical Diversion Control Act. DEA undertook this review to update, simplify, and consolidate its regulations in concert with the President's Regulatory Reform Initiative under the NPR; to clarify areas of confusion which have been raised by the pharmaceutical, chemical, and health care industries; and to correct inaccurate citations, office designations, and typographical errors. In so doing it was DEA's intention to reduce some of the regulatory burden on the affected industries. Interested parties were given 120 days to submit written comments regarding the proposed rule.

Comments

Twenty-five organizations submitted comments in response to the proposed rule. One organization expressed support for the entire proposed rule as published, two others expressed support for one specific element within the proposal with no further substantive comment, and six others expressed their support for the comments submitted by their industry trade group. These and the comments of the other sixteen respondents are addressed below.

Part 1300

Two commentors expressed their support for the consolidation of the definitions in new §§ 1300.01 and 1300.02. One commentor suggested that the definition of ''home infusion pharmacy'' be deleted as unnecessary because all retail pharmacies are qualified to provide home infusion services, and the expression ''compounds for intramuscular infusion'' is confusing since the commentor was unaware of any pharmacy which actually compounds, as opposed to dispenses, intramuscular infusion solutions. DEA agrees that a definition of home infusion pharmacy is unnecessary as the distinction between home infusion services and other dispensing activities is adequately addressed within § 1306.11(e), which permits the retention of faxed Schedule II prescriptions as original documents for home infusion prescriptions. Therefore, the definition of home infusion pharmacy will be removed from § 1300.01 and the words ''home infusion pharmacy'' in § 1306.11(e) will be replaced by the word ''pharmacy.'' When the original rule was published, DEA determined that there were in fact pharmacies which compound solutions for intramuscular injection. Even if this activity is no longer being performed by pharmacies, keeping this phrase in the definition allows for the possibility that in the future such activities may again be conducted.

One commentor recommended that the definition of ''inventory'' be modified to include the terms ''bulk active drug substance, in-process materials (work in progress), and finished dosage form inventory.'' This definition, which was previously contained in part 1303, was not changed as part of this proposed rule and will, therefore, remain unchanged in the Final Rule. However, due to this comment and other questions previously raised by industry, a new definition of ''inventory'' will be published for comment in the near future.

One commentor expressed the opinion that the definitions of ''hearing'', ''interested person'', and ''proceeding'' are unclear with respect to proceedings pursuant to 21 U.S.C. 952; that a definition of research be added which is in accordance with DEA's Policy Statement on Coincident Activities of Researchers, 60 FR 55310 (10/31/95); that the definitions which are repeated in §§ 1300.01 and 1300.02 be removed from one of the sections; and that the references to ''this section'' in § 1300.02(b)(12) and to ''this part'' in § 1300.02(b)(28)(i)(B) are unclear. DEA does not agree that the definitions of ''hearing'', ''interested person'', and ''proceeding'' are not sufficiently clear. These definitions were not changed as part of the proposal and are sufficiently precise to fulfill their intended purpose.

Since the only ambiguity regarding the term ''research'' addressed in the cited Policy Statement related to whether certain manufacturing activities may be conducted as coincident activities of a researcher registration or require a manufacturer registration, a statement consistent with the espoused policy will be added to the table of coincident activities, § 1301.13(e)(1)(v), noting that dosage form development is not an authorized coincident activity of a researcher registration.

The purpose of providing two sets of definitions, one for controlled substance handlers and one for chemical handlers, was to direct an interested person to a single source for all definitions relevant to that person's business activity. Therefore, it was deemed more appropriate and less confusing to repeat those few definitions which are common to both groups rather than to compel each person to identify which definitions pertain to them. The reference to ''this section'' in § 1300.02(b)(12) will be replaced with the phrase ''for purposes of this definition'' and the reference to ''this part'' in § 1300.02(b)(28)(i)(B) will be changed to reflect the part to which it refers, i.e. part 1310.

Part 1301

Two commentors expressed support for the proposed change to § 1301.21, Exemptions to Registrations and Fees. Another commentor expressed support for the proposal to extend the renewal period for bulk manufacturers to 120 days contained in § 1301.13. One commentor stated that references to the

''Secretary'' in § 1301.32 are unclear; the reference to ''these substances'' in § 1301.34(b)(3) should be clarified; the reference to ''hearing'' in § 1301.35(b) could be misinterpreted as referring to third-party hearings and recommended that the phrase ''in response to a show cause order'' be added; § 1301.42 should reference the possibility that the hearing could involve the granting of any application for registration to import by adding the phrase ''to import or'' after the words ''for registration''; and § 1301.46 should be clarified to indicate that if an application for registration to import a Schedule I or II substance is granted, the order should include an explanation of the basis for such granting by adding the phrase ''to import or'' after the words ''for registration''. The references in § 1301.32 will be changed to identify the individual in question as the Secretary of Health and Human Services; the term ''these substances'' comes directly from the applicable statute and, therefore, cannot be changed by regulation; the phrase ''in response to a show cause order'' will be added to § 1301.35(b); and the phrase ''to import or'' will be added to §§ 1301.42 and 1301.46.

Part 1304

Two comments were received supporting the acceptability of filing Schedule III-V prescriptions without marking them with a red ''C'' if the pharmacy can retrieve certain information with its data processing system as required by § 1304.04(h)(2). One commentor recommended that the sentence ''Registrants who desire to continue maintaining central records will make notification to the local Special Agent in Charge as provided in paragraph (a) of this section'' be removed from § 1304.04(e). This sentence was in fact removed in the proposed rule.

Two commentors supported the change to § 1304.11(c) which allows a registrant to conduct its biennial inventory on any date within two years from the date of its previous biennial inventory. One of these commentors noted that the proposed regulatory language implementing the proposed rule had not changed. The corrected language was published in the **Federal Register** on March 21, 1996 (61 FR 11594). One commentor suggested that the requirements of § 1304.11(e)(3)(ii) were misstated. The commentor believed that DEA was intending to require dispensers and researchers to make an exact inventory count of Schedule III–V drugs in opened containers when the containers held fewer than 1,000 tablets or capsules, and an estimate if the containers held more than 1,000. The language in the proposed rule, which is unchanged from the existing regulation, is correct as stated in the proposed rule.

Two comments were received which recommended that the terms ''receipt'' and ''distribution'' contained in §§ 1304.22(a)(2)(iv) and 1304.22(a)(2)(vii) be changed to ''acquisition to inventory'' and ''reduction from inventory'' for purposes of clarity and consistency with the terms used for ARCOS reporting. The recommended terms will be incorporated into those sections.

Four commentors expressed their support for the change to § 1304.33 which puts ARCOS reporting on a quarterly rather than a monthly schedule. One commentor recommended that § 1304.33(b) be modified to specify that controlled substances in the various stages of production be included in the year-end ARCOS inventory. The language in the current regulation indicating that registrants should identify whether each reported substance is in storage or in process of manufacturing was inadvertently omitted and will be reinstated. The final rule will also be amended to permit quarterly reporting, as well as annual reporting, of manufacturing transactions if the reporting registrant so chooses.

Part 1305

One commentor objected to the removal of the information from the regulations which is contained on the back of DEA–222 Order Forms, as this information might be needed at a training site which is a non-registered location and, therefore, would be unavailable for reference purposes. When needed for training or other off-site purposes, the backs of the order forms containing the requisite information could be photocopied and provided to students at least as easily as providing copies of the CFR. Therefore, the information will be deleted as originally proposed.

One commentor suggested that the phrase used in § 1305.06(b), ''last line completed,'' was inconsistent with the recently changed term used on the DEA–222 Order Forms themselves. The commentor is correct. The phrase used on the Order Forms, ''No. of lines completed,'' was adopted recently for purposes of clarity and has been substituted in the final rule for the language contained in the proposed rule. Another commentor recommended that § 1305.06(b) be modified to acknowledge that some substances may require more than one line to fully describe the substance being ordered. DEA believes that the amount of space provided on a single line is generally sufficient to completely identify the controlled substance. This same commentor recommended that § 1305.09(e) be amended to explain that an item on an Order Form can be partially filled with less but not more than the quantity ordered. The paragraph in question states that a purchaser must record the date and quantity of the items received on copy 3 of the Order Form. The statement being recommended for inclusion in paragraph (e) is clearly and appropriately contained in paragraph (b) of this section which relates to what can be supplied. This commentor also recommended that § 1305.11(a)(1) be modified to explain when an Order Form is not ''complete.'' DEA believes that the term ''complete'' is self-explanatory, i.e. the purchaser must enter all the information called for in the spaces provided except those that specifically state that the information is to be filled in by the supplier.

Part 1306

Five commentors expressed support for the extension of time to 7 days from 72 hours within which pharmacies must obtain written prescriptions to cover emergency oral prescriptions for Schedule II controlled substances, as required by § 1306.11(d)(4).

Five comments were received regarding the proposal to allow pharmacies to retain faxed Schedule II prescription records as original documents for patients in a home hospice setting. One commentor supported the change without further elaboration. A second commentor recommended that the terms ''terminal illness'' or ''terminally ill'' be substituted for the word ''hospice,'' so as to make the rule less restrictive; if the terms hospice or home hospice were retained, it was recommended that they be defined. The last three commentors suggested that the rule be changed to allow pharmacies to accept faxed Schedule II prescriptions for individuals in all hospice settings, not just individuals in home hospice settings who have been released from registered institutions and are receiving daily skilled nursing care. It was suggested by two of these commentors that this would be best achieved by replacing the relevant language in the proposed rule with the phrase: ''a hospice certified by Medicare under Title XVIII or licensed by the state.'' As stated in the proposed rule, it was DEA's intention to allow faxed Schedule II prescriptions to be retained as original documents in order

to ease the recordkeeping burden for physicians and pharmacies for non-institutionalized patients who require frequent and/or unanticipated changes in their Schedule II narcotic medication. It was DEA's belief that individuals residing in a hospice facility licensed by the state would already be covered by the existing exception to the rule afforded to patients residing in Long Term Care Facilities. This proposal was directed at individuals who require a similar level of care but reside at home rather than in an institution. However, based on the comments received and to insure that no properly affected individuals will be inadvertently excluded from the exception, the recommended phrase, ''a hospice certified by Medicare under Title XVIII or licensed by the state,'' will be incorporated into the final rule.

Two commentors expressed support for the removal of the requirement, previously contained in § 1306.13(b), that a pharmacist determine that subsequent partial fillings of Schedule II prescriptions for patients in Long Term Care Facilities are still necessary. One commentor pointed out that a sentence was needlessly repeated in this paragraph; one of which will be removed.

Two commentors voiced their support for the proposal to permit Schedule III–V prescription information to be transferred for refill purposes up to the maximum number of times authorized by the physician among pharmacies sharing a real-time, on-line electronic database.

Part 1308

One commentor disagreed with the proposal to remove the tables of exempted and excluded products from §§ 1308.24, 1308.26, 1308.32, and 1308.34. This commentor expressed concern that by removing the tables, DEA would not be obligated to publish changes to the tables as they occur, thus denying interested parties an opportunity to comment and/or adapt operations as needed. The requirement to publish all approvals of exempted and excluded products in the **Federal Register** in order to allow an opportunity for comment remains unchanged in the following sections: 1308.23(e), 1308.25(c), 1308.31(c), and 1308.33(d). The tables will continue to be published for comment in the **Federal Register** each year. Therefore, the proposal to remove these tables will have no effect on the ability of interested parties to comment and/or adapt their operations. Another commentor suggested that the rule be modified to require DEA to provide state scheduling authorities which do not receive the **Federal Register** separate notification of changes to the lists of exempted and excluded products. States which do not receive copies of the **Federal Register** directly can request updated lists from the local DEA office or from DEA Headquarters.

Part 1316

Four commentors expressed support for the change to § 1316.13 which replaces the present schedule of administrative inspections with a system whereby the frequency of inspections will be determined by factors such as the prior history of the registrant, the potential for diversion, and the existence of pharmaceutical controlled substances found in the illicit market. Three of these commentors suggested adding a requirement that an exit interview be conducted at the completion of the investigation. Although it is DEA policy to conduct an exit interview, there are occasions when it would be premature and/or inadvisable to discuss results at the completion of the on-site portion of the investigation. Therefore, DEA declines to add such a requirement.

In the proposed rule the table of registration categories under § 1301.13(e)(1)(iv) incorrectly included instructing as an authorized activity with Schedule I substances. The words ''or Instructing'' are being removed in the Final Rule. In the proposed rule § 1304.22(c) should have included a reference to paragraph (a)(2)(vii) of this section which will be inserted in the Final Rule. In the proposed rule the authority citation for subpart A of part 1316 omitted Section ''830(a)'' of 21 U.S.C. inadvertently. It is being reinstated in the Final Rule. A typographical error in § 1316.12 which was overlooked for correction in the proposed rule is being corrected in the Final Rule; the reference should read ''21 U.S.C. 842(a)(6)'' not ''21 U.S.C. (a)(6).''

In addition to the comments previously discussed, several commentors also identified typographical errors in the proposed rule which will be corrected in the final rule.

Five of the commentors took this occasion to recommend that DEA adopt new regulations and procedures in a number of areas that go beyond what was published in the proposed rule. A number of these are matters of internal procedures which do not require regulatory changes and are under development and discussion with the commentors, e.g. batch certification and renewal of applications. Several recommendations addressed issues which were not part of this rulemaking and since other interested parties have not been given an opportunity to comment on them, were not considered, e.g. permitting pharmacies to receive controlled substances from LTCFs for disposal purposes, requiring hospitals to provide suffix information for affiliated practitioners, adding an Affidavit for Power of Attorney to allow pharmacies to be operated by an acquirer under the existing registration pending approval of the new application.

Several commentors recommended that the regulations be changed to permit registered distributors to utilize cross-docking/freight-forwarding facilities. Although this was not part of the proposed rule, on December 18, 1996, DEA published a proposed rule to permit such activities. Still other commentors proposed changes which would modify specific requirements mandated by law and, therefore, cannot be altered by regulation, e.g. written prescriptions for Schedule II controlled substances. As was stated in the proposed rule, DEA is committed to constant self-examination, responsiveness to technological innovation, and working with industry to develop effective and minimally intrusive methods of preventing and detecting the diversion of controlled substances. The comments which suggested additional changes not proposed as part of this NPRM will be evaluated and, where appropriate, addressed in future meetings and conferences with the regulated industry.

The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) as amended by the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121), has reviewed this final rule and based on the supplemental information above certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This final rule imposes no additional regulatory burdens on small businesses. To the contrary, it is primarily intended to streamline and simplify various regulations in order to provide regulatory relief to registrants. Various regulations and reports were either eliminated or reduced to allow greater flexibility in complying with existing requirements. For example, the frequency of reports to ARCOS were reduced to quarterly from monthly; some pharmacies will be permitted to transfer prescription information for refill purposes more frequently; all pharmacies will be permitted to retain faxed prescriptions as original

documents for hospice patients; pharmacies will no longer be required to determine if additional partial fillings of prescriptions are necessary for patients in LTCFs; and all registrants will be given the flexibility to establish the date for their biennial inventory.

This rulemaking has been drafted in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget has reviewed this final rule and determined that it is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on 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.

List of Subjects in 21 CFR Parts 1300–1316

Administrative practice and procedure, Drug traffic control, Exports, Imports, Labeling, List I and List II chemicals, Narcotics, Packaging and containers, Prescription drugs, Reporting requirements, Research, Security measures, Seizures and forfeitures.

For the reasons stated in the preamble, 21 CFR Ch. II is amended as follows:

21 CFR part 1300 is added to read as follows:

PART 1300—DEFINITIONS

Sec.

Authority: 21 U.S.C. 802, 871(b), 951, 958(f)

§ 1300.01 Definitions relating to controlled substances.

(a) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802), except that certain terms used in part 1316 of this chapter are defined at the beginning of each subpart of that part.

(b) As used in parts 1301 through 1308 and part 1312 of this chapter, the following terms shall have the meanings specified:

(1) The term *Act* means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951).

(2) The term *Administration* means the Drug Enforcement Administration.

(3) The term *Administrator* means the Administrator of the Drug Enforcement Administration. The Administrator has been delegated authority under the Act by the Attorney General (28 CFR 0.100).

(4) The term *anabolic steroid* means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

(i) Boldenone;

(ii) Chlorotestosterone (4-chlortestosterone);

(iii) Clostebol;

(iv) Dehydrochlormethyltestosterone;

(v) Dihydrotestosterone (4-dihydrotestosterone);

(vi) Drostanolone;

(vii) Ethylestrenol;

(viii) Fluoxymesterone;

(ix) Formebulone (formebolone);

(x) Mesterolone;

(xi) Methandienone;

(xii) Methandranone;

(xiii) Methandriol;

(xiv) Methandrostenolone;

(xv) Methenolone;

(xvi) Methyltestosterone;

(xvii) Mibolerone;

(xviii) Nandrolone;

(xix) Norethandrolone;

(xx) Oxandrolone;

(xxi) Oxymesterone;

(xxii) Oxymetholone;

(xxiii) Stanolone;

(xxiv) Stanozolol;

(xxv) Testolactone;

(xxvi) Testosterone;

(xxvii) Trenbolone; and

(xxviii) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(5) The term *basic class* means, as to controlled substances listed in Schedules I and II:

(i) Each of the opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, listed in § 1308.11(b) of this chapter;

(ii) Each of the opium derivatives, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in § 1308.11(c) of this chapter;

(iii) Each of the hallucinogenic substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in § 1308.11(d) of this chapter;

(iv) Each of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;

(B) Apomorphine;

(C) Codeine;

(D) Etorphine hydrochloride;

(E) Ethylmorphine;

(F) Hydrocodone;

(G) Hydromorphone;

(H) Metopon;

(I) Morphine;

(J) Oxycodone;

(K) Oxymorphone;

(L) Thebaine;

(M) Mixed alkaloids of opium listed in Section 1308.12(b)(2) of this chapter;

(N) Cocaine; and

(O) Ecgonine;

(v) Each of the opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, listed in § 1308.12(c) of this chapter; and

(vi) Methamphetamine, its salts, isomers, and salts of its isomers;

(vii) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(viii) Phenmetrazine and its salts;

(ix) Methylphenidate;

(x) Each of the substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in § 1308.12(e) of this chapter.

(6) The term *commercial container* means any bottle, jar, tube, ampule, or other receptacle in which a substance is

held for distribution or dispensing to an ultimate user, and in addition, any box or package in which the receptacle is held for distribution or dispensing to an ultimate user. The term commercial container does not include any package liner, package insert or other material kept with or within a commercial container, nor any carton, crate, drum, or other package in which commercial containers are stored or are used for shipment of controlled substances.

(7) The term *compounder* means any person engaging in maintenance or detoxification treatment who also mixes, prepares, packages or changes the dosage form of a narcotic drug listed in Schedules II, III, IV or V for use in maintenance or detoxification treatment by another narcotic treatment program.

(8) The term *controlled substance* has the meaning given in section 802(6) of Title 21, United States Code (U.S.C.).

(9) The term *customs territory* of the United States means the several States, the District of Columbia, and Puerto Rico.

(10) The term *detoxification treatment* means the dispensing, for a period of time as specified below, of a narcotic drug or narcotic drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. There are two types of detoxification treatment: Short-term detoxification treatment and long-term detoxification treatment.

(i) Short-term detoxification treatment is for a period not in excess of 30 days.

(ii) Long-term detoxification treatment is for a period more than 30 days but not in excess of 180 days.

(11) The term *dispenser* means an individual practitioner, institutional practitioner, pharmacy or pharmacist who dispenses a controlled substance.

(12) The term *export* means, with respect to any article, any taking out or removal of such article from the jurisdiction of the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the customs and related laws of the United States).

(13) The term *exporter* includes every person who exports, or who acts as an export broker for exportation of, controlled substances listed in any schedule.

(14) The term *hearing* means:

(i) In part 1301 of this chapter, any hearing held for the granting, denial, revocation, or suspension of a registration pursuant to sections 303, 304, and 1008 of the Act (21 U.S.C. 823, 824 and 958).

(ii) In part 1303 of this chapter, any hearing held regarding the determination of aggregate production quota or the issuance, adjustment, suspension, or denial of a procurement quota or an individual manufacturing quota.

(iii) In part 1308 of this chapter, any hearing held for the issuance, amendment, or repeal of any rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).

(15) The term *import* means, with respect to any article, any bringing in or introduction of such article into either the jurisdiction of the United States or the customs territory of the United States, and from the jurisdiction of the United States into the customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(16) The term *importer* includes every person who imports, or who acts as an import broker for importation of, controlled substances listed in any schedule.

(17) The term *individual practitioner* means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(18) The term *institutional practitioner* means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(19) The term *interested person* means any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).

(20) The term *inventory* means all factory and branch stocks in finished form of a basic class of controlled substance manufactured or otherwise acquired by a registrant, whether in bulk, commercial containers, or contained in pharmaceutical preparations in the possession of the registrant (including stocks held by the registrant under separate registration as a manufacturer, importer, exporter, or distributor).

(21) The term *isomer* means the optical isomer, except as used in § 1308.11(d) and § 1308.12(b)(4) of this chapter. As used in § 1308.11(d) of this chapter, the term isomer means the optical, positional, or geometric isomer. As used in § 1308.12(b)(4) of this chapter, the term isomer means the optical or geometric isomer.

(22) The term *jurisdiction of the United States* means the customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

(23) The term *label* means any display of written, printed, or graphic matter placed upon the commercial container of any controlled substance by any manufacturer of such substance.

(24) The term *labeling* means all labels and other written, printed, or graphic matter:

(i) Upon any controlled substance or any of its commercial containers or wrappers, or

(ii) Accompanying such controlled substance.

(25) The term *Long Term Care Facility (LTCF)* means a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients.

(26) The term *maintenance treatment* means the dispensing for a period in excess of twenty-one days, of a narcotic drug or narcotic drugs in the treatment of an individual for dependence upon heroin or other morphine-like drug.

(27) The term *manufacture* means the producing, preparation, propagation, compounding, or processing of a drug or other substance or the packaging or repackaging of such substance, or the labeling or relabeling of the commercial container of such substance, but does not include the activities of a practitioner who, as an incident to his/her administration or dispensing such substance in the course of his/her professional practice, prepares, compounds, packages or labels such substance. The term *manufacturer* means a person who manufactures a drug or other substance, whether under a registration as a manufacturer or under authority of registration as a researcher or chemical analyst.

(28) The term *mid-level practitioner* means an individual practitioner, other than a physician, dentist, veterinarian, or podiatrist, who is licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices, to dispense a controlled substance in the course of professional practice. Examples of mid-level practitioners include, but are not limited to, health care providers such as nurse practitioners, nurse midwives,

nurse anesthetists, clinical nurse specialists and physician assistants who are authorized to dispense controlled substances by the state in which they practice.

(29) The term *name* means the official name, common or usual name, chemical name, or brand name of a substance.

(30) The term *narcotic drug* means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(i) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(ii) Poppy straw and concentrate of poppy straw.

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed.

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(v) Ecgonine, its derivatives, their salts, isomers and salts of isomers.

(vi) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(31)(i) through (v) of this section.

(31) The term *narcotic treatment program* means a program engaged in maintenance and/or detoxification treatment with narcotic drugs.

(32) The term *net disposal* means, for a stated period, the quantity of a basic class of controlled substance distributed by the registrant to another person, plus the quantity of that basic class used by the registrant in the production of (or converted by the registrant into) another basic class of controlled substance or a noncontrolled substance, plus the quantity of that basic class otherwise disposed of by the registrant, less the quantity of that basic class returned to the registrant by any purchaser, and less the quantity of that basic class distributed by the registrant to another registered manufacturer of that basic class for purposes other than use in the production of, or conversion into, another basic class of controlled substance or a noncontrolled substance or in the manufacture of dosage forms of that basic class.

(33) The term *pharmacist* means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State.

(34) The term *person* includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.

(35) The term *prescription* means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

(36) The term *proceeding* means all actions taken for the issuance, amendment, or repeal of any rule issued pursuant to section 201 of the Act (21 U.S.C. 811), commencing with the publication by the Administrator of the proposed rule, amended rule, or repeal in the **Federal Register**.

(37) The term *purchaser* means any registered person entitled to obtain and execute order forms pursuant to Section 1305.04 and Section 1305.06.

(38) The term *readily retrievable* means that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(39) The terms *register* and *registration* refer only to registration required and permitted by sections 303 or 1007 of the Act (21 U.S.C. 823 or 957).

(40) The term *registrant* means any person who is registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823 or 958).

(41) The term *supplier* means any registered person entitled to fill order forms pursuant to § 1305.08 of this chapter.

§ 1300.02 Definitions relating to listed chemicals.

(a) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802), except that certain terms used in part 1316 of this chapter are defined at the beginning of each subpart of that part.

(b) As used in parts 1309, 1310, and 1313 of this chapter, the following terms shall have the meaning specified:

(1) The term *Act* means the Controlled Substances Act, as amended (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act, as amended (84 Stat. 1285; 21 U.S.C. 951) as amended.

(2) The term *Administration* means the Drug Enforcement Administration.

(3) The term *Administrator* means the Administrator of the Drug Enforcement Administration. The Administrator has been delegated authority under the Act by the Attorney General (28 CFR 0.100).

(4) The terms *broker* and *trader* mean any individual, corporation, corporate division, partnership, association, or other legal entity which assists in arranging an international transaction in a listed chemical by—

(i) Negotiating contracts;

(ii) Serving as an agent or intermediary; or

(iii) Fulfilling a formal obligation to complete the transaction by bringing together a buyer and seller, a buyer and transporter, or a seller and transporter, or by receiving any form of compensation for so doing.

(5) The term *chemical* export means transferring ownership or control, or the sending or taking of threshold quantities of listed chemicals out of the United States (whether or not such sending or taking out constitutes an exportation within the meaning of the Customs and related laws of the United States).

(6) The term *chemical exporter* is a regulated person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the listed chemical out of the United States.

(7) The term *chemical import* means with respect to a listed chemical, any bringing in or introduction of such listed chemical into either the jurisdiction of the United States or into the Customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(8) The term *chemical importer* is a regulated person who, as the principal party in interest in the import transaction, has the power and responsibility for determining and controlling the bringing in or introduction of the listed chemical into the United States.

(9) The term *chemical mixture* means a combination of two or more chemical substances, at least one of which is not a listed chemical, except that such term does not include any combination of a listed chemical with another chemical that is present solely as an impurity or

which has been created to evade the requirements of the Act.

(10) The term *customs territory of the United States* means the several States, the District of Columbia, and Puerto Rico.

(11) The term *encapsulating machine* means any manual, semi-automatic, or fully automatic equipment which may be used to fill shells or capsules with any powdered, granular, semi-solid, or liquid material.

(12) The term *established business relationship with a foreign customer* means the regulated person has exported a listed chemical at least once within the past six months, or twice within the past twelve months to a foreign manufacturer, distributor, or end user of the chemical that has an established business in the foreign country with a fixed street address. A person or business which functions as a broker or intermediary is not a customer for purposes of this definition. The term also means that the regulated person has provided the Administration with the following information in accordance with the waiver of 15-day advance notice requirements of § 1313.24 of this chapter:

(i) The name and street address of the chemical exporter and of each regular customer;

(ii) The telephone number, telex number, contact person, and where available, the facsimile number for the chemical exporter and for each regular customer;

(iii) The nature of the regular customer's business (i.e., importer, exporter, distributor, manufacturer, etc.), and if known, the use to which the listed chemical or chemicals will be applied;

(iv) The duration of the business relationship;

(v) The frequency and number of transactions occurring during the preceding 12-month period;

(vi) the amounts and the listed chemical or chemicals involved in regulated transactions between the chemical exporter and regular customer;

(vii) The method of delivery (direct shipment or through a broker or forwarding agent); and

(viii) Other information that the chemical exporter considers relevant for determining whether a customer is a regular customer.

(13) The term *established record as an importer* means that the regulated person has imported a listed chemical at least once within the past six months, or twice within the past twelve months from a foreign supplier. The term also means that the regulated person has provided the Administration with the following information in accordance with the waiver of the 15-day advance notice requirements of § 1313.15 of this chapter:

(i) The name, DEA registration number (where applicable), street address, telephone number, telex number, and, where available, the facsimile number of the regulated person and of each foreign supplier; and

(ii) The frequency and number of transactions occurring during the preceding 12 month period.

(14) The term *hearing* means any hearing held for the granting, denial, revocation, or suspension of a registration pursuant to sections 303, 304, and 1008 of the Act (21 U.S.C. 823, 824 and 958).

(15) The term *international transaction* means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

(16) The term *jurisdiction of the United States* means the customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

(17) The term *listed chemical* means any List I chemical or List II chemical.

(18) The term *List I chemical* means a chemical specifically designated by the Administrator in § 1310.02(a) of this chapter that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act and is important to the manufacture of a controlled substance.

(19) The term *List II chemical* means a chemical, other than a List I chemical, specifically designated by the Administrator in § 1310.02(b) of this chapter that, in addition to legitimate uses, is used in manufacturing a controlled substance in violation of the Act.

(20) The term *name* means the official name, common or usual name, chemical name, or brand name of a substance.

(21) The term *person* includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.

(22) The term *readily retrievable* means that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(23) The terms *register* and *registration* refer only to registration required and permitted by sections 303 or 1007 of the Act (21 U.S.C. 823 or 957).

(24) The term *registrant* means any person who is registered pursuant to either section 303 or section 1008 of the Act (21 U.S.C. 823 or 958).

(25) The term *regular customer* means a person with whom the regulated person has an established business relationship for a specified listed chemical or chemicals that has been reported to the Administration subject to the criteria established in § 1300.02(b)(12).

(26) The term *regular importer* means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Administrator.

(27) The term *regulated person* means any individual, corporation, partnership, association, or other legal entity who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine, or who acts as a broker or trader for an international transaction involving a listed chemical, tableting machine, or encapsulating machine.

(28) The term *regulated transaction* means:

(i) A distribution, receipt, sale, importation, or exportation of a listed chemical, or an international transaction involving shipment of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount for multiple transactions, of a listed chemical, except that such term does not include:

(A) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(B) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or

exporter from compliance with parts 1309, 1310, and 1313 of this chapter;

(C) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(D) Any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act unless—

(*1*) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient. For purposes of this paragraph, the term ''therapeutically insignificant quantities'' shall apply if the product formulation (i.e., the qualitative and quantitative composition of active ingredients within the product) is not listed in any of the following compendiums: American Pharmaceutical Association (Apha) Handbook of Nonprescription Drugs; Drug Facts and Comparisons (published by Wolters Kluwer Company); or USP DI (published by authority of the United States Pharmacopeial Convention, Inc.); or the product is not listed in § 1310.15 of this chapter as an exempt drug product. For drug products having formulations not found in the above compendiums, the Administrator shall determine, pursuant to a written request as specified in § 1310.14 of this chapter, whether the active medicinal ingredients are present in quantities considered therapeutically significant for purposes of this paragraph; or

(*2*) The Administrator has determined pursuant to the criteria in § 1310.10 of this chapter that:

(*i*) The drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(*ii*) The quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Administrator;

(E) Any transaction in a chemical mixture listed in § 1310.13 of this chapter.

(ii) A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such term does not include a domestic lawful distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person.

(29) The term *retail distributor* means a distributor whose List I chemical activities are restricted to the sale of drug products that are regulated as List I chemicals pursuant to § 1300.02(b)(28)(i)(D), directly to walk-in customers for personal use.

(30) The term *tableting machine* means any manual, semi-automatic, or fully automatic equipment which may be used for the compaction or molding of powdered or granular solids, or semi-solid material, to produce coherent solid tablets.

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877, 952, 956, 957, 958, unless otherwise noted.

2. Section 1301.01 is revised to read as follows:

§ 1301.01 Scope of this part 1301.

Procedures governing the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances pursuant to Sections 301–304 and 1007–1008 of the Act (21 U.S.C. 821–824 and 957–958) are set forth generally by those sections and specifically by the sections of this part.

3. Section 1301.02 is revised to read as follows:

§ 1301.02 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

4. Part 1301 is amended by revising §§ 1301.11 through 1301.52 and the undesignated center headings and by removing §§ 1301.53 through 1301.63 and the undesignated center headings:

Registration

Sec.

Exceptions to Registration and Fees

Action on Applications for Registration: Revocation or Suspension of Registration

Hearings

Modification, Transfer, and Termination of Registration

Registration

§ 1301.11 Persons required to register.

(a) Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§ 1301.22–1301.26. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

§ 1301.12 Separate registrations for separate locations.

(a) A separate registration is required for each principal place of business or professional practice at one general physical location where controlled

substances are manufactured, distributed, imported, exported, or dispensed by a person.

(b) The following locations shall be deemed not to be places where controlled substances are manufactured, distributed, or dispensed:

(1) A warehouse where controlled substances are stored by or on behalf of a registered person, unless such substances are distributed directly from such warehouse to registered locations other than the registered location from which the substances were delivered or to persons not required to register by virtue of subsection 302(c)(2) or subsection 1007(b)(1)(B) of the Act (21 U.S.C. 822(c)(2) or 957(b)(1)(B));

(2) An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised but which neither contains such substances (other than substances for display purposes or lawful distribution as samples only) nor serves as a distribution point for filling sales orders; and

(3) An office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his/her registration, except that a bulk manufacturer of Schedule I or II controlled substances or an importer of Schedule I or II controlled substances may apply to be reregistered no more than 120 days before the expiration date of their registration.

(c) At the time a manufacturer, distributor, researcher, analytical lab, importer, exporter or narcotic treatment program is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last date of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is less than one year from the date such business activity was registered. If the business activity is assigned to a group which has an expiration date less than three months from the date of which the business activity is registered, the registration shall not expire until one year from that expiration date; in all other cases, the registration shall expire on the expiration date following the date on which the business activity is registered.

(d) At the time a retail pharmacy, hospital/clinic, practitioner or teaching institution is first registered, that business activity shall be assigned to one of twelve groups, which shall correspond to the months of the year. The expiration date of the registrations of all registrants within any group will be the last day of the month designated for that group. In assigning any of the above business activities to a group, the Administration may select a group the expiration date of which is not less than 28 months nor more than 39 months from the date such business activity was registered. After the initial registration period, the registration shall expire 36 months from the initial expiration date.

(e) Any person who is required to be registered and who is not so registered, shall make application for registration for one of the following groups of controlled substances activities, which are deemed to be independent of each other. Application for each registration shall be made on the indicated form, and shall be accompanied by the indicated fee. Fee payments shall be made in the form of a personal, certified, or cashier's check or money order made payable to the ''Drug Enforcement Administration''. The application fees are not refundable. Any person, when registered to engage in the activities described in each subparagraph in this paragraph, shall be authorized to engage in the coincident activities described without obtaining a registration to engage in such coincident activities, provided that, unless specifically exempted, he/she complies with all requirements and duties prescribed by law for persons registered to engage in such coincident activities. Any person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, except as provided in this paragraph under coincident activities. A single registration to engage in any group of independent activities listed below may include one or more controlled substances listed in the schedules authorized in that group of independent activities. A person registered to conduct research with controlled substances listed in Schedule I may conduct research with any substances listed in Schedule I for which he/she has filed and had approved a research protocol.

(1)

Business activity	Controlled substances	DEA application forms	Application fee (dollars)	Registration period (years)	Coincident activities allowed
(i) Manufacturing	Schedules I through V.	New—225 Renewal—225a	875 875	1	Schedules I through V: May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered. Schedules II through V: May conduct chemical analysis and preclinical research (including quality control analysis) with substances listed in those schedules for which authorization as a manufacturer was issued.
(ii) Distributing	Schedules I through V.	New—225 Renewal—225a	438 438	1	

Business activity	Controlled substances	DEA application forms	Application fee (dollars)	Registration period (years)	Coincident activities allowed
(iii) Dispensing or Instructing (Includes Practitioner Hospital/Clinic, Retail Pharmacy, Teaching Institution).	Schedules II through V.	New—224 ..... Renewal—224a ..	210 210	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under state statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II through V in a proportion not exceeding 20 percent of the complete solution, compound, or mixture.
(iv) Research	Schedule I	New—225 ..... Renewal—225a ..	70 70	1	A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in Section 1301.18 and to distribute such class to persons registered or authorized to conduct research with such class of substance or registered or authorized to conduct chemical analysis with controlled substances.
(v) Research	Schedules II through V.	New—225 ..... Renewal—225a ..	70 70	1	May conduct chemical analysis with controlled substances in those schedules for which registration was issued; manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration or reregistration and provided that the manufacture is not for the purposes of dosage form development; import such substances for research purposes; distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempted from registration pursuant to Section 1301.24; and conduct instructional activities with controlled substances.
(vi) Narcotic Treatment Program (including compounder).	Narcotic Drugs in Schedules II through V.	New—363 ..... Renewal—363a ..	70 70	1	
(vii) Importing	Schedules I through V.	New—225 ..... Renewal—225a ..	438 438	1	May distribute that substance or class for which registration was issued; may not distribute any substance or class for which not registered.
(viii) Exporting	Schedules I through V.	New—225 ..... Renewal—225a ..	438 438	1	

Business activity	Controlled substances	DEA application forms	Application fee (dollars)	Registration period (years)	Coincident activities allowed
(ix) Chemical Analysis	Schedules I through V.	New—225 ..... Renewal—225a ..	70 70	1	May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to Section 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

(2) DEA Forms 224, 225, and 363 may be obtained at any area office of the Administration or by writing to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005.

(3) DEA Forms 224a, 225a, and 363a will be mailed, as applicable, to each registered person approximately 60 days before the expiration date of his/her registration; if any registered person does not receive such forms within 45 days before the expiration date of his/her registration, he/she must promptly give notice of such fact and request such forms by writing to the Registration Unit of the Administration at the foregoing address.

(f) Each application for registration to handle any basic class of controlled substance listed in Schedule I (except to conduct chemical analysis with such classes), and each application for registration to manufacture a basic class of controlled substance listed in Schedule II shall include the Administration Controlled Substances Code Number, as set forth in part 1308 of this chapter, for each basic class to be covered by such registration.

(g) Each application for registration to import or export controlled substances shall include the Administration Controlled Substances Code Number, as set forth in part 1308 of this chapter, for each controlled substance whose importation or exportation is to be authorized by such registration. Registration as an importer or exporter shall not entitle a registrant to import or export any controlled substance not specified in such registration.

(h) Each application for registration to conduct research with any basic class of controlled substance listed in Schedule II shall include the Administration Controlled Substances Code Number, as set forth in part 1308 of this chapter, for each such basic class to be manufactured or imported as a coincident activity of that registration. A statement listing the quantity of each such basic class of controlled substance to be imported or manufactured during the registration period for which application is being made shall be included with each such application. For purposes of this paragraph only, manufacturing is defined as the production of a controlled substance by synthesis, extraction or by agricultural/horticultural means.

(i) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(j) Each application, attachment, or other document filed as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, corporate division, association, trust or other entity. An applicant may authorize one or more individuals, who would not otherwise be authorized to do so, to sign applications for the applicant by filing with the Registration Unit of the Administration a power of attorney for each such individual. The power of attorney shall be signed by a person who is authorized to sign applications under this paragraph and shall contain the signature of the individual being authorized to sign applications. The power of attorney shall be valid until revoked by the applicant.

§ 1301.14 Filing of application; acceptance for filing; defective applications.

(a) All applications for registration shall be submitted for filing to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. The appropriate registration fee and any required attachments must accompany the application.

(b) Any person required to obtain more than one registration may submit all applications in one package. Each application must be complete and should not refer to any accompanying application for required information.

(c) Applications submitted for filing are dated upon receipt. If found to be complete, the application will be accepted for filing. Applications failing to comply with the requirements of this part will not generally be accepted for filing. In the case of minor defects as to completeness, the Administrator may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 10 days following its receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time; the Administrator shall accept for filing any application upon resubmission by the applicant, whether complete or not.

(d) Accepting an application for filing does not preclude any subsequent request for additional information pursuant to § 1301.15 and has no bearing on whether the application will be granted.

§ 1301.15 Additional information.

The Administrator may require an applicant to submit such documents or

written statements of fact relevant to the application as he/she deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Administrator in granting or denying the application.

§ 1301.16 Amendments to and withdrawal of applications.

(a) An application may be amended or withdrawn without permission of the Administrator at any time before the date on which the applicant receives an order to show cause pursuant to § 1301.37. An application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

§ 1301.17 Special procedures for certain applications.

(a) If, at the time of application for registration of a new pharmacy, the pharmacy has been issued a license from the appropriate State licensing agency, the applicant may include with his/her application an affidavit as to the existence of the State license in the following form:

Affidavit for New Pharmacy

I, _____, the _____ (Title of officer, official, partner, or other position) of _____ (Corporation, partnership, or sole proprietor), doing business as _____ (Store name) at _____ (Number and Street), _____ (City) _____ (State) _____ (Zip code), hereby certify that said store was issued a pharmacy permit No. _____ by the _____ (Board of Pharmacy or Licensing Agency) of the State of _____ on _____ (Date).

This statement is submitted in order to obtain a Drug Enforcement Administration registration number. I understand that if any information is false, the Administration may immediately suspend the registration for this store and commence proceedings to revoke under 21 U.S.C. 824(a) because of the danger to public health and safety. I further understand that any false information contained in this affidavit may subject me personally and the above-named corporation/partnership/business to prosecution under 21 U.S.C. 843, the penalties for conviction of which include imprisonment for up to 4 years, a fine of not more than $30,000 or both.

_____

Signature (Person who signs Application for Registration)

State of _____

County of _____

Subscribed to and sworn before me this _____ day of _____, 19_____.

_____

Notary Public

(b) Whenever the ownership of a pharmacy is being transferred from one person to another, if the transferee owns at least one other pharmacy licensed in the same State as the one the ownership of which is being transferred, the transferee may apply for registration prior to the date of transfer. The Administrator may register the applicant and authorize him to obtain controlled substances at the time of transfer. Such registration shall not authorize the transferee to dispense controlled substances until the pharmacy has been issued a valid State license. The transferee shall include with his/her application the following affidavit:

Affidavit for Transfer of Pharmacy

I, _____, the _____ (Title of officer, official, partner or other position) of _____ (Corporation, partnership, or sole proprietor), doing business as _____ (Store name) hereby certify:

(1) That said company was issued a pharmacy permit No._____by the _____ (Board of Pharmacy of Licensing Agency) of the State of _____ and a DEA Registration Number _____ for a pharmacy located at _____ (Number and Street) _____ (City) _____ (State) _____ (Zip Code); and

(2) That said company is acquiring the pharmacy business of _____ (Name of Seller) doing business as_____with DEA Registration Number _____ on or about _____ (Date of Transfer) and that said company has applied (or will apply on _____ (Date) for a pharmacy permit from the board of pharmacy (or licensing agency) of the State of _____ to do business as _____ (Store name) at _____ (Number and Street) _____ (City) _____ (State) _____ (Zip Code).

This statement is submitted in order to obtain a Drug Enforcement Administration registration number.

I understand that if a DEA registration number is issued, the pharmacy may acquire controlled substances but may not dispense them until a pharmacy permit or license is issued by the State board of pharmacy or licensing agency.

I understand that if any information is false, the Administration may immediately suspend the registration for this store and commence proceedings to revoke under 21 U.S.C. 824(a) because of the danger to public health and safety. I further understand that any false information contained in this affidavit may subject me personally to prosecution under 21 U.S.C. 843, the penalties for conviction of which include imprisonment for up to 4 years, a fine of not more than $30,000 or both.

_____

Signature (Person who signs Application for Registration)

State of _____

County of _____

Subscribed to and sworn before me this____day of_____, 19____.

_____

Notary Public

(c) The Administrator shall follow the normal procedures for approving an application to verify the statements in the affidavit. If the statements prove to be false, the Administrator may revoke the registration on the basis of section 304(a)(1) of the Act (21 U.S.C. 824(a)(1)) and suspend the registration immediately by pending revocation on the basis of section 304(d) of the Act (21 U.S.C. 824(d)). At the same time, the Administrator may seize and place under seal all controlled substances possessed by the applicant under section 304(f) of the Act (21 U.S.C. 824(f)). Intentional misuse of the affidavit procedure may subject the applicant to prosecution for fraud under section 403(a)(4) of the Act (21 U.S.C. 843(a)(4)), and obtaining controlled substances through registration by fraudulent means may subject the applicant to prosecution under section 403(a)(3) of the Act (21 U.S.C. 843(a)(3)). The penalties for conviction of either offense include imprisonment for up to 4 years, a fine not exceeding $30,000 or both.

§ 1301.18 Research protocols.

(a) A protocol to conduct research with controlled substances listed in Schedule I shall be in the following form and contain the following information where applicable:

(1) Investigator:

(i) Name, address, and DEA registration number; if any.

(ii) Institutional affiliation.

(iii) Qualifications, including a curriculum vitae and an appropriate bibliography (list of publications).

(2) Research project:

(i) Title of project.

(ii) Statement of the purpose.

(iii) Name of the controlled substances or substances involved and the amount of each needed.

(iv) Description of the research to be conducted, including the number and species of research subjects, the dosage to be administered, the route and method of administration, and the duration of the project.

(v) Location where the research will be conducted.

(vi) Statement of the security provisions for storing the controlled substances (in accordance with § 1301.75) and for dispensing the controlled substances in order to prevent diversion.

(vii) If the investigator desires to manufacture or import any controlled substance listed in paragraph (a)(2)(iii) of this section, a statement of the quantity to be manufactured or imported and the sources of the chemicals to be used or the substance to be imported.

(3) Authority:

(i) Institutional approval.

(ii) Approval of a Human Research Committee for human studies.

(iii) Indication of an approved active Notice of Claimed Investigational Exemption for a New Drug (number).

(iv) Indication of an approved funded grant (number), if any.

(b) In the case of a clinical investigation with controlled substances listed in Schedule I, the applicant shall submit three copies of a Notice of Claimed Investigational Exemption for a New Drug (IND) together with a statement of the security provisions (as proscribed in paragraph (a)(2)(vi) of this section for a research protocol) to, and have such submission approved by, the Food and Drug Administration as required in 21 U.S.C. 355(i) and § 130.3 of this title. Submission of this Notice and statement to the Food and Drug Administration shall be in lieu of a research protocol to the Administration as required in paragraph (a) of this section. The applicant, when applying for registration with the Administration, shall indicate that such notice has been submitted to the Food and Drug Administration by submitting to the Administration with his/her DEA Form 225 three copies of the following certificate:

I hereby certify that on _____ (Date), pursuant to 21 U.S.C. 355(i) and 21 CFR 130.3, I, _____ (Name and Address of IND Sponsor) submitted a Notice of Claimed Investigational Exemption for a New Drug (IND) to the Food and Drug Administration for:

_____

(Name of Investigational Drug).

_____

(Date)

_____

(Signature of Applicant).

(c) In the event that the registrant desires to increase the quantity of a controlled substance used for an approved research project, he/she shall submit a request to the Registration Unit, Drug Enforcement Administration, Post Office Box 28083, Central Station, Washington, DC 20005, by registered mail, return receipt requested. The request shall contain the following information: DEA registration number; name of the controlled substance or substances and the quantity of each authorized in the approved protocol; and the additional quantity of each desired. Upon return of the receipt, the registrant shall be authorized to purchase the additional quantity of the controlled substance or substances specified in the request. The Administration shall review the letter and forward it to the Food and Drug Administration together with the Administration comments. The Food and Drug Administration shall approve or deny the request as an amendment to the protocol and so notify the registrant. Approval of the letter by the Food and Drug Administration shall authorize the registrant to use the additional quantity of the controlled substance in the research project.

(d) In the event the registrant desires to conduct research beyond the variations provided in the registrant's approved protocol (excluding any increase in the quantity of the controlled substance requested for his/her research project as outlined in paragraph (c) of this section), he/she shall submit three copies of a supplemental protocol in accordance with paragraph (a) of this section describing the new research and omitting information in the supplemental protocol which has been stated in the original protocol. Supplemental protocols shall be processed and approved or denied in the same manner as original research protocols.

Exceptions to Registration and Fees

§ 1301.21 Exemption from fees.

(a) The Administrator shall exempt from payment of an application fee for registration or reregistration:

(1) Any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps., Air Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

(2) Any individual practitioner who is required to obtain an individual registration in order to carry out his or her duties as an official of an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

(b) In order to claim exemption from payment of a registration or reregistration application fee, the registrant shall have completed the certification on the appropriate application form, wherein the registrant's superior (if the registrant is an individual) or officer (if the registrant is an agency) certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances.

(c) Exemption from payment of a registration or reregistration application fee does not relieve the registrant of any other requirements or duties prescribed by law.

§ 1301.22 Exemption of agents and employees; affiliated practitioners.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his/her business or employment.

(b) An individual practitioner who is an agent or employee of another practitioner (other than a mid-level practitioner) registered to dispense controlled substances may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself.

(c) An individual practitioner who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself, provided that:

(1) Such dispensing, administering or prescribing is done in the usual course of his/her professional practice;

(2) Such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she is practicing;

(3) The hospital or other institution by whom he/she is employed has verified that the individual practitioner is so permitted to dispense, administer, or prescribe drugs within the jurisdiction;

(4) Such individual practitioner is acting only within the scope of his/her employment in the hospital or institution;

(5) The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized. The code number shall consist of numbers, letters, or a combination thereof and shall be a suffix to the institution's DEA registration number, preceded by a hyphen (e.g., APO123456–10 or APO123456–A12); and

(6) A current list of internal codes and the corresponding individual practitioners is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner.

§ 1301.23 Exemption of certain military and other personnel.

(a) The requirement of registration is waived for any official of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service, or Bureau of Prisons who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his/her official duties. Such officials shall follow procedures set forth in part 1306 of this chapter regarding prescriptions, but shall state the branch of service or agency (e.g., ''U.S. Army'' or ''Public Health Service'') and the service identification number of the issuing official in lieu of the registration number required on prescription forms. The service identification number for a Public Health Service employee is his/her Social Security identification number.

(b) The requirement of registration is waived for any official or agency of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or Public Health Service who or which is authorized to import or export controlled substances in the course of his/her official duties.

(c) If any official exempted by this section also engages as a private individual in any activity or group of activities for which registration is required, such official shall obtain a registration for such private activities.

§ 1301.24 Exemption of law enforcement officials.

(a) The requirement of registration is waived for the following persons in the circumstances described in this section:

(1) Any officer or employee of the Administration, any officer of the U.S. Customs Service, any officer or employee of the United States Food and Drug Administration, and any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to controlled substances, drugs or customs, and is duly authorized to possess or to import or export controlled substances in the course of his/her official duties; and

(2) Any officer or employee of any State, or any political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to controlled substances and is duly authorized to possess controlled substances in the course of his/her official duties.

(b) Any official exempted by this section may, when acting in the course of his/her official duties, procure any controlled substance in the course of an inspection, in accordance with § 1316.03(d) of this chapter, or in the course of any criminal investigation involving the person from whom the substance was procured, and may possess any controlled substance and distribute any such substance to any other official who is also exempted by this section and acting in the course of his/her official duties.

(c) In order to enable law enforcement agency laboratories, including laboratories of the Administration, to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall obtain annually a registration to conduct chemical analysis. Such laboratories shall be exempted from payment of a fee for registration. Laboratory personnel, when acting in the scope of their official duties, are deemed to be officials exempted by this section and within the activity described in section 515(d) of the Act (21 U.S.C. 885(d)). For purposes of this paragraph, laboratory activities shall not include field or other preliminary chemical tests by officials exempted by this section.

(d) In addition to the activities authorized under a registration to conduct chemical analysis pursuant to § 1301.13(e)(1)(ix), laboratories of the Administration shall be authorized to manufacture or import controlled substances for any lawful purpose, to distribute or export such substances to any person, and to import and export such substances in emergencies without regard to the requirements of part 1312 of this chapter if a report concerning the importation or exportation is made to the Drug Operations Section of the Administration within 30 days of such importation or exportation.

§ 1301.25 Registration regarding ocean vessels, aircraft, and other entities.

(a) If acquired by and dispensed under the general supervision of a medical officer described in paragraph (b) of this section, or the master or first officer of the vessel under the circumstances described in paragraph (d) of this section, controlled substances may be held for stocking, be maintained in, and dispensed from medicine chests, first aid packets, or dispensaries:

(1) On board any vessel engaged in international trade or in trade between ports of the United States and any merchant vessel belonging to the U.S. Government;

(2) On board any aircraft operated by an air carrier under a certificate of permit issued pursuant to the Federal Aviation Act of 1958 (49 U.S.C. 1301); and

(3) In any other entity of fixed or transient location approved by the Administrator as appropriate for application of this section (e.g., emergency kits at field sites of an industrial firm).

(b) A medical officer shall be:

(1) Licensed in a state as a physician;

(2) Employed by the owner or operator of the vessel, aircraft or other entity; and

(3) Registered under the Act at either of the following locations:

(i) The principal office of the owner or operator of the vessel, aircraft or other entity or

(ii) At any other location provided that the name, address, registration number and expiration date as they appear on his/her Certificate of Registration (DEA Form 223) for this location are maintained for inspection at said principal office in a readily retrievable manner.

(c) A registered medical officer may serve as medical officer for more than one vessel, aircraft, or other entity under a single registration, unless he/she serves as medical officer for more than one owner or operator, in which case he/she shall either maintain a separate registration at the location of the principal office of each such owner or operator or utilize one or more registrations pursuant to paragraph (b)(3)(ii) of this section.

(d) If no medical officer is employed by the owner or operator of a vessel, or in the event such medical officer is not accessible and the acquisition of controlled substances is required, the master or first officer of the vessel, who shall not be registered under the Act, may purchase controlled substances

from a registered manufacturer or distributor, or from an authorized pharmacy as described in paragraph (f) of this section, by following the procedure outlined below:

(1) The master or first officer of the vessel must personally appear at the vendor's place of business, present proper identification (e.g., Seaman's photographic identification card) and a written requisition for the controlled substances.

(2) The written requisition must be on the vessel's official stationery or purchase order form and must include the name and address of the vendor, the name of the controlled substance, description of the controlled substance (dosage form, strength and number or volume per container) number of containers ordered, the name of the vessel, the vessel's official number and country of registry, the owner or operator of the vessel, the port at which the vessel is located, signature of the vessel's officer who is ordering the controlled substances and the date of the requisition.

(3) The vendor may, after verifying the identification of the vessel's officer requisitioning the controlled substances, deliver the control substances to that officer. The transaction shall be documented, in triplicate, on a record of sale in a format similar to that outlined in paragraph (d)(4) of this section. The vessel's requisition shall be attached to copy 1 of the record of sale and filed with the controlled substances records of the vendor, copy 2 of the record of sale shall be furnished to the officer of the vessel and retained aboard the vessel, copy 3 of the record of sale shall be forwarded to the nearest DEA Division Office within 15 days after the end of the month in which the sale is made.

(4) The vendor's record of sale should be similar to, and must include all the information contained in, the below listed format.

Sale of Controlled Substances to Vessels

(Name of registrant) _____

(Address of registrant) _____

(DEA registration number) _____

Line No.	Number of packages ordered	Size of packages	Name of product	Packages distributed	Date distributed
1	.....	.....	.....	.....	.....
2	.....	.....	.....	.....	.....
3	.....	.....	.....	.....	.....

Footnote: Line numbers may be continued according to needs of the vendor.

Number of lines completed _____
Name of vessel _____
Vessel's official number _____
Vessel's country of registry _____
Owner or operator of the vessel _____
Name and title of vessel's officer who presented the requisition _____
Signature of vessel's officer who presented the requisition _____

(e) Any medical officer described in paragraph (b) of this section shall, in addition to complying with all requirements and duties prescribed for registrants generally, prepare an annual report as of the date on which his/her registration expires, which shall give in detail an accounting for each vessel, aircraft, or other entity, and a summary accounting for all vessels, aircraft, or other entities under his/her supervision for all controlled substances purchased, dispensed or disposed of during the year. The medical officer shall maintain this report with other records required to be kept under the Act and, upon request, deliver a copy of the report to the Administration. The medical officer need not be present when controlled substances are dispensed, if the person who actually dispensed the controlled substances is responsible to the medical officer to justify his/her actions.

(f) Any registered pharmacy that wishes to distribute controlled substances pursuant to this section shall be authorized to do so, provided:

(1) The registered pharmacy notifies the nearest Division Office of the Administration of its intention to so distribute controlled substances prior to the initiation of such activity. This notification shall be by registered mail and shall contain the name, address, and registration number of the pharmacy as well as the date upon which such activity will commence; and

(2) Such activity is authorized by state law; and

(3) The total number of dosage units of all controlled substances distributed by the pharmacy during any calendar year in which the pharmacy is registered to dispense does not exceed the limitations imposed upon such distribution by § 1307.11(a)(4) and (b) of this chapter.

(g) Owners or operators of vessels, aircraft, or other entities described in this section shall not be deemed to possess or dispense any controlled substance acquired, stored and dispensed in accordance with this section. Additionally, owners or operators of vessels, aircraft, or other entities described in this section or in Article 32 of the Single Convention on Narcotic Drugs, 1961, or in Article 14 of the Convention on Psychotropic Substances, 1971, shall not be deemed to import or export any controlled substances purchased and stored in accordance with that section or applicable article.

(h) The Master of a vessel shall prepare a report for each calendar year which shall give in detail an accounting for all controlled substances purchased, dispensed, or disposed of during the year. The Master shall file this report with the medical officer employed by the owner or operator of his/her vessel, if any, or, if not, he/she shall maintain this report with other records required to be kept under the Act and, upon request, deliver a copy of the report to the Administration.

(i) Controlled substances acquired and possessed in accordance with this section shall not be distributed to persons not under the general supervision of the medical officer employed by the owner or operator of the vessel, aircraft, or other entity, except in accordance with a § 1307.21 of this chapter.

§ 1301.26 Exemptions from import or export requirements for personal medical use.

Any individual who has in his/her possession a controlled substance listed in schedules II, III, IV, or V, which he/she has lawfully obtained for his/her personal medical use, or for administration to an animal accompanying him/her, may enter or depart the United States with such substance notwithstanding sections 1002–1005 of the Act (21 U.S.C. 952–955), providing the following conditions are met:

(a) The controlled substance is in the original container in which it was dispensed to the individual; and

(b) The individual makes a declaration to an appropriate official of the U.S. Customs Service stating:

(1) That the controlled substance is possessed for his/her personal use, or for an animal accompanying him/her; and

(2) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name and address of the pharmacy or practitioner who dispensed the substance and the prescription number, if any; and

(c) The importation of the controlled substance for personal medical use is authorized or permitted under other Federal laws and state law.

Action on Application for Registration: Revocation or Suspension of Registration

§ 1301.31 Administrative review generally.

The Administrator may inspect, or cause to be inspected, the establishment of an applicant or registrant, pursuant to subpart A of part 1316 of this chapter. The Administrator shall review the application for registration and other information gathered by the Administrator regarding an applicant in order to determine whether the applicable standards of section 303 (21 U.S.C. 823) or section 1008 (21 U.S.C. 958) of the Act have been met by the applicant.

§ 1301.32 Action on applications for research in Schedule I substances.

(a) In the case of an application for registration to conduct research with controlled substances listed in Schedule I, the Administrator shall process the application and protocol and forward a copy of each to the Secretary of Health and Human Services (Secretary) within 7 days after receipt. The Secretary shall determine the qualifications and competency of the applicant, as well as the merits of the protocol (and shall notify the Administrator of his/her determination) within 21 days after receipt of the application and complete protocol, except that in the case of a clinical investigation, the Secretary shall have 30 days to make such determination and notify the Administrator. The Secretary, in determining the merits of the protocol, shall consult with the Administrator as to effective procedures to safeguard adequately against diversion of such controlled substances from legitimate medical or scientific use.

(b) An applicant whose protocol is defective shall be notified by the Secretary within 21 days after receipt of such protocol from the Administrator (or in the case of a clinical investigation within 30 days), and he/she shall be requested to correct the existing defects before consideration shall be given to his/her submission.

(c) If the Secretary determines the applicant qualified and competent and the research protocol meritorious, he/she shall notify the Administrator in writing of such determination. The Administrator shall issue a certificate of registration within 10 days after receipt of this notice, unless he/she determines that the certificate of registration should be denied on a ground specified in section 304(a) of the Act (21 U.S.C. 824(a)). In the case of a supplemental protocol, a replacement certificate of registration shall be issued by the Administrator.

(d) If the Secretary determines that the protocol is not meritorious and/or the applicant is not qualified or competent, he/she shall notify the Administrator in writing setting forth the reasons for such determination. If the Administrator determines that grounds exist for the denial of the application, he/she shall within 10 days issue an order to show cause pursuant to § 1301.37 and, if requested by the applicant, hold a hearing on the application pursuant to Section 1301.41. If the grounds for denial of the application include a determination by the Secretary, the Secretary or his duly authorized agent shall furnish testimony and documents pertaining to his determination at such hearing.

(e) Supplemental protocols will be processed in the same manner as original research protocols. If the processing of an application or research protocol is delayed beyond the time limits imposed by this section, the applicant shall be so notified in writing.

§ 1301.33 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 60 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration.

(b) In order to provide adequate competition, the Administrator shall not be required to limit the number of manufacturers in any basic class to a number less than that consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply.

(c) This section shall not apply to the manufacture of basic classes of controlled substances listed in Schedules I or II as an incident to research or chemical analysis as authorized in § 1301.13(e)(1).

§ 1301.34 Application for importation of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to import a controlled substance listed in Schedule I or II, under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as an importer of a Schedule I or II controlled substance, which substance shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that controlled substance and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the **Federal Register**, file written comments on or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on the application pursuant to § 1301.43. If a hearing is requested, the Administrator shall hold a hearing on the application in accordance with § 1301.41. Notice of the hearing shall be published in the **Federal Register**, and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Any such person may participate in the hearing by filing a notice of appearance in accordance with § 1301.43 of this chapter. Notice of the hearing shall contain a summary of all comments and objections filed regarding the application and shall state the time and place for the hearing, which shall not be less than 30 days after the date of publication of such notice in the **Federal Register**. A hearing pursuant to this section may be consolidated with a hearing held pursuant to § 1301.35 or § 1301.36 of this part.

(b) The Administrator shall register an applicant to import a controlled substance listed in Schedule I or II if he/she determines that such registration is consistent with the public interest and with U.S. obligations under international treaties, conventions, or

protocols in effect on May 1, 1971. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in Schedule I or II compounded therefrom into other than legitimate medical, scientific research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) Compliance with applicable State and local law;

(3) Promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) Past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion;

(6) That the applicant will be permitted to import only:

(i) Such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves as the Administrator finds to be necessary to provide for medical, scientific, or other legitimate purposes; or

(ii) Such amounts of any controlled substances listed in Schedule I or II as the Administrator shall find to be necessary to provide for the medical, scientific, or other legitimate needs of the United States during an emergency in which domestic supplies of such substances are found by the Administrator to be inadequate; or

(iii) Such amounts of any controlled substance listed in Schedule I or II as the Administrator shall find to be necessary to provide for the medical, scientific, or other legitimate needs of the United States in any case in which the Administrator finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303 of the Act (21 U.S.C. 823); or

(iv) Such limited quantities of any controlled substance listed in Schedule I or II as the Administrator shall find to be necessary for scientific, analytical or research uses; and

(7) Such other factors as may be relevant to and consistent with the public health and safety.

(c) In determining whether the applicant can and will maintain effective controls against diversion within the meaning of paragraph (b) of this section, the Administrator shall consider among other factors:

(1) Compliance with the security requirements set forth in §§ 1301.71–1301.76; and

(2) Employment of security procedures to guard against in-transit losses within and without the jurisdiction of the United States.

(d) In determining whether competition among the domestic manufacturers of a controlled substance is adequate within the meaning of paragraphs (b)(1) and (b)(6)(iii) of this section, as well as section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Administrator shall consider:

(1) The extent of price rigidity in the light of changes in:

(i) raw materials and other costs and

(ii) conditions of supply and demand;

(2) The extent of service and quality competition among the domestic manufacturers for shares of the domestic market including:

(i) Shifts in market shares and

(ii) Shifts in individual customers among domestic manufacturers;

(3) The existence of substantial differentials between domestic prices and the higher of prices generally prevailing in foreign markets or the prices at which the applicant for registration to import is committed to undertake to provide such products in the domestic market in conformity with the Act. In determining the existence of substantial differentials hereunder, appropriate consideration should be given to any additional costs imposed on domestic manufacturers by the requirements of the Act and such other cost-related and other factors as the Administrator may deem relevant. In no event shall an importer's offering prices in the United States be considered if they are lower than those prevailing in the foreign market or markets from which the importer is obtaining his/her supply;

(4) The existence of competitive restraints imposed upon domestic manufacturers by governmental regulations; and

(5) Such other factors as may be relevant to the determinations required under this paragraph.

(e) In considering the scope of the domestic market, consideration shall be given to substitute products which are reasonably interchangeable in terms of price, quality and use.

(f) The fact that the number of existing manufacturers is small shall not demonstrate, in and of itself, that adequate competition among them does not exist.

§ 1301.35 Certificate of registration; denial of registration.

(a) The Administrator shall issue a Certificate of Registration (DEA Form 223) to an applicant if the issuance of registration or reregistration is required under the applicable provisions of sections 303 or 1008 of the Act (21 U.S.C. 823 and 958). In the event that the issuance of registration or reregistration is not required, the Administrator shall deny the application. Before denying any application, the Administrator shall issue an order to show cause pursuant to § 1301.37 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 1301.41.

(b) If in response to a show cause order a hearing is requested by an applicant for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, notice that a hearing has been requested shall be published in the **Federal Register** and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Any person entitled to file comments or objections to the issuance of the proposed registration pursuant to § 1301.33(a) may participate in the hearing by filing notice of appearance in accordance with § 1301.43. Such persons shall have 30 days to file a notice of appearance after the date of publication of the notice of a request for a hearing in the **Federal Register**.

(c) The Certificate of Registration (DEA Form 223) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the schedules and/or Administration Controlled Substances Code Number (as set forth in part 1308 of this chapter) of the controlled substances which the registrant is authorized to handle, the amount of fee paid (or exemption), and the expiration date of the registration. The registrant shall maintain the certificate of registration at the registered location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the Administration or of any Federal, State, or local agency engaged in enforcement of laws relating to controlled substances.

§ 1301.36 Suspension or revocation of registration; suspension of registration pending final order; extension of registration pending final order.

(a) For any registration issued under section 303 of the Act (21 U.S.C. 823), the Administrator may:

(1) Suspend the registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) for any period of time.

(2) Revoke the registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)).

(b) For any registration issued under section 1008 of the Act (21 U.S.C. 958), the Administrator may:

(1) Suspend the registration pursuant to section 1008(d) of the Act (21 U.S.C. 958(d)) for any period of time.

(2) Revoke the registration pursuant to section 1008(d) of the Act (21 U.S.C. 958(d)) if he/she determines that such registration is inconsistent with the public interest as defined in section 1008 or with the United States obligations under international treaties, conventions, or protocols in effect on October 12, 1984.

(c) The Administrator may limit the revocation or suspension of a registration to the particular controlled substance, or substances, with respect to which grounds for revocation or suspension exist.

(d) Before revoking or suspending any registration, the Administrator shall issue an order to show cause pursuant to § 1301.37 and, if requested by the registrant, shall hold a hearing pursuant to § 1301.41.

(e) The Administrator may suspend any registration simultaneously with or at any time subsequent to the service upon the registrant of an order to show cause why such registration should not be revoked or suspended, in any case where he/she finds that there is an imminent danger to the public health or safety. If the Administrator so suspends, he/she shall serve with the order to show cause pursuant to § 1301.37 an order of immediate suspension which shall contain a statement of his findings regarding the danger to public health or safety.

(f) Upon service of the order of the Administrator suspending or revoking registration, the registrant shall immediately deliver his/her Certificate of Registration, any order forms, and any import or export permits in his/her possession to the nearest office of the Administration. The suspension or revocation of a registration shall suspend or revoke any individual manufacturing or procurement quota fixed for the registrant pursuant to part 1303 of this chapter and any import or export permits issued to the registrant pursuant to part 1312 of this chapter. Also, upon service of the order of the Administrator revoking or suspending registration, the registrant shall, as instructed by the Administrator:

(1) Deliver all controlled substances in his/her possession to the nearest office of the Administration or to authorized agents of the Administration; or

(2) Place all controlled substances in his/her possession under seal as described in sections 304(f) or 1008(d)(6) of the Act (21 U.S.C. 824(f) or 958(d)(6)).

(g) In the event that revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new Certificate of Registration for all substances not affected by such revocation or suspension; no fee shall be required to be paid for the new Certificate of Registration. The registrant shall deliver the old Certificate of Registration and, if appropriate, any order forms in his/her possession to the nearest office of the Administration. The suspension or revocation of a registration, when limited to a particular basic class or classes of controlled substances, shall suspend or revoke any individual manufacturing or procurement quota fixed for the registrant for such class or classes pursuant to part 1303 of this chapter and any import or export permits issued to the registrant for such class or classes pursuant to part 1312 of this chapter. Also, upon service of the order of the Administrator revoking or suspending registration, the registrant shall, as instructed by the Administrator:

(1) Deliver to the nearest office of the Administration or to authorized agents of the Administration all of the particular controlled substance or substances affected by the revocation or suspension which are in his/her possession; or

(2) Place all of such substances under seal as described in sections 304(f) or 958(d)(6) of the Act (21 U.S.C. 824(f) or 958(d)(6)).

(h) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under paragraph (e) of this section may request a hearing on the revocation or suspension of his/her registration at a time earlier than specified in the order to show cause pursuant to § 1301.37. This request shall be granted by the Administrator, who shall fix a date for such hearing as early as reasonably possible.

(i) In the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his/her order. The Administrator may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Administrator finds that such extension is not inconsistent with the public health and safety.

§ 1301.37 Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Administration regarding the applicant, the Administrator is unable to make the determinations required by the applicable provisions of section 303 and/or section 1008 of the Act (21 U.S.C. 823 and 958) to register the applicant, the Administrator shall serve upon the applicant an order to show cause why the registration should not be denied.

(b) If, upon information gathered by the Administration regarding any registrant, the Administrator determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 or section 1008 of the Act (21 U.S.C. 824 and 958), the Administrator shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before the Administrator at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant must,

if he/she desires a hearing, file a request for a hearing pursuant to § 1301.43. If a hearing is requested, the Administrator shall hold a hearing at the time and place stated in the order, pursuant to § 1301.41.

(e) When authorized by the Administrator, any agent of the Administration may serve the order to show cause.

Hearings

§ 1301.41 Hearings generally.

(a) In any case where the Administrator shall hold a hearing on any registration or application therefor, the procedures for such hearing shall be governed generally by the adjudication procedures set forth in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by sections 303, 304, and 1008 of the Act (21 U.S.C. 823–824 and 958), by §§ 1301.42–1301.46 of this part, and by the procedures for administrative hearings under the Act set forth in §§ 1316.41–1316.67 of this chapter.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

§ 1301.42 Purpose of hearing.

If requested by a person entitled to a hearing, the Administrator shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration, and the granting of any application for registration to import or to manufacture in bulk a basic class of controlled substance listed in Schedule I or II. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

§ 1301.43 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to § 1301.32 or §§ 1301.34–1301.36 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause (or the date of publication of notice of the application for registration in the **Federal Register** in the case of § 1301.34), file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.34 or § 1301.35(b) and desiring to do so shall, within 30 days of the date of publication of notice of the request for a hearing in the **Federal Register**, file with the Administrator a written notice of intent to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to § 1301.32 or §§ 1301.34–1301.36 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding such person's position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to § 1301.32 or §§ 1301.34–1301.36 fails to file a request for a hearing or a notice of appearance, or if such person so files and fails to appear at the hearing, such person shall be deemed to have waived the opportunity for a hearing or to participate in the hearing, unless such person shows good cause for such failure.

(e) If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may cancel the hearing, if scheduled, and issue his/her final order pursuant to § 1301.46 without a hearing.

§ 1301.44 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.35(b) shall have the burden of proving any propositions of fact or law asserted by such person in the hearing.

(b) At any hearing on the granting or denial of an applicant to be registered to conduct a narcotic treatment program or as a compounder, the applicant shall have the burden of proving that the requirements for each registration pursuant to section 303(g) of the Act (21 U.S.C. 823(g)) are satisfied.

(c) At any hearing on the granting or denial of an application to be registered to import or export any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to sections 1008(a) and (d) of the Act (21 U.S.C. 958 (a) and (d)) are satisfied. Any other person participating in the hearing pursuant to § 1301.34 shall have the burden of proving any propositions of fact or law asserted by him/her in the hearings.

(d) At any other hearing for the denial of a registration, the Administration shall have the burden of proving that the requirements for such registration pursuant to section 303 or section 1008(c) and (d) of the Act (21 U.S.C. 823 or 958(c) and (d)) are not satisfied.

(e) At any hearing for the revocation or suspension of a registration, the Administration shall have the burden of proving that the requirements for such revocation or suspension pursuant to section 304(a) or section 1008(d) of the Act (21 U.S.C. 824(a) or 958(d)) are satisfied.

§ 1301.45 Time and place of hearing.

The hearing will commence at the place and time designated in the order to show cause or notice of hearing published in the **Federal Register** (unless expedited pursuant to § 1301.36(h)) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1301.46 Final order.

As soon as practicable after the presiding officer has certified the record to the Administrator, the Administrator shall issue his/her order on the granting, denial, revocation, or suspension of registration. In the event that an application for registration to import or to manufacture in bulk a basic class of any controlled substance listed in Schedule I or II is granted, or any application for registration is denied, or any registration is revoked or suspended, the order shall include the findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. The Administrator shall serve one copy of his/her order upon each party in the hearing.

Modification, Transfer and Termination of Registration

§ 1301.51 Modification in registration.

Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances or to change his/her name or address, by submitting a letter of request to the Registration Unit, Drug Enforcement Administration,

Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. The letter shall contain the registrant's name, address, and registration number as printed on the certificate of registration, and the substances and/or schedules to be added to his/her registration or the new name or address and shall be signed in accordance with § 1301.13(j). If the registrant is seeking to handle additional controlled substances listed in Schedule I for the purpose of research or instructional activities, he/she shall attach three copies of a research protocol describing each research project involving the additional substances, or two copies of a statement describing the nature, extent, and duration of such instructional activities, as appropriate. No fee shall be required to be paid for the modification. The request for modification shall be handled in the same manner as an application for registration. If the modification in registration is approved, the Administrator shall issue a new certificate of registration (DEA Form 223) to the registrant, who shall maintain it with the old certificate of registration until expiration.

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

(a) Except as provided in paragraph (b) of this section, the registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact.

(b) No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the Administration may specifically designate and then only pursuant to written consent. Any person seeking authority to transfer a registration shall submit a written request, providing full details regarding the proposed transfer of registration, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(c) Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession, to the Registration Unit, Drug Enforcement Administration, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. Any controlled substances in his/her possession may be disposed of in accordance with § 1307.21 of this chapter.

(d) Any registrant desiring to discontinue business activities altogether or with respect to controlled substance (by transferring such business activities to another person) shall submit in person or by registered or certified mail, return receipt requested, to the Special Agent in Charge in his/her area, at least 14 days in advance of the date of the proposed transfer (unless the Special Agent in Charge waives this time limitation in individual instances), the following information:

(1) The name, address, registration number, and authorized business activity of the registrant discontinuing the business (registrant-transferor);

(2) The name, address, registration number, and authorized business activity of the person acquiring the business (registrant-transferee);

(3) Whether the business activities will be continued at the location registered by the person discontinuing business, or moved to another location (if the latter, the address of the new location should be listed);

(4) Whether the registrant-transferor has a quota to manufacture or procure any controlled substance listed in Schedule I or II (if so, the basic class or class of the substance should be indicated); and

(5) The date on which the transfer of controlled substances will occur.

(e) Unless the registrant-transferor is informed by the Special Agent in Charge, before the date on which the transfer was stated to occur, that the transfer may not occur, the registrant-transferor may distribute (without being registered to distribute) controlled substances in his/her possession to the registrant-transferee in accordance with the following:

(1) On the date of transfer of the controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with § 1304.11 of this chapter. This inventory shall serve as the final inventory of the registrant-transferor and the initial inventory of the registrant-transferee, and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with the Administration unless requested by the Special Agent in Charge. Transfers of any substances listed in Schedule I or II shall require the use of order forms in accordance with part 1305 of this chapter.

(2) On the date of transfer of the controlled substances, all records required to be kept by the registrant-transferor with reference to the controlled substances being transferred, under part 1304 of this chapter, shall be transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

(3) In the case of registrants required to make reports pursuant to part 1304 of this chapter, a report marked ''Final'' will be prepared and submitted by the registrant-transferor showing the disposition of all the controlled substances for which a report is required; no additional report will be required from him, if no further transactions involving controlled substances are consummated by him. The initial report of the registrant-transferee shall account for transactions beginning with the day next succeeding the date of discontinuance or transfer of business by the transferor-registrant and the substances transferred to him shall be reported as receipts in his/her initial report.

5. Section 1301.75 is amended by revising paragraph (b) to read as follows:

§ 1301.75 Physical security controls for practitioners.

* * * * *

(b) Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

* * * * *

6. Section 1301.76 is amended by revising paragraph (c) to read as follows:

§ 1301.76 Other security controls for practitioners.

* * * * *

(c) Whenever the registrant distributes a controlled substance (without being registered as a distributor, as permitted in § 1301.13(e)(1) and/or §§ 1307.11–1307.12) he/she shall comply with the requirements imposed on nonpractitioners in § 1301.74(a), (b), and (e).

§ 1301.72 [Amended]

7. In 21 CFR 1301.72(b)(4)(i)(b) remove the word ''lay'' and add, in its place, the word ''lag'.

PART 1302—[AMENDED]

1. The authority citation for part 1302 continues to read as follows:

Authority: 21 U.S.C. 821, 825, 871(b), 958 (e).

2. Section 1302.02 is revised to read as follows:

§ 1302.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1302.04 is revised to read as follows:

§ 1302.04 Location and size of symbol on label and labeling.

The symbol shall be prominently located on the label or the labeling of the commercial container and/or the panel of the commercial container normally displayed to dispensers of any controlled substance. The symbol on labels shall be clear and large enough to afford easy identification of the schedule of the controlled substance upon inspection without removal from the dispenser's shelf. The symbol on all other labeling shall be clear and large enough to afford prompt identification of the controlled substance upon inspection of the labeling.

§ 1302.05 [Removed]

4. Section 1302.05 is removed.

5. Section 1302.06 is redesignated as § 1302.05 and revised to read as follows:

§ 1302.05 Effective dates of labeling requirements.

All labels on commercial containers of, and all labeling of, a controlled substance which either is transferred to another schedule or is added to any schedule shall comply with the requirements of § 1302.03, on or before the effective date established in the final order for the transfer or addition.

6. Section 1302.07 is redesignated as § 1302.06 and revised to read as follows:

§ 1302.06 Sealing of controlled substances.

On each bottle, multiple dose vial, or other commercial container of any controlled substance, there shall be securely affixed to the stopper, cap, lid, covering, or wrapper or such container a seal to disclose upon inspection any tampering or opening of the container.

7. Section 1302.08 is redesignated as § 1302.07 and revised to read as follows:

§ 1302.07 Labeling and packaging requirements for imported and exported substances.

(a) The symbol requirements of §§ 1302.03–1302.05 apply to every commercial container containing, and to all labeling of, controlled substances imported into the jurisdiction of and/or the customs territory of the United States.

(b) The symbol requirements of §§ 1302.03–1302.05 do not apply to any commercial containers containing, or any labeling of, a controlled substance intended for export from the jurisdiction of the United States.

(c) The sealing requirements of § 1302.06 apply to every bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III or IV, imported into, exported from, or intended for export from, the jurisdiction of and/or the customs territory of the United States.

PART 1303—[AMENDED]

1. The authority citation for part 1303 continues to read as follows:

Authority: 21 U.S.C. 821, 826, 871(b).

2. Section 1303.02 is revised to read as follows:

§ 1303.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1303.12(b)	(or BND) each place it appears	
1303.12(b)	Drug Control Section	Drug & Chemical Evaluation Section.
1303.12(d)	Drug Control Section	Drug & Chemical Evaluation Section.
1303.12(e)(1)	subsance	substance.
1303.12(e)(3)	1301.22(b)	1301.13.
1303.21(a)	1301.45 and 1301.46	1301.36.
1303.22, introductory text	(or BND) each place it appears	
1303.22, introductory text	Drug Control Section	Drug & Chemical Evaluation Section.
1303.26	1301.45 or 1301.46	1301.36.
1303.27	Drug Control Section	Drug & Chemical Evaluation Section.
1303.32(b)	1301.45 or 1301.46	1301.36.
1303.35(a)	aggregrate	aggregate.

PART 1304—[AMENDED]

1. The authority citation for part 1304 is revised to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e), 965, unless otherwise noted.

2. Section 1304.02 is revised to read as follows:

§ 1304.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1304.03 is amended by removing paragraphs (g) and (h), and revising paragraph (f) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(f) Registered persons using any controlled substances while conducting preclinical research, in teaching at a registered establishment which maintains records with respect to such substances or conducting research in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) or 360b(j)) at a registered establishment which maintains records in accordance with either of those sections, are not required to keep records if he/she notifies the Administration of the name, address, and registration number of the establishment maintaining such records. This notification shall be given at the time the person applies for registration or reregistration and shall be made in the form of an attachment to the application, which shall be filed with the application.

4. Section 1304.04 is amended by removing ''excuted'' in paragraph (a),

introductory text, and by adding ''executed'' in its place and by revising paragraphs (e) and (h) to read as follows:

§ 1304.04 Maintenance of records and inventories.

* * * * *

(e) All central recordkeeping permits previously issued by the Administration expired September 30, 1980.

* * * * *

(h) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file; and

(2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter ''C'' no less than 1 inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances. However, if a pharmacy employs an ADP system or other electronic recordkeeping system for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red ''C'' is waived.

5. Section 1304.11 is revised to read as follows:

§ 1304.11 Inventory requirements.

(a) *General requirements.* Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be ''on hand'' if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

(b) *Initial inventory date.* Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances, in accordance with paragraph (e) of this section as applicable. In the event a person commences business with no controlled substances on hand, he/she shall record this fact as the initial inventory.

(c) *Biennial inventory date.* After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

(d) *Inventory date for newly controlled substances.* On the effective date of a rule by the Administrator pursuant to §§ 1308.45, 1308.46, or 1308.47 of this chapter adding a substance to any schedule of controlled substances, which substance was, immediately prior to that date, not listed on any such schedule, every registrant required to keep records who possesses that substance shall take an inventory of all stocks of the substance on hand. Thereafter, such substance shall be included in each inventory made by the registrant pursuant to paragraph (c) of this section.

(e) *Inventories of manufacturers, distributors, dispensers, researchers, importers, exporters and chemical analysts.* Each person registered or authorized (by § 1301.13 or §§ 1307.11–1307.13 of this chapter) to manufacture, distribute, dispense, import, export, conduct research or chemical analysis with controlled substances and required to keep records pursuant to § 1304.03 shall include in the inventory the information listed below.

(1) *Inventories of manufacturers.* Each person registered or authorized to manufacture controlled substances shall include the following information in the inventory:

(i) For each controlled substance in bulk form to be used in (or capable of use in) the manufacture of the same or other controlled or non-controlled substances in finished form, the inventory shall include:

(A) The name of the substance and

(B) The total quantity of the substance to the nearest metric unit weight consistent with unit size.

(ii) For each controlled substance in the process of manufacture on the inventory date, the inventory shall include:

(A) The name of the substance;

(B) The quantity of the substance in each batch and/or stage of manufacture, identified by the batch number or other appropriate identifying number; and

(C) The physical form which the substance is to take upon completion of the manufacturing process (e.g., granulations, tablets, capsules, or solutions), identified by the batch number or other appropriate identifying number, and if possible the finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number or volume thereof.

(iii) For each controlled substance in finished form the inventory shall include:

(A) The name of the substance;

(B) Each finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter);

(C) The number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and

(D) The number of commercial containers of each such finished form (e.g. four 100-tablet bottles or six 3-milliliter vials).

(iv) For each controlled substance not included in paragraphs (e)(1) (i), (ii) or (iii) of this section (e.g., damaged, defective or impure substances awaiting disposal, substances held for quality control purposes, or substances maintained for extemporaneous compoundings) the inventories shall include:

(A) The name of the substance;

(B) The total quantity of the substance to the nearest metric unit weight or the

total number of units of finished form; and

(C) The reason for the substance being maintained by the registrant and whether such substance is capable of use in the manufacture of any controlled substance in finished form.

(2) *Inventories of distributors.* Each person registered or authorized to distribute controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section.

(3) *Inventories of dispensers and researchers.* Each person registered or authorized to dispense or conduct research with controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section. In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the dispenser shall do as follows:

(i) If the substance is listed in Schedule I or II, make an exact count or measure of the contents, or

(ii) If the substance is listed in Schedule III, IV or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case he/she must make an exact count of the contents.

(4) *Inventories of importers and exporters.* Each person registered or authorized to import or export controlled substances shall include in the inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section. Each such person who is also registered as a manufacturer or as a distributor shall include in his/her inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

(5) *Inventories of chemical analysts.* Each person registered or authorized to conduct chemical analysis with controlled substances shall include in his inventory the same information required of manufacturers pursuant to paragraphs (e)(1) (iii) and (iv) of this section as to substances which have been manufactured, imported, or received by such person. If less than 1 kilogram of any controlled substance (other than a hallucinogenic controlled substance listed in Schedule I), or less than 20 grams of a hallucinogenic substance listed in Schedule I (other than lysergic acid diethylamide), or less than 0.5 gram of lysergic acid diethylamide, is on hand at the time of inventory, that substance need not be included in the inventory. Laboratories of the Administration may possess up to 150 grams of any hallucinogenic substance in Schedule I without regard to a need for an inventory of those substances. No inventory is required of known or suspected controlled substances received as evidentiary materials for analysis.

§§ 1304.12–1304.19 [Removed]

6. Sections 1304.12, 1304.13, 1304.14, 1304.15, 1304.16, 1304.17, 1304.18 and 1304.19 are removed.

7. Section 1304.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1304.21 General requirements for continuing records.

(a) Every registrant required to keep records pursuant to § 1304.03 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her, except that no registrant shall be required to maintain a perpetual inventory.

(b) * * *

(c) Separate records shall be maintained by a registrant for each independent activity for which he/she is registered, except as provided in § 1304.22(d).

* * * * *

8. Section 1304.22 is revised to read as follows:

§ 1304.22 Records for manufacturers, distributors, dispensers, researchers, importers and exporters.

Each person registered or authorized (by § 1301.13(e) or §§ 1307.11–1307.13 of this chapter) to manufacture, distribute, dispense, import, export or conduct research with controlled substances shall maintain records with the information listed below.

(a) *Records for manufacturers.* Each person registered or authorized to manufacture controlled substances shall maintain records with the following information:

(1) For each controlled substance in bulk form to be used in, or capable of use in, or being used in, the manufacture of the same or other controlled or noncontrolled substances in finished form,

(i) The name of the substance;

(ii) The quantity manufactured in bulk form by the registrant, including the date, quantity and batch or other identifying number of each batch manufactured;

(iii) The quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;

(iv) The quantity imported directly by the registrant (under a registration as an importer) for use in manufacture by him/her, including the date, quantity, and import permit or declaration number for each importation;

(v) The quantity used to manufacture the same substance in finished form, including:

(A) The date and batch or other identifying number of each manufacture;

(B) The quantity used in the manufacture;

(C) The finished form (e.g., 10-milligram tablets or 10-milligram concentration per fluid ounce or milliliter);

(D) The number of units of finished form manufactured;

(E) The quantity used in quality control;

(F) The quantity lost during manufacturing and the causes therefore, if known;

(G) The total quantity of the substance contained in the finished form;

(H) The theoretical and actual yields; and

(I) Such other information as is necessary to account for all controlled substances used in the manufacturing process;

(vi) The quantity used to manufacture other controlled and noncontrolled substances, including the name of each substance manufactured and the information required in paragraph (a)(1)(v) of this section;

(vii) The quantity distributed in bulk form to other persons, including the date and quantity of each distribution and the name, address, and registration number of each person to whom a distribution was made;

(viii) The quantity exported directly by the registrant (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation;

(ix) The quantity distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity distributed or disposed; and

(x) The originals of all written certifications of available procurement quotas submitted by other persons (as

required by § 1303.12(f) of this chapter) relating to each order requiring the distribution of a basic class of controlled substance listed in Schedule I or II.

(2) For each controlled substance in finished form,

(i) The name of the substance;

(ii) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(iii) The number of containers of each such commercial finished form manufactured from bulk form by the registrant, including the information required pursuant to paragraph (a)(1)(v) of this section;

(iv) The number of units of finished forms and/or commercial containers acquired from other persons, including the date of and number of units and/or commercial containers in each acquisition to inventory and the name, address, and registration number of the person from whom the units were acquired;

(v) The number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation;

(vi) The number of units and/or commercial containers manufactured by the registrant from units in finished form received from others or imported, including:

(A) The date and batch or other identifying number of each manufacture;

(B) The operation performed (e.g., repackaging or relabeling);

(C) The number of units of finished form used in the manufacture, the number manufactured and the number lost during manufacture, with the causes for such losses, if known; and

(D) Such other information as is necessary to account for all controlled substances used in the manufacturing process;

(vii) The number of commercial containers distributed to other persons, including the date of and number of containers in each reduction from inventory, and the name, address, and registration number of the person to whom the containers were distributed;

(viii) The number of commercial containers exported directly by the registrant (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

(ix) The number of units of finished forms and/or commercial containers distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity in finished form distributed or disposed.

(b) *Records for distributors.* Each person registered or authorized to distribute controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraphs (a)(2) (i), (ii), (iv), (v), (vii), (viii) and (ix) of this section.

(c) *Records for dispensers and researchers.* Each person registered or authorized to dispense or conduct research with controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraph (a)(2) (i), (ii), (iv), (vii), and (ix) of this section. In addition, records shall be maintained of the number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser.

(d) *Records for importers and exporters.* Each person registered or authorized to import or export controlled substances shall maintain records with the same information required of manufacturers pursuant to paragraphs (a)(2) (i), (iv), (v) and (vii) of this section. In addition, the quantity disposed of in any other manner by the registrant (except quantities used in manufacturing by an importer under a registration as a manufacturer), which quantities are to be recorded pursuant to paragraphs (a)(1) (iv) and (v) of this section; and the quantity (or number of units or volume in finished form) exported, including the date, quantity (or number of units or volume), and the export permit or declaration number for each exportation, but excluding all quantities (and number of units and volumes) manufactured by an exporter under a registration as a manufacturer, which quantities (and numbers of units and volumes) are to be recorded pursuant to paragraphs (a)(1)(xiii) or (a)(2)(xiii) of this section.

§ 1304.23–1304.26 [Removed]

9. Sections 1304.23 through 1304.26 are removed.

§ 1304.27 [Redesignated as § 1304.23]

10. Section 1304.27 is redesignated as § 1304.23.

§ 1304.28 [Redesignated as § 1304.24 and amended]

11. Section 1304.28 is redesignated as § 1304.24 and reference in § 1304.28(b) to ''§ 1304.24'' is revised to read ''§ 1304.22'', and in paragraph (d), the words ''part 1401 of this title'' are revised to read ''42 CFR Part 2.''

§ 1304.29 [Redesignated as § 1304.25]

12. Section 1304.29 is redesignated as § 1304.25.

13. Section 1304.31 is revised to read as follows:

§ 1304.31 Reports from manufacturers importing narcotic raw material.

(a) Every manufacturer which imports or manufactures from narcotic raw material (opium, poppy straw, and concentrate of poppy straw) shall submit information which accounts for the importation and for all manufacturing operations performed between importation and the production in bulk or finished marketable products, standardized in accordance with the U.S. Pharmacopeia, National Formulary or other recognized medical standards. Reports shall be signed by the authorized official and submitted quarterly on company letterhead to the Drug Enforcement Administration, Drug and Chemical Evaluation Section, Washington, D.C. 20537, on or before the 15th day of the month immediately following the period for which it is submitted.

(b) The following information shall be submitted for each type of narcotic raw material (quantities are expressed as grams of anhydrous morphine alkaloid):

(1) Beginning inventory;

(2) Gains on reweighing;

(3) Imports;

(4) Other receipts;

(5) Quantity put into process;

(6) Losses on reweighing;

(7) Other dispositions and

(8) Ending inventory.

(c) The following information shall be submitted for each narcotic raw material derivative including morphine, codeine, thebaine, oxycodone, hydrocodone, medicinal opium, manufacturing opium, crude alkaloids and other derivatives (quantities are expressed as grams of anhydrous base or anhydrous morphine alkaloid for manufacturing opium and medicinal opium):

(1) Beginning inventory;

(2) Gains on reweighing;

(3) Quantity extracted from narcotic raw material;
(4) Quantity produced/manufactured/synthesized;
(5) Quantity sold;
(6) Quantity returned to conversion processes for reworking;
(7) Quantity used for conversion;
(8) Quantity placed in process;
(9) Other dispositions;
(10) Losses on reweighing and
(11) Ending inventory.

(d) The following information shall be submitted for importation of each narcotic raw material:
(1) Import permit number;
(2) Date shipment arrived at the United States port of entry;
(3) Actual quantity shipped;
(4) Assay (percent) of morphine, codeine and thebaine and
(5) Quantity shipped, expressed as anhydrous morphine alkaloid.

(e) Upon importation of crude opium, samples will be selected and assays made by the importing manufacturer in the manner and according to the method specified in the U.S. Pharmacopoeia. Where final assay data is not determined at the time of rendering report, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

(f) Where factory procedure is such that partial withdrawals of opium are made from individual containers, there shall be attached to each container a stock record card on which shall be kept a complete record of all withdrawals therefrom.

(g) All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it must no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

14. Section 1304.32 is revised to read as follows:

§ 1304.32 Reports of manufacturers importing coca leaves.

(a) Every manufacturer importing or manufacturing from raw coca leaves shall submit information accounting for the importation and for all manufacturing operations performed between the importation and the manufacture of bulk or finished products standardized in accordance with U.S. Pharmacopoeia, National Formulary, or other recognized standards. The reports shall be submitted quarterly on company letterhead to the Drug Enforcement Administration, Drug and Chemical Evaluation Section, Washington, DC 20537, on or before the 15th day of the month immediately following the period for which it is submitted.

(b) The following information shall be submitted for raw coca leaf, ecgonine, ecgonine for conversion or further manufacture, benzoylecgonine, manufacturing coca extracts (list for tinctures and extracts; and others separately), other crude alkaloids and other derivatives (quantities should be reported as grams of actual quantity involved and the cocaine alkaloid content or equivalency):
(1) Beginning inventory;
(2) Imports;
(3) Gains on reweighing;
(4) Quantity purchased;
(5) Quantity produced;
(6) Other receipts;
(7) Quantity returned to processes for reworking;
(8) Material used in purification for sale;
(9) Material used for manufacture or production;
(10) Losses on reweighing;
(11) Material used for conversion;
(12) Other dispositions and
(13) Ending inventory.

(c) The following information shall be submitted for importation of coca leaves:
(1) Import permit number;
(2) Date the shipment arrived at the United States port of entry;
(3) Actual quantity shipped;
(4) Assay (percent) of cocaine alkaloid and
(5) Total cocaine alkaloid content.

(d) Upon importation of coca leaves, samples will be selected and assays made by the importing manufacturer in accordance with recognized chemical procedures. These assays shall form the basis of accounting for such coca leaves, which shall be accounted for in terms of their cocaine alkaloid content or equivalency or their total anhydrous coca alkaloid content. Where final assay data is not determined at the time of submission, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

(e) Where factory procedure is such that partial withdrawals of medicinal coca leaves are made from individual containers, there shall be attached to the container a stock record card on which shall be kept a complete record of withdrawals therefrom.

(f) All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it must no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

§ 1304.33 [Removed]

15. Section 1304.33 is removed.

§ 1304.34 [Redesignated as § 1304.33 and reviewes]

16. Section 1304.34 is redesignated as § 1304.33 and revised to read as follows:

§ 1304.33 Reports to ARCOS.

(a) *Reports generally.* All reports required by this section shall be filed with the ARCOS Unit, PO 28293, Central Station, Washington, DC 20005 on DEA Form 333, or on media which contains the data required by DEA Form 333 and which is acceptable to the ARCOS Unit.

(b) *Frequency of reports.* Acquisition/Distribution transaction reports shall be filed every quarter not later than the 15th day of the month succeeding the quarter for which it is submitted; except that a registrant may be given permission to file more frequently (but not more frequently than monthly), depending on the number of transactions being reported each time by that registrant. Inventories shall provide data on the stocks of each reported controlled substance on hand as of the close of business on December 31 of each year, indicating whether the substance is in storage or in process of manufacturing. These reports shall be filed not later than January 15 of the following year. Manufacturing transaction reports shall be filed annually for each calendar year not later than January 15 of the following year, except that a registrant may be given permission to file more frequently (but not more frequently than quarterly).

(c) *Persons reporting.* For controlled substances in Schedules I, II or narcotic controlled substances in Schedule III, each person who is registered to manufacture in bulk or dosage form, or to package, repackage, label or relabel, and each person who is registered to distribute shall report acquisition/distribution transactions. In addition to reporting acquisition/distribution transactions, each person who is registered to manufacture controlled substances in bulk or dosage form shall report manufacturing transactions on controlled substances in Schedules I and II, each narcotic controlled substance listed in Schedules III, IV, and V, and on each psychotropic controlled substance listed in Schedules

III and IV as identified in paragraph (d) of this section.

(d) *Substances covered.* (1) Manufacturing and acquisition/distribution transaction reports shall include data on each controlled substance listed in Schedules I and II and on each narcotic controlled substance listed in Schedule III (but not on any material, compound, mixture or preparation containing a quantity of a substance having a stimulant effect on the central nervous system, which material, compound, mixture or preparation is listed in Schedule III or on any narcotic controlled substance listed in Schedule V). Additionally, reports on manufacturing transactions shall include the following psychotropic controlled substances listed in Schedules III and IV:

(i) Schedule III
(A) Benzphetamine;
(B) Cyclobarbital;
(C) Methyprylon; and
(D) Phendimetrazine.
(ii) Schedule IV
(A) Barbital;
(B) Diethylpropion (Amfepramone);
(C) Ethchlorvynol;
(D) Ethinamate;
(E) Lefetamine (SPA);
(F) Mazindol;
(G) Meprobamate;
(H) Methylphenobarbital;
(I) Phenobarbital;
(J) Phentermine; and
(K) Pipradrol.

(2) Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

(e) *Transactions reported.* Acquisition/distribution transaction reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the Federal Government) and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, theft, destruction or seizure by Government agencies). Manufacturing reports shall provide data on material manufactured, manufacture from other material, use in manufacturing other material and use in producing dosage forms.

(f) *Exceptions.* A registered institutional practitioner who repackages or relabels exclusively for distribution or who distributes exclusively to (for dispensing by) agents, employees, or affiliated institutional practitioners of the registrant may be exempted from filing reports under this section by applying to the ARCOS Unit of the Administration.

(Approved by the Office of Management and Budget under control number 1117–0003)

§§ 1304.35–1304.38 [Removed]

17. Sections 1304.35 through 1304.38 are removed.

PART 1305—[AMENDED]

1. The authority citation for part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b) unless otherwise noted.

2. Section 1305.02 is revised to read as follows:

§ 1305.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1305.03 is revised to read as follows:

§ 1305.03 Distributions requiring order forms.

An order form (DEA Form 222) is required for each distribution of a Schedule I or II controlled substance except to persons exempted from registration under part 1301 of this chapter; which are exported from the United States in conformity with the Act; or for delivery to a registered analytical laboratory, or its agent approved by DEA.

4. Section 1305.06 is revised to read as follows:

§ 1305.06 Procedure for executing order forms.

(a) Order forms shall be prepared and executed by the purchaser simultaneously in triplicate by means of interleaved carbon sheets which are part of the DEA Form 222. Order forms shall be prepared by use of a typewriter, pen, or indelible pencil.

(b) Only one item shall be entered on each numbered line. An item shall consist of one or more commercial or bulk containers of the same finished or bulk form and quantity of the same substance. The number of lines completed shall be noted on that form at the bottom of the form, in the space provided. Order forms for carfentanil, etorphine hydrochloride, and diprenorphine shall contain only these substances.

(c) The name and address of the supplier from whom the controlled substances are being ordered shall be entered on the form. Only one supplier may be listed on any form.

(d) Each order form shall be signed and dated by a person authorized to sign an application for registration. The name of the purchaser, if different from the individual signing the order form, shall also be inserted in the signature space. Unexecuted order forms may be kept and may be executed at a location other than the registered location printed on the form, provided that all unexecuted forms are delivered promptly to the registered location upon an inspection of such location by any officer authorized to make inspections, or to enforce, any Federal, State, or local law regarding controlled substances.

5. Section 1305.07 is revised to read as follows:

§ 1305.07 Power of attorney.

Any purchaser may authorize one or more individuals, whether or not located at the registered location of the purchaser, to obtain and execute order forms on his/her behalf by executing a power of attorney for each such individual. The power of attorney shall be signed by the same person who signed the most recent application for registration or reregistration and by the individual being authorized to obtain and execute order forms. The power of attorney shall be filed with the executed order forms of the purchaser, and shall be retained for the same period as any order form bearing the signature of the attorney. The power of attorney shall be available for inspection together with other order form records. Any power of attorney may be revoked at any time by executing a notice of revocation, signed by the person who signed (or was authorized to sign) the power of attorney or by a successor, whoever signed the most recent application for registration or reregistration, and filing it with the power of attorney being revoked. The form for the power of attorney and notice of revocation shall be similar to the following:

Power of Attorney for DEA Order Forms

_____ (Name of registrant)
_____ (Address of registrant)
_____ (DEA registration number)

I, _____ (name of person granting power), the undersigned, who is authorized to sign the current application for registration of the above-named registrant under the Controlled Substances Act or Controlled Substances Import and Export Act, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint _____ (name of attorney-in-fact), my true and lawful attorney for me in my name, place, and stead, to execute applications for books of official order forms and to sign such order forms in requisition for Schedule I and II controlled substances, in accordance with section 308 of the Controlled Substances Act (21 U.S.C. 828)

and part 1305 of Title 21 of the Code of Federal Regulations. I hereby ratify and confirm all that said attorney shall lawfully do or cause to be done by virtue hereof.

_____
(Signature of person granting power)

I, _____ (name of attorney-in-fact), hereby affirm that I am the person named herein as attorney-in-fact and that the signature affixed hereto is my signature.

_____
(Signature of attorney-in-fact)

Witnesses:
1. _____.
2. _____.
Signed and dated on the _____ day of _____, (year), at _____.

Notice of Revocation

The foregoing power of attorney is hereby revoked by the undersigned, who is authorized to sign the current application for registration of the above-named registrant under the Controlled Substances Act of the Controlled Substances Import and Export Act. Written notice of this revocation has been given to the attorney-in-fact _____ this same day.

_____
(Signature of person revoking power)

Witnesses:
1. _____.
2. _____.
Signed and dated on the _____ day of _____, (year), at _____.

6. Section 1305.12 is amended by revising paragraph (b) to read as follows:

§ 1305.12 Lost or stolen order forms.

* * * * *

(b) Whenever any used or unused order forms are stolen or lost (otherwise than in the course of transmission) by any purchaser or supplier, he/she shall immediately upon discovery of such theft or loss, report the same to the Special Agent in Charge of the Drug Enforcement Administration in the Divisional Office responsible for the area in which the registrant is located, stating the serial number of each form stolen or lost. If the theft or loss includes any original order forms received from purchasers and the supplier is unable to state the serial numbers of such order forms, he/she shall report the date or approximate date of receipt thereof and the names and addresses of the purchasers. If an entire book of order forms is lost or stolen, and the purchaser is unable to state the serial numbers of the order forms contained therein, he/she shall report, in lieu of the numbers of the forms contained in such book, the date or approximate date of issuance thereof. If any unused order form reported stolen or lost is subsequently recovered or found, the Special Agent in Charge of the Drug Enforcement Administration in the Divisional Office responsible for the area in which the registrant is located shall immediately be notified.

7. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1305.04(b)	his	his/her
1305.05(b)	him (twice)	him/her
1305.08(a)	he	he/she
1305.08(a)	his (twice)	his/her
1305.09(b)	he	he/she
1305.09(d)	his ovn	his/her own
1305.10(a)	hall	shall
1305.10(a)	he	he/she
1305.13(a)	He	He/She
1305.13(b)	he	he/she
1305.13(c)	he	he/she
1305.13(c)	1305.06(e)	1305.06(d)
1305.14	he (twice)	he/she
1305.14	1301.45 or 1301.46	1301.36
1305.16(b)	he	he/she

PART 1306—[AMENDED]

1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b).

2. Section 1306.02 is revised to read as follows:

§ 1306.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

3. Section 1306.11 is amended by revising paragraphs (a),(d)(4), and (e), and adding a new paragraph (g) to read as follows:

§ 1306.11 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to a written prescription signed by the practitioner, except as provided in paragraph (d) of this section. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in paragraph (e), (f), or (g) of this section. The original prescription shall be maintained in accordance with § 1304.04(h) of this chapter.

* * * * *

(d) * * *

(4) Within 7 days after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 1306.05, the prescription shall have written on its face ''Authorization for Emergency Dispensing,'' and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the 7 day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Administration if the prescribing individual practitioner fails to deliver a written prescription to him; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner.

(e) A prescription prepared in accordance with § 1306.05 written for a

Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph (e) and it shall be maintained in accordance with § 1304.04(h) of this chapter.

* * * * *

(g) A prescription prepared in accordance with § 1306.05 written for a Schedule II narcotic substance for a patient residing in a hospice certified by Medicare under Title XVIII or licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent will note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this paragraph (g) and it shall be maintained in accordance with § 1304.04(h) of this chapter.

4. Section 1306.13 is amended by revising paragraph (b) to read as follows:

§ 1306.13 Partial filling of prescriptions.

* * * * *

(b) A prescription for a Schedule II controlled substance written for a patient in a Long Term Care Facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is ''terminally ill'' or an ''LTCF patient.'' A prescription that is partially filled and does not contain the notation ''terminally ill'' or ''LTCF patient'' shall be deemed to have been filled in violation of the Act. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

* * * * *

5. Section 1306.14 is amended by revising the heading and adding a new paragraph (c) to read as follows:

§ 1306.14 Labeling of substances and filing of prescriptions.

* * * * *

(c) All written prescriptions and written records of emergency oral prescriptions shall be kept in accordance with requirements of § 1304.04(h) of this chapter.

§ 1306.15 [Removed]

6. Section 1306.15 is removed.

7. The center undesignated heading preceding § 1306.21 and § 1306.21 are revised to read as follows:

Controlled Substances Listed in Sechedules III, IV, and V

§ 1306.21 Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required in § 1306.05, except for the signature of the practitioner.

(b) An individual practitioner may administer or dispense directly a controlled substance listed in Schedule III, IV, or V in the course of his/her professional practice without a prescription, subject to § 1306.07.

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule III, IV, or V only pursuant to a written prescription signed by an individual practitioner, or pursuant to a facsimile of a written prescription or order for medication transmitted by the practitioner or the practitioner's agent to the institutional practitioner-pharmacist, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in Section 1306.05 except for the signature of the individual practitioner), or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user, subject to § 1306.07.

8. Section 1306.23 is amended by revising the introductory text to read as follows:

§ 1306.23 Partial filling of prescriptions.

The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible, provided that:

* * * * *

9. Section 1306.24 is revised to read as follows:

§ 1306.24 Labeling of substances and filing of prescriptions.

(a) The pharmacist filling a prescription for a controlled substance listed in Schedule III, IV, or V shall affix to the package a label showing the pharmacy name and address, the serial number and date of initial filling, the name of the patient, the name of the practitioner issuing the prescription, and directions for use and cautionary statements, if any, contained in such prescription as required by law.

(b) The requirements of paragraph (a) of this section do not apply when a controlled substance listed in Schedule III, IV, or V is prescribed for administration to an ultimate user who is institutionalized: Provided, That:

(1) Not more than a 34-day supply or 100 dosage units, whichever is less, of the controlled substance listed in Schedule III, IV, or V is dispensed at one time;

(2) The controlled substance listed in Schedule III, IV, or V is not in the possession of the ultimate user prior to administration;

(3) The institution maintains appropriate safeguards and records the proper administration, control, dispensing, and storage of the controlled substance listed in Schedule III, IV, or V; and

(4) The system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

(c) All prescriptions for controlled substances listed in Schedules III, IV, and V shall be kept in accordance with § 1304.04(h) of this chapter.

§ 1306.25 [Removed]

10. Section 1306.25 is removed.

§ 1306.26 [Redesignated as § 1306.25 and amended]

11. Section 1306.26 is redesignated as § 1306.25 and amended by revising paragraphs (a) and (b) to read as follows:

§ 1306.25 Transfer between pharmacies of prescription information for Schedules III, IV, and V controlled substances for refill purposes.

(a) The transfer of original prescription information for a controlled substance listed in Schedules III, IV or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization. Transfers are subject to the following requirements:

(1) The transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(i) Write the word ''VOID'' on the face of the invalidated prescription.

(ii) Record on the reverse of the invalidated prescription the name, address and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information.

(iii) Record the date of the transfer and the name of the pharmacist transferring the information.

(b) The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(1) Write the word ''transfer'' on the face of the transferred prescription.

(2) Provide all information required to be on a prescription pursuant to 21 CFR 1306.05 and include:

(i) Date of issuance of original prescription;

(ii) Original number of refills authorized on original prescription;

(iii) Date of original dispensing;

(iv) Number of valid refills remaining and date(s) and locations of previous refill(s);

(v) Pharmacy's name, address, DEA registration number and prescription number from which the prescription information was transferred;

(vi) Name of pharmacist who transferred the prescription.

(vii) Pharmacy's name, address, DEA registration number and prescription number from which the prescription was originally filled;

(3) The original and transferred prescription(s) must be maintained for a period of two years from the date of last refill.

* * * * *

§ Undesignated center heading and § 1306.31 [Removed]

12. The undesignated heading preceding § 1306.31 and § 1306.31 are removed.

§ 1306.32 [Redesignated as § 1306.26 and amended]

13. § 1306.32 is redesignated as § 1306.26 and the introductory text and paragraph (a) revised to read as follows:

§ 1306.26 Dispensing without prescription.

A controlled substance listed in Schedules II, III, IV, or V which is not a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

(a) Such dispensing is made only by a pharmacist (as defined in part 1300 of this chapter), and not by a nonpharmacist employee even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist);

* * * * *

14. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1306.03(a)(2)	1301.24(c)	1301.22(c)
1306.03(a)(2)	1301.25	1301.23
1306.05(b)	1301.24(c)	1301.22(c)
1306.05(c)	1301.25	1301.22(c)
1306.22(a)(2)	practioner	practitioner
1306.22(b), introductory text	retrival	retrieval
1306.22(b)(2)	duing	during
1306.22(b)(4)	Compliance	Diversion

PART 1307—[AMENDED]

1. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b).

2. Section 1307.01 is revised to read as follows:

§ 1307.01 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1307.02 is revised to read as follows:

§ 1307.02 Application of State law and other Federal law.

Nothing in this chapter shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under other Federal laws or obligations under international treaties, conventions or protocols, or under the law of the State in which he/she desires to do such act nor shall compliance with such parts be construed as compliance with other Federal or State laws unless expressly provided in such other laws.

4. Section 1307.03 is revised to read as follows:

§ 1307.03 Exceptions to regulations.

Any person may apply for an exception to the application of any provision of this chapter by filing a written request stating the reasons for such exception. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537. The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section.

§ 1307.12 [Removed]

5. Section 1307.12 is removed.

§ 1307.13 [Redesignated as § 1307.12]

6. Section 1307.13 is redesignated as § 1307.12.

§ 1307.14 [Removed]

7. Section 1307.14 is removed.

§ 1307.15 [Redesignated as § 1307.13]

8. Section 1307.15 is redesignated as § 1307.13.

9. Section 1307.21 is amended by revising paragraph (a) to read as follows:

§ 1307.21 Procedure for disposing of controlled substances.

(a) Any person in possession of any controlled substance and desiring or required to dispose of such substance may request assistance from the Special Agent in Charge of the Administration in the area in which the person is located for authority and instructions to dispose of such substance. The request should be made as follows:

(1) If the person is a registrant, he/she shall list the controlled substance or substances which he/she desires to dispose of on DEA Form 41, and submit three copies of that form to the Special Agent in Charge in his/her area; or

(2) If the person is not a registrant, he/she shall submit to the Special Agent in Charge a letter stating:

(i) The name and address of the person;

(ii) The name and quantity of each controlled substance to be disposed of;

(iii) How the applicant obtained the substance, if known; and

(iv) The name, address, and registration number, if known, of the person who possessed the controlled substances prior to the applicant, if known.

* * * * *

10. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1307.11(a)(2)	1304.24(e)	1304.22(c)
1307.11(a)(2)	1304.24(c)	1304.22(c)
1307.11(a)(4)	1301.28	1301.25
1307.11(b)	1301.28	1301.25
1307.22	28083	20537

PART 1308—[AMENDED]

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.02 is revised to read as follows:

§ 1308.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

§ 1308.04 [Removed]

3. Section 1308.04 is removed.

4. Section 1308.24 is amended by removing the Exempt Chemical Preparations Table and revising paragraphs (a) and (i) to read as follows:

§ 1308.24 Exempt chemical preparations.

(a) The chemical preparations and mixtures approved pursuant to § 1308.23 are exempt from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003 and 1004 of the Act (21 U.S.C. 822–823, 825–829, 952–954) and § 1301.74 of this chapter, to the extent described in paragraphs (b) to (h) of this section. Substances set forth in paragraph (j) of this section shall be exempt from the application of sections 305, 306, 307, 308, 309, 1002, 1003 and 1004 of the Act (21 U.S.C. 825–829, 952–954) and §§ 1301.71—1301.73 and 1301.74 (a), (b), (d), (e) and (f) of this chapter to the extent as hereinafter may be provided.

* * * * *

(i) A listing of exempt chemical preparations may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537.

* * * * *

5. In § 1308.26(a) the Table of Excluded Veterinary Anabolic Steroid Implant Products is removed. As revised, § 1308.26(a) reads as follows:

§ 1308.26 Excluded veterinary anabolic steroid implant products.

(a) Products containing an anabolic steroid, that are expressly intended for administration through implants to cattle or other nonhuman species and which have been approved by the Secretary of Health and Human Services for such administration are excluded from all schedules pursuant to section 102(41)(B)(I) of the Act (21 U.S.C. 802(41)(B)(I)). A listing of the excluded products may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington DC 20537.

* * * * *

6. In § 1308.32 the Table of Exempted Prescription Products is removed. As revised, Section 1308.32 reads as follows:

§ 1308.32 Exempted prescription products.

The compounds, mixtures, or preparations that contain a nonnarcotic controlled substance listed in § 1308.12(e) or in § 1308.13 (b) or (c) or in § 1308.14 or in § 1308.15 listed in the Table of Exempted Prescription Products have been exempted by the Administrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.13, 1301.22, and §§ 1301.71 through 1301.76 of this chapter for administrative purposes only. An exception to the above is that those products containing butalbital shall not be exempt from the requirement of 21 U.S.C. 952–954 concerning importation, exportation, transshipment and in-transit shipment of controlled substances. Any deviation from the quantitative composition of any of the listed drugs shall require a petition of exemption in order for the product to be exempted. A listing of the Exempted Prescription Products may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537.

7. In § 1308.34 the Table of Exempt Anabolic Steroid Products is removed. As revised, § 1308.34 reads as follows:

§ 1308.34 Exempt anabolic steroid products.

The list of compounds, mixtures, or preparations that contain an anabolic steroid that have been exempted by the Administrator from application of sections 302 through 309 and 1002 through 1004 of the Act (21 U.S.C. 822–829 and 952–954) and §§ 1301.13, 1301.22, and 1301.71 through 1301.76 of this chapter for administrative purposes only may be obtained by submitting a written request to the Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537.

8. § 1308.42 is revised to read as follows:

§ 1308.42 Purpose of hearing.

If requested by any interested person after proceedings are initiated pursuant to § 1308.43, the Administrator shall hold a hearing for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment or repeal of a rule issuable pursuant to section 201(a) of the Act (21 U.S.C. 811(a)). Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law. Additional information relating to hearings to include waivers or modification of rules, request for hearing, burden of proof, time and place, and final order are set forth in Part 1316 of this chapter.

Section 1308.43 [Removed]

9. Section 1308.43 is removed.

§ 1308.44 [Redesignated as § 1308.43 and amended]

10. Section 1308.44 is redesignated as § 1308.43 and the citation ''1308.45'' in paragraph (f) is revised to read ''1308.44'':

§ 1308.45 [Redesignated as § 1308.44 and amended]

11. Section 1308.45 is redesignated as § 1308.44 and the citation in paragraph (e) ''1308.48'' is revised to read ''1308.45''.

§§ 1308.46 and 1308.47 [Removed]

12. Sections 1308.46 and 1308.47 are removed.

§§ 1308.48–1308.50 [Redesignated as §§ 1308.45–1308.47]

13. Sections 1308.48 through 1308.50 are redesignated as §§ Sections 1308.45 through 1308.47.

Section 1308.51 [Removed]

14. Section 1308.51 is removed.

§ 1308.52 [Redesignated as § 1308.49 and corrected]

15. Section 1308.52 is redesignated as § 1308.49 and the typographical error ''withott'' in the introductory text is corrected to read ''without''.

16. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
Table of Contents for Part 1308	1308.52 sheduling	1308.52 scheduling
1308.03(a)	1301.44 and 1311.43	1301.35
1308.12(g)	prectrsors	precursors
1308.13(b)(1)	quantitive	quantitative
1308.13(b)(1)	lirted	listed
1308.13(b)(1)	308.32	1308.32
1308.22, title of table	nonarcotic	nonnarcotic
1308.23(c)(7)	1302.01	Part 1300 of this chapter
1308.23(f)	revoje	revoke
1308.24(d)	Drug Control	Drug and Chemical Evaluation
1308.33(a)	1308.02	Part 1300 of this chapter
1308.33(b)	1308.02	Part 1300 of this chapter

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.02 is revised to read as follows:

§ 1309.02 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

§§ 1309.53 and 1309.57 [Removed] and

§§ 1309.54–1309.56 [Redesignated as §§ 1309.53–1309.55]

3. Sections 1309.53 and 1309.57 are removed and §§ 1309.54 through 1309.56 are redesignated as §§ 1309.53 through 1309.55.

4. In addition to the amendments set forth above, DEA is removing the words ''§ 1310.01(f)(1)(iv) and adding in their place the words ''§ 1300.01(b)(28)(i)(D)'' in the following places:

(a) Section 1309.02(g)
(b) Section 1309.21 (a) and (b)
(c) Section 1309.25 (a) and (b); and
(d) Section 1309.71(a)(2).

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.01 is revised to read as follows:

§ 1310.01 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

§ 1310.05 [Amended]

3. Section 1310.05(c) is amended by removing the words ''as defined in § 1310.01(i)'' and ''as defined in § 1310.01(j)''

§ 1310.08 [Amended]

4. Section 1310.08 introductory text is amended by removing the words ''contained in 21 CFR 1310.01(f) and 1313.02(d)''

§ 1310.09 [Removed]

5. Section 1310.09 is removed.

6. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1310.10(a)	1310.01(f)(1)(iv)	1300.01(b)(28)(i)(D)
1310.14(a)	1310.01(f)(1)(iv)(A)	1300.01(b)(28)(i)(D)(*1*)
1310.15(d)	1310.01(f)(1)(iv)(A)	1300.01(b)(28)(i)(D)(*1*)

PART 1311—[REMOVED AND RESERVED]

Part 1311 is removed and reserved.

PART 1312—[AMENDED]

1. The authority citation for part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

2. Section 1312.02 is revised to read as follows:

§ 1312.02 Definitions.

Any term contained in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or Part 1300 of this chapter.

3. Part 1312 is amended to remove the words, ''1405 I Street, NW'' and ''1405 Eye Street, NW.'', in the following sections:

(a) 1312.12(a);
(b) 1312.16(b);
(c) 1312.18(b);
(d) 1312.19(b);
(e) 1312.22(a);
(f) 1312.24(a);
(g) 1312.27(a);
(h) 1312.27(b)(5)(iv);
(i) 1312.28(d);
(j) 1312.31(b); and
(k) 1312.32(a).

4. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1312.12(a)	Drug Control Section	Drug Operations Section
1312.14(a)	Drug Control Section	Drug Operations Section
1312.16(b)	Drug Control Section	Drug Operations Section
1312.17	304	1304
1312.18(b)	Drug Control Section	Drug Operations Section
1312.18(c)	(or BND).	
1312.19(a)	Drug Control Section	Drug Operations Section
1312.19(b)	Drug Control Section	Drug Operations Section
1312.22(a)	Drug Control Section	Drug Operations Section
1312.24(a)	Bureau	Administration
1312.24(a)	Drug Control Section	Drug Operations Section
1312.25	Drug Control Section	Drug Operations Section
1312.27(a)	regirtered	registered
1312.27(a)	Drug Control Section	Drug Operations Section
1312.27(b)(5)(iii)	inital	initial
1312.27(b)(5)(iv)	Drug Control Section	Drug Operations Section
1312.28(d)	Drug Control Section	Drug Operations Section
1312.28(d)	1327.27(b)(4)	1312.27(b)(4)
1312.31(b)	Drug Control Section	Drug Operations Section
1312.32(a)	Drug Control Section	Drug Operations Section

PART 1313—[AMENDED]

1. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

2. Section 1313.02 is revised to read as follows:

§ 1313.02 Definitions.

Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

§ 1313.15 [Amended]

3. Section 1313.15(a) is amended by removing the words ''§ 1313.02(i)'' and replacing them with the words ''§ 1300.02(b)(13)''

§ 1313.21 [Amended]

4. Section 1313.21(c)(1) is amended by removing the words ''§ 1313.02(j)'' and replacing them with the words ''§ 1300.02(b)(12)''

§ 1313.24 [Amended]

5. Section 1313.24(a) is amended by removing the words ''§ 1313.02(j)'' and replacing them with the words ''§ 1300.02(b)(12)''

PART 1316—[AMENDED]

1. The authority citation for part 1316 continues to read as follows:

Authority: 21 U.S.C. 822(f), 830(a), 871(b), 880, 958(f), 965.

2. Section 1316.02 is amended by revising paragraph (g) to read as follows:

§ 1316.02 Definitions.

* * * * *

(g) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

3. Section 1316.13 is amended by revising the text to read as follows:

§ 1316.13 Frequency of administrative inspections.

Except where circumstances otherwise dictate, it is the intent of the Administration to inspect all manufacturers of controlled substances listed in Schedules I and II and distributors of controlled substances listed in Schedule I once each year. Distributors of controlled substances listed in Schedules II through V and manufacturers of controlled substances listed in Schedules III through V shall be inspected as circumstances may require, based in part on the registrant's history of compliance with the requirements of this chapter and maintenance of effective controls and procedures to guard against the diversion of controlled substances.

4. Section 1316.42 is amended by revising paragraph (h) to read as follows:

§ 1316.42 Definitions.

* * * * *

(h) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

5. Section 1316.71 is amended by revising paragraph (f) to read as follows:

§ 1316.71 Definitions.

* * * * *

(f) Any term not defined in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.

6. In addition to the amendments set forth above, DEA is amending each section indicated in the left column by removing the words indicated in the middle column and adding the words in the right column:

Section	Remove	Add
1316.05	1314.06	1316.06
1316.05	1316.09–1316.14	1316.09–1316.13
1316.12	21 U.S.C. (a)(6)	21 U.S.C. 842(a)(6)
1316.23(b)	1405 I Street.	
1316.24(c)	1316.21(b)	1316.23(b)
1316.24(c)	1316.22(b)	1316.24(b)
1316.41	1303.41–1303.47	1303.31–1303.37 1313.51–1313.57
1316.46(b)(1)	1301.32(a)(3)	1301.32(a)(6)
1316.52(a)	1301.60	1301.56
1316.77(a)	fovard	forward
1316.81	proceeeding	proceeding

Dated: February 26, 1997.

James Milford,

Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 97–7036 Filed 3–21–97; 8:45 am]

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Federal Register

Monday
March 24, 1997

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Children With Disabilities Programs; Grants Availability; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Children With Disabilities Programs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Secretary proposes priorities for programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1997 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. The proposed priorities are intended to ensure wide and effective use of program funds.

DATES: Comments must be received on or before May 23, 1997 for the Directed Research Projects proposed priority. Comments on all other priorities must be received on or before April 23, 1997.

ADDRESSES: All comments concerning proposed priorities should be addressed to: Linda Glidewell, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3521, Switzer Building, Washington, D.C. 20202–2641. Internet: NPP__Research@ed.gov

FOR FURTHER INFORMATION CONTACT: For further information on these proposed priorities contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 260–9182. FAX: (202) 205–8717 (FAX is the preferred method for requesting information).

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. braille, large print, audiotape, or computer diskette) by contacting the Department as listed above.

SUPPLEMENTARY INFORMATION: This notice contains six proposed priorities authorized by the Individuals with Disabilities Education Act. These proposed priorities would support the National Education Goals by helping to improve results for children with disabilities.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. Further, priorities could be affected by enactment of legislation reauthorizing these programs. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. Notices inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notices of final priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Absolute Priority 1—Urban Center on Implementing Inclusive Education for Children With Severe Disabilities as Part of Systemic Education Reform Efforts

Background

During the past ten years research and demonstration activities related to inclusive education have expanded dramatically. Increasing numbers of State and local education agencies are involved in school reform and inclusion efforts to ensure that all students, including those with severe disabilities, are provided with equal educational opportunities, meaningful access to the general curriculum, and effective educational and related services in their neighborhood schools.

However, in the midst of multiple social and economic problems, urban districts are confronted with increasingly complex issues that have made the pursuit of inclusion and systemic education reform initiatives difficult. The need is compelling, considering that forty percent of our Nation's students attend four percent of the country's school districts.

Priority

This priority is national in scope and is designed to help bridge the gap between the knowledge base and the state of practice in urban districts by: (a) Incorporating extant theory and research findings about the inclusion of students with disabilities, particularly students with severe disabilities, into systemic educational reform efforts, including efforts to improve education in multicultural environments; (b) increasing the capacity of urban school districts to provide high quality inclusive educational opportunities for students with disabilities, particularly students with severe disabilities; and (c) creating a national network of parents, education professionals (including teacher's organizations and unions), and advocacy groups interested in pursuing inclusion of students with disabilities, particularly students with severe disabilities, as a component of systemic education reform in urban districts in order to facilitate increased exchange of information and collaborative problem solving among these stakeholders.

The Center must—

(a) Prepare a synthesis of the relevant extant systemic reform, systems change, and inclusion theory and research with emphasis on urban schools with diverse populations to serve as the conceptual and empirical basis for center activities;

(b) Translate this knowledge base into educational practices and materials that promote the inclusion of children with disabilities in regular education programs, and can be used by program implementers and policy makers in urban areas at district, building, and classroom levels;

(c) Provide training and technical assistance via direct technical assistance as well distance learning and other innovative methods in the adoption, use, and maintenance of inclusive educational practices involving access to the general education curriculum in urban settings;

(d) Evaluate the effectiveness of the center's activities in promoting inclusive educational practices in multiple urban settings by assessing: (1) the number of school sites where activities are conducted; (2) the number of people trained; (3) the types of follow-up activities that appear most valuable; and (4) the number of children with disabilities who are served in inclusive educational programs;

(e) Evaluate the effect of the Center's activities on results for children with disabilities;

(f) Produce a variety of evaluation data, including: (1) factors that contribute to the successful adoption, use, and maintenance of inclusive educational efforts in urban districts; (2) descriptions of the instructional contexts and settings, and classroom instructional supports; (3) school governance, organizational, and administrative patterns; (4) the attitudes and involvement of school administrators, school personnel, union membership, families, students, and

other stakeholders; (5) information about student results and the social validity of project activities; (6) information about how project activities are integrated in broader school reform efforts; and (7) analysis of policies, procedures, and fiscal implications at the urban district level;

(g) Develop linkages with U.S. Department of Education technical assistance providers and disseminators to communicate findings and distribute products;

(h) Coordinate activities on an on-going basis with other relevant efforts sponsored by the Office of Special Education Programs (OSEP), including the Consortium for Inclusive Schooling Practices, and State-wide Systems Change projects;

(i) Provide training and experience in translating research to practice, materials development, technical assistance, dissemination, and program evaluation for a limited number of graduate students including students who are from traditionally underrepresented groups;

(j) Conduct topical meetings and other activities on issues and emerging or promising inclusion practices in urban education; and

(k) Collect and ensure timely dissemination of information on inclusion to urban policymakers and program implementers.

Under this priority, the Secretary anticipates making one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Urban Center for the fourth and fifth years of the project, the Secretary, in addition to considering factors in 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the project are to be performed during the last half of the Center's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Center's budget for year two. These costs are estimated to be approximately $4,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The degree to which the Center's technical assistance, evaluation, and dissemination activities demonstrate the potential for significantly increasing the capacity of urban schools to serve children with disabilities in inclusive school and community settings.

This award will be jointly funded under two statutory authorities: (1) The Research in Education of Individuals with Disabilities Program; and (2) the Program for Children with Severe Disabilities. The Secretary has determined that this joint award is necessary to address not only the needs of children with severe disabilities in urban settings, but also the broader needs of all children with disabilities in urban settings.

Program Authority: 20 U.S.C. 1441 and 1424.

Proposed Absolute Priority 2—Center to Promote the Access to and Participation by Minority Institutions in Discretionary Programs Authorized Under the Individuals With Disabilities Education Act (IDEA)

Background

The Congress has found that the Federal Government must be responsive to the growing needs of an increasingly diverse society and that a more equitable distribution of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals, including children with disabilities. Specifically, the Congress has concluded that increasing the participation in awards for IDEA grants, cooperative agreements and contracts by Historically Black Colleges and Universities (HBCUs), other institutions of higher education whose minority enrollment is at least 25 percent (OMIs), and other eligible institutions as defined under section 312 of the Higher Education Act of 1965 (OEIs) can greatly improve our success in educating children with disabilities from diverse backgrounds.

Priority

This priority is part of the Secretary's plan for increasing participation of minority entities in grant competitions. The purpose of this priority is to improve educational results for children with disabilities from diverse backgrounds by supporting a national center to: (a) promote the participation of HBCUs, OMIs, and OEIs in personnel preparation competitions authorized by IDEA; and (b) increase the capacity of HBCUs, OMIs, and OEIs to prepare personnel to work with children with disabilities.

The Center must—

(1) Identify the universe of HBCUs, OMIs, and OEIs;

(2) Establish and maintain contacts with the minority entities;

(3) Conduct needs assessments and negotiate technical assistance agreements on an annual basis with each HBCU, OMI, or OEI requesting assistance. The Center may propose cross-institutional activities if similar objectives are established in several agencies, and if combining activities could create cost savings or extend benefits to minority entities requesting assistance. In developing these activities, the Center must analyze the needs of each entity and determine the most effective and cost efficient means of addressing those needs. In developing each specific technical assistance agreement, the Center must—

(i) Reconcile the needs identified by the entity with the Center's resources and its ability to respond;

(ii) Describe the strategies and mechanisms it will use to respond to the technical assistance and professional development needs;

(iii) Identify the persons involved in the technical assistance activity;

(iv) Specify the beginning and end date of the activity;

(v) Describe how the technical assistance activity will contribute to promoting the immediate and long-term goals of the project, including improved educational results for children with disabilities; and

(vi) Describe a plan for coordinating with other technical assistance providers (e.g., the Regional Resource Centers) that may be involved in related activities;

(5) Analyze the performance of grantees to serve as a basis for providing technical assistance, especially in the areas of recruitment and retention of students in personnel preparation programs, improving the quality of those programs, placement of students after graduation, and other areas that contribute to improved results for children with disabilities;

(6) Develop materials and implement strategies that are necessary to carry out the center's activities;

(7) Prepare and disseminate materials explaining personnel preparation competitions under IDEA to the HBCUs, OMIs, and OEIs;

(8) Analyze the results of each competition in terms of the degree to which the HBCUs, OMIs, and OEIs applied, and the degree to which they were successful, and submit this analysis to the Department and the HBCUs, OMIs, and OEIs served by the project;

(9) Provide advice as requested by the Department on strategies to further the

purposes of section 610(j) of the Act; and

(10) Disseminate state-of-the-art practices in personnel preparation, recruitment, and retention through linkages with U.S. Department of Education dissemination and technical assistance providers, in particular those technical assistance providers supported under the Individuals with Disabilities Education Act.

The Secretary anticipates making one award for a grant with project period of up to 60 months subject to the requirements of 34 CFR § 75.253(a) for continuation awards. In determining whether to continue the Center for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR § 75.253(a), will consider——

(a) The timeliness and effectiveness with which all requirements of the negotiated scope of work have been or are being met by the Center; and

(b) The degree to which minority entities applied and were successful in participating in personnel preparation programs under IDEA.

Program Authority: 20 U.S.C. 1409(j) and 1431.

Proposed Absolute Priority 3—Technical Assistance to Parent Projects

This priority is issued under the Program for Training Personnel for the Education of Individuals with Disabilities—Parent Training and Information Centers. The purpose of this priority is to provide technical assistance for establishing, developing, and coordinating parent training and information projects (PTIs) supported under § 631(e) of the Individuals with Disabilities Education Act. The project must:

(a) Plan and conduct one national and four regional conferences each year;

(b) Conduct an assessment of the training and information needs of the PTIs;

(c) Provide direct technical assistance and disseminate information through a variety of mechanisms to individual parent training and information projects on management processes or content areas (e.g., special education and related services issues, laws and regulation, networking) as identified through the needs assessment;

(d) Maximize the computer and technological capabilities of the Federally-supported network of PTIs, by: (1) Systematizing data collection to conduct needs assessments (e.g., of who is and is not being served, where and what kinds of problems or successes exist in States, tracking effects of Federal and State initiatives), (2) linking the PTIs together electronically using a web page and bulletin boards that are user-friendly, enable PTIs to access and communicate with each other, and link PTIs directly to the National Information Center for Children and Youth with Disabilities (NICHCY) and other information sources, and (3) implementing other appropriate strategies.

(e) Identify effective strategies for working with parents, families, and schools, and incorporate these strategies into training materials, technical assistance activities, and conferences; and

(f) Provide direct technical assistance to PTIs that need such assistance in order to better serve underserved and underrepresented populations.

Program Authority: 20 U.S.C. 1431(e).

Proposed Absolute Priority 4—Special Projects—National Initiatives

This priority is issued under the Program for Training Personnel for the Education of Individuals with Disabilities. The purpose of this priority is to support projects of national significance related to the preparation of personnel needed to serve infants, toddlers, children, and youth with disabilities. Projects funded under this priority must address one of the following focus areas:

Focus 1—An Academy: Linking Teacher Education to Advances in Research. The purpose of this project will be to link teacher education programs with recent advances in research that have documented successful methods and strategies for assisting children with disabilities to achieve better results. The teacher education programs shall benefit by integrating these research advances into their respective preservice preparation programs for preparing personnel to work with children with disabilities, including special education, early intervention, related services personnel, and regular educators. The researchers will benefit from understanding how the findings of their research impact and improve the personnel preparation programs. A preservice program is defined as one that leads toward a degree, certification, or professional license or standard, and may be supported at the associate, baccalaureate, master's or specialist level.

The Academy must focus its staff and resources on research advancements that improve results for children with disabilities in: (a) teaching reading to children with learning disabilities; (b) using technology to enhance educational results for children with disabilities; and (c) using positive behavioral supports to teach children with disabilities who exhibit challenging behaviors.

Activities

The Academy must—

(a) Design an approach, consistent with principles of effective professional development, for linking teacher education programs to the recent advances in research listed above. The professional development approach must consider a range of strategies for facilitating the exchange of knowledge between researchers and individuals who prepare personnel to work with children with disabilities. Strategies may include, for example, face to face meetings, electronic networks, seminars, retreats, mentoring agreements, and building local resource banks;

(b) Design a comprehensive approach for reaching out to teacher education programs across the country in each of the three research areas identified above;

(c) Design innovative tools to facilitate the exchange of knowledge, such as experiential activities, videos, course syllabi, interactive media, etc.; and

(d) Evaluate the progress of linking research advances to teacher education programs.

Focus 2—Developing A National Plan for Training Personnel to Teach Blind and Low-Vision Children. In recent years, the number of institutions of higher education that offer teacher training programs for teachers of blind and low-vision children has significantly diminished. Today, very few vision training programs for teachers of visually impaired individuals exist across the country. In some geographic areas, no such program exists. There has also been a concurrent reduction in the number of personnel available to meet the needs of children who are blind or have low vision. Institutions currently respond to this shortage by offering abbreviated courses, off-campus courses, and distance learning. Both individual institutions and regional organizations are seeking more effective responses to this problem.

These problems are significant. Thus, immediate attention must be devoted to developing a national strategy for addressing the need for qualified personnel to teach blind and low-vision children.

Activities

The project must—

(a) Conduct a systemic and systematic needs assessment of the personnel shortage identified above; and

(b) Design a comprehensive approach for preparing capable and qualified personnel to educate blind and low vision students, including strategies for solving this shortage problem, consideration and comparisons of the merits of each alternative strategy, and a recommended solution.

Program Authority: 20 U.S.C 1431.

Proposed Absolute Priority 5—Research Institute on Secondary Education Services for Children and Youth With Disabilities

This priority is issued under the Secondary Education and Transitional Services for Youth with Disabilities Program. This institute would support a strategic program of research to study a variety of strategies to improve educational results for students with disabilities in secondary education settings (including urban, rural, and suburban community settings), and promote their successful transition to postsecondary settings.

The secondary research institute must design and conduct a strategic program of research to study—

(a) The range of effective support strategies, supplementary aids, and services (e.g., counseling, tutoring, assistive technology) aimed at improving educational results for students with disabilities in a wide range of typical secondary education experiences (e.g., academic, vocational, extracurricular) as well as their retention in school and their engagement in the educational process;

(b) Effective strategies that secondary school personnel can use to restructure academic and vocational courses to accommodate students with disabilities with diverse learning needs and styles;

(c) The extent to which secondary schools are effectively implementing the transition services requirement of IDEA;

(d) The extent to which secondary academic and vocational curricula promote postsecondary education and employment; and

(e) Standards and models for developing instructional and transition plans for students who are entering or enrolled in secondary school programs.

The program of research must include, but need not be limited to, studying school based exemplars, or designing and implementing interventions using a rich array of research methods to reach the intended goals of this priority as articulated by the proposed research hypotheses. In addition, the research must be designed in a manner that is likely to lead to improved services and results for children and youth with disabilities, including those who are members of cultural, linguistic, or racial minority groups.

The institute must—

(a) Design and conduct a strategic program of research across multiple sites to represent organizational and demographic diversity;

(b) Collect, analyze, and communicate student results data and supporting context data; and multiple results data for teachers, parents, and administrators, as appropriate;

(c) Collaborate with other research institutes supported under the Individuals with Disabilities Education Act and experts and researchers in related subject matter and methodological fields, to design and conduct the activities of the institute;

(d) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the issues that will be studied, the research methods and instrumentation that will be used, and the specific target populations and settings that will be studied;

(e) Collaborate with communication specialists and professional and advocacy organizations to ensure that findings are prepared in formats that are useable for specific audiences such as teachers, administrators, and other service providers;

(f) Develop linkages with U.S. Department of Education dissemination and technical assistance providers, in particular those supported under the Individuals with Disabilities Education Act, to communicate research findings and distribute products;

(g) Provide training and research opportunities for a limited number of graduate students, including students who are from traditionally underrepresented groups;

(h) Coordinate research and dissemination activities with other relevant efforts sponsored by the U.S. Department of Education and with the U.S. Department of Labor, including other research institutes, and information clearinghouses; and

(i) Meet with the Office of Special Education Programs (OSEP) project officer in the first four months of the project to review the program of research and communication approaches.

The Institute must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to collaborate with the OSEP project officer.

Under this priority, the Secretary anticipates making one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Institute for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the Institute's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Institute's budget for year two. These costs are estimated to be approximately $4,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(c) The degree to which the Institute's research designs, methodologies, and activities demonstrate the potential for advancing significant new knowledge.

Program Authority: 20 U.S.C. 1425.

Proposed Absolute Priority 6—Directed Research Projects

Background

The Office of Special Education Programs (OSEP) has, in prior years, announced priorities for the support of research projects under several of the programs authorized by the Individuals with Disabilities Education Act. Separate research priorities (competitions) have been announced under the Early Education Program for Children with Disabilities, Program for Children with Severe Disabilities, Secondary Education and Transitional Services for Youth with Disabilities Program, Program for Children and Youth with Serious Emotional Disturbance, and the Research in Education of Individuals with Disabilities Program. The purpose of this priority is to group all priorities for directed research and apply a single set of requirements among the various competitions. By consolidating multiple priorities and announcements into one priority, OSEP endeavors to avoid unnecessary duplication and provide consistent information for all research competitions. The program authority for each focus is listed following each focus statement.

Priority

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments, to provide such children effective instruction and enable them to learn successfully. Under this priority, projects must support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of early intervention, instruction, and learning of infants, toddlers, children, and youth with disabilities.

A research project must address one of the following focus areas:

Focus 1—Beacons of excellence. Research projects supported under focus 1 must identify and study schools achieving exemplary results for students with disabilities in the context of efforts to achieve exemplary results for all students. Projects must develop and apply procedures and criteria to identify those schools, and to identify factors contributing to exemplary learning results, and examine how those factors and other factors relate to achieving exemplary learning results for students with disabilities. Projects may focus on either secondary or elementary levels, or both. During the third year of the project, the Secretary will determine whether or not to fund an optional six-month period for extended dissemination activities arranged with OSEP.

Program Authority: Research in Education of Individuals with Disabilities Program, 20 U.S.C. 1441.

Focus 2—Prevention and early intervention services for children with emotional and behavioral problems. Many young children with emotional and behavioral problems experience years of repeated preschool and school failure, permanent damage to their self-esteem, and escalation of their problems, before they receive appropriate services. Research projects supported under this focus must identify, examine, and document information about the specific factors that contribute to effectiveness in collaborative, community-based, prevention and early intervention services to prevent children with emotional and behavioral problems from developing serious emotional disturbance. The target population for these projects includes children in preschool, kindergarten, and the primary grades (1–4), and their families.

The research may focus, for example, on child find, screening, early identification, assessment, pre-referral strategies, child and family intervention and prevention services, and results. Research must include but is not limited to services and programs funded under the Individuals with Disabilities Education Act. Additional programs with collaborative, community-based services appropriate for study may include, where available, Head Start and Early Head Start programs, other early childhood service programs, primary care and mental health programs, child care center programs, and public and private preschools and elementary school programs. Each research project must include an evaluation of the collaboration and coordination of prevention and early intervention services across multiple service providers and agencies working with these children and their families.

Program Authority: Program for Children and Youth with Serious Emotional Disturbance, 20 U.S.C. 1426.

Focus 3—Students approaching graduation and the supplemental security income program. Many children and youth with disabilities receiving special education services also receive Supplemental Security Income (SSI). Administered by the Social Security Administration, the SSI program provides cash assistance, Medicaid eligibility, and work incentives such as the Impairment-Related Work Expense incentive and the Plan for Achieving Self-Support. National data indicate that these work incentives are under-utilized and that most working-age SSI recipients are unemployed. To address this problem, the National Academy of Social Insurance (1996) recommended that information about the SSI work incentives should be incorporated in the transition planning process required by the Individuals with Disabilities Education Act. The SSI work incentives may therefore enhance the employment results of transitioning youth with disabilities.

The purpose of focus 3 is to develop and test innovative strategies for increasing the utilization of the SSI work incentives. Projects must: (a) Examine the barriers to employment for young adults with disabilities who are receiving SSI benefits; (b) develop innovative strategies and materials for promoting the utilization of work incentives through the transition planning process; and (c) apply qualitative and quantitative research methods to determine the relative efficacy of technical assistance strategies, toward improving work incentive utilization developed under (b).

Program Authority: Secondary Education and Transitional Services for Youth with Disabilities Program, 20 U.S.C. 1425.

Focus 4—The sustainability of promising innovations. A growing body of practice-based research and model demonstration work in schools and local districts, including projects supported by the Office of Special Education Programs (OSEP), has focussed on meeting the needs of, and improving the results for, students with disabilities in schools and districts involved in reform and restructuring initiatives. Some of this work is yielding promising positive results for students with disabilities. However, little is known about the extent to which the innovations developed and implemented in these efforts are sustained in project sites beyond the term of time-limited external support and assistance.

Focus 4 is designed to study the implementation of practices that have been found to be effective in meeting the needs of students with disabilities in reform/restructuring initiatives in local and district schools. The practices must have been included as part of projects designed to implement those practices. The study must address: (1) The extent to which those practices have been sustained beyond the term of the projects; and (2) factors that influence the determined level of sustainability. Factors to be studied may include, but are not limited to: (a) the nature of the innovations and the extent to which the innovations have undergone adaptation or alteration over time; (b) the type and extent of support strategies employed during initial implementation stages and over time; (c) planned and unplanned changes in school organizational or structural contexts or both; (d) the level of penetration of the innovation; (e) the actual and perceived costs and benefits for participants; (f) constancy of site leadership, school staff, and school policy requirements; (g) the extent of consonance or dissonance between critical features of the innovations and existing (and emerging) school and district practices and policies; and (h) resource access and allocation. Within focus 4, projects must provide comprehensive descriptions of the targeted effective practices to be studied, and convincing documentation of resulting positive results for students with disabilities. In addition, projects must dedicate the

bulk of support requested within focus 4 to research on the issues of sustainability and on continuing documentation of results for students with disabilities. Within focus 4, the Secretary particularly encourages an in-depth case study research design where the sites to be studied are the cases.

Program Authority: Research in Education of Individuals with Disabilities Program, 20 U.S.C. 1441.

Focus 5—Educating children with severe disabilities in inclusive settings. Focus 5 supports research projects to (a) identify new or improved strategies to address the educational and related service needs of children and youth with severe disabilities in inclusive general education settings and extracurricular activities, and (b) describe how the school inclusion strategies as identified in (a) are aligned with systemic reform and school improvement strategies for all students.

Additional research is needed to identify, describe, and examine: (1) The efficacy and linkages of existing systemic reform and school inclusion strategies, (2) how school systems provide supports and collaborative teaming to meet the needs of students with severe disabilities, and other diverse learners; (3) how standards and authentic assessment practices are implemented for students with severe disabilities and their impact on inclusive and systemic reform efforts, (4) social support strategies that promote positive interactions among students with severe disabilities and other students, and their same-aged peers to foster cohesive school and classroom communities; and (5) the types of peer-mediated strategies that actively involve all students, including students with severe disabilities, in inclusive educational programs.

To be considered for funding under focus 5, a research project must—

(a) Identify specific interventions or strategies to be investigated;

(b) Design the research activities in a manner that is likely to improve services for all students in inclusive classrooms, including students with severe disabilities;

(c) Conduct the research in schools pursuing systemic education reform and school inclusion; and

(d) Use methodological procedures designed to produce findings useful to program implementers and policy makers regarding the impact and interaction effects of systemic reform and school inclusion strategies in State and local contexts.

All projects funded under focus 5 must identify and describe how these inclusion efforts benefit students with severe disabilities including the reciprocal benefits of inclusive schooling for all students.

Program Authority: Program for Children with Severe Disabilities, 20 U.S.C. 1424.

Requirements for All Directed Research Projects

In addition to addressing focus (1), (2), (3), (4), or (5) above, projects must:

(a) Apply rigorous research methods (qualitative or quantitative or both) to identify approaches contributing to improved results for children with disabilities;

(b) Provide a conceptual framework, based on extant research and theory to serve as a basis for the issues to be studied, the research design, and the target population;

(c) Prepare dissemination materials for both researcher and practitioner audiences and develop linkages with U.S. Department of Education dissemination and technical assistance providers, in particular those supported under the Individuals with Disabilities Education Act, to communicate research findings and distribute products; and

(d) Budget for two trips annually to Washington, D.C., for: (1) a two-day Research to Practice Division Project Directors' meeting; and (2) another meeting to collaborate with the Research to Practice Division project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination.

Selection criteria for evaluating applications under proposed absolute priority 6. The Secretary proposes to use the following criteria to evaluate applications under proposed absolute priority 6—Directed Research Projects. The maximum score for all the criteria is 100 points.

(a) *Importance* (10 points). The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(b) *Technical soundness* (40 points). The Secretary reviews each application to determine the technical soundness of the research, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

(c) *Plan of operation* (10 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The quality of the evaluation plan for the project including the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(Cross Reference: 34 CFR 75.590, Evaluation by the grantee.)

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used); and,

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(e) *Underrepresented populations* (10 points). The Secretary reviews each application for information that shows the extent to which the applicant, as part of its nondiscriminatory employment practices, employs members of underrepresented populations as project staff. The Secretary looks for—

(1) Employees who are members of underrepresented populations, including members of racial or ethnic minority groups and individuals with disabilities; and

(2) Procedures to provide training and other necessary support to retain and advance qualified personnel from underrepresented populations.

(f) *Adequacy of resources* (5 points).

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Impact* (5 points). The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on infants, toddlers, children, and youth with disabilities or personnel responsible for their education or early intervention services.

(h) *Organizational capability* (5 points). The Secretary considers—

(1) The applicant's experience in special education or early intervention services; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Budget and cost effectiveness* (5 points).

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

Intergovernmental Review

Except for focus areas 1 and 4 in the Directed Research Projects priority, all other priorities included in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3524, 300 C Street, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays. Individuals with disabilities who need assistance to review the comments will be provided with appropriate aids, such as readers or print magnifiers. To schedule an appointment call (202) 205–8113 or (202) 260–9895. Persons using a TDD should call the Federal Information Relay Service.

Dated: March 19, 1997.

(Catalog of Federal Domestic Assistance Numbers: Research in Education of Individuals with Disabilities Program, 84.023; Training Personnel for the Education of Individuals with Disabilities Program—Grants for Personnel Training and Parent Training and Information Centers, 84.029; Program for Children with Severe Disabilities, 84.086; Secondary Education and Transitional Services for Youth with Disabilities Program, 84.158; and the Program for Children and Youth with Serious Emotional Disturbance)

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–7364 Filed 3–21–97; 8:45 am]

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Federal Register

Monday
March 24, 1997

Part IV

The President

Presidential Determination No. 97–16—Immigration Emergency Resulting From Alien Smuggling

Federal Register
Vol. 62, No. 56
Monday, March 24, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 97–16 of February 12, 1997

Immigration Emergency Resulting From Alien Smuggling

Memorandum for the Attorney General

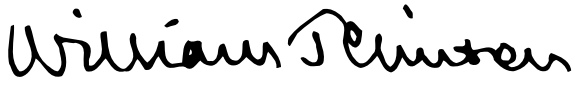
In September 1995, I determined that an immigration emergency was in existence with respect to the smuggling into the United States of illegal aliens. I therefore directed the use of up to $6,000,000 from the Immigration Emergency Fund to cover costs associated with repatriation of foreign nationals intercepted en route to the United States. To date, all but $700,000 of that amount has been used to cover these costs. While our policy to deter smuggling activity has been successful, attempts to smuggle illegal aliens persist and require continued efforts on the part of the United States.

Accordingly, by virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 404(b)(1) of the Immigration and Nationality Act, I hereby:

Determine that the immigration emergency determined to exist in 1995 with respect to the smuggling into the United States of illegal aliens persists; and

Direct that up to $7,400,000 appropriated by the Congress to the Immigration Emergency Fund be used to cover costs associated with the repatriation of foreign nationals intercepted en route to the United States.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 12, 1997.

[FR Doc. 97–7592
Filed 3–21–97; 8:45 am]
Billing code 4410–01–P

Reader Aids

Federal Register

Vol. 62, No. 56

Monday, March 24, 1997

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Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

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FEDERAL REGISTER PAGES AND DATES, MARCH

9349–9678 3
9679–9904 4
9905–10184 5
10185–10410 6
10411–10680 7
10681–11068 10
11069–11306 11
11307–11756 12
11757–12066 13
12067–12530 14
12531–12738 17
12739–12914 18
12915–13288 19
13289–13530 20
13531–13800 21
13801–13982 24

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6974 9677
6975 9905
6976 9907
6977 11067
6978 11069

Executive Orders:
July 24, 1875 (Revoked in part by PLO 7249) 12836
12171 (Amended by 13039) 12529
12958 (See Order of February 26, 1997) 9349
12957 (Continued by Notice of March 5, 1997) 10185
12959 (See Notice of March 5, 1997) 10185
13037 10185
13038 12065
13039 12529

Administrative Orders:
Notices:
Notice of March 5, 1997. 10409
Presidential Determinations:
No. 97–16 of February 12, 1997 13981
No. 97–17 of February 21, 1997 9903
Order of February 26, 1997 9349
No. 97–18 of February 28, 1997 11588
No. 97–19 of March 11, 1997 13531

5 CFR

351 10681
630 10681
2635 12531
2638 ..... 11307, 13213

Proposed Rules:
551 9995
591 13354

7 CFR

20 10411
210 10187
220 10187
225 10187
226 10187
301 10412
401 12067
414 13289
457 ..... 12067, 13289
906 11757
925 10419
932 11314
959 10420
1215 13533
1910 ..... 9351, 11953
1941 11953
1943 11953
1945 11953
1951 10118
1956 10118
1962 10118
1965 10118
1980 11953

Proposed Rules:
28 12577
29 11773
250 12108
251 12108
253 12108
723 13546
1131 9381
1208 12976
1215 13551
1240 10481
1610 10483
1717 9382
1735 10483
1737 10483
1739 10483
1746 10483
3403 11256

8 CFR

1 10312
3 10312
103 10312
204 10312
207 10312
208 10312
209 10312
211 10312
212 10312
213 10312
214 ..... 10312, 10422
216 10312
217 10312
221 10312
223 10312
232 10312
233 10312
234 10312
235 10312
236 10312
237 10312
238 10312
239 10312
240 10312
241 10312
242 10312
243 10312
244 10312
245 10312
246 10312
248 10312

249.....10312
251.....10312
252.....10312
253.....10312
274a.....10312
286.....10312
287.....10312
299.....10312, 12915
312.....12915
316.....10312
318.....10312
329.....10312
499.....12915

9 CFR

77.....13293
78.....10192
102.....13293
104.....13293
201.....11758

Proposed Rules:

92.....9387
130.....9387
145.....11111
147.....11111
318.....12117

10 CFR

170.....10626

Proposed Rules:

430.....13842
960.....13355

11 CFR

111.....11317

Proposed Rules:

100.....13355
114.....13355

12 CFR

13.....13276
215.....13294
208.....9909, 13276
211.....13276
226.....10193
229.....13801
344.....9915
350.....10199
368.....13276
611.....13213
613.....11071
614.....11071
615.....11071, 13213
618.....11071
619.....11071
620.....11071
626.....11071
704.....12929
709.....12929
741.....12929
935.....12073
1806.....10668

Proposed Rules:

Ch. VII 11773, 11778
25.....12531, 12730
204.....11117
208.....12730
209.....11117
211.....12730
369.....12730
614.....13842
627.....13842
701.....11779
712.....11779
740.....11779

13 CFR

107.....11759
121.....11317

14 CFR

21.....9923, 13248
25.....11072, 13248
39 .....9359, 9361, 9679, 9925, 10201, 11318, 11320, 11760, 11763, 11764, 12081, 12531, 12533, 12739, 12740, 12949
61.....13788
71 .....9363, 9681, 9928, 10425, 10427, 10684, 11073, 11074, 11075, 11076, 11077, 11078, 11766, 12082, 12534, 12535, 12536, 12537, 12538, 12743, 13537, 13734
73.....11768
87.....13496
91 .....11768, 12687, 13248
93.....11768, 12687
95.....10202
97 .....9681, 9683, 11078
107.....13736
108.....13736
109.....13736
119.....13248
121 .....11768, 12687, 13248, 13788
125.....13248
129.....13736
135 .....11768, 12687, 13248, 13788
142.....13788
191.....13736

Proposed Rules:

25.....12119
39 ...9388, 9390, 10224, 10226, 10228, 10231, 10233, 10236, 10237, 10240, 10488, 10490, 10492, 10754, 10756, 11384, 11386, 11388, 11390, 11392, 12121, 12123, 12126, 12768, 12771, 12774, 12979
71 .....9392, 9393, 9394, 9395, 9396, 9397, 9398, 9399, 9400, 9720, 9995, 11120, 11121, 11122, 11123, 11124, 11125, 11126, 11127, 11128, 12578, 12892, 13562, 13563
107.....13262
108.....12724, 13262
221.....10758
243.....11789
250.....10758
293.....10758
401.....13216
411.....13216
413.....13216
415.....13216
417.....13216

15 CFR

746.....9364
902.....13298
921.....12539
923.....12539
930.....12539

16 CFR

Proposed Rules:

308.....11750

17 CFR

1 .....10427, 10434, 10441
5.....10434
15.....13301
18.....13301
19.....13301
30 .....10445, 10447, 10449
31.....10441
140.....13302
210.....12743
228.....11321
229.....11321
232.....13820
239.....11321
240.....11321, 12743
242.....11321, 13213
300.....10450

Proposed Rules:

1.....13564
230.....10898, 13356
239.....10898
240.....13356
270.....10898, 13356
274.....10898
275.....13356

18 CFR

35.....12274
37.....12484
284.....10204, 10684

19 CFR

Proposed Rules:

7.....9401
10.....9401
145.....9401
146.....12129
173.....9401
174.....9401
181.....9401
191.....9401

20 CFR

216.....11323
404.....13537, 13733
416.....13537, 13733
801.....10666
802.....10666

21 CFR

5.....13821
11.....13430
73.....12951
176.....10452
178.....9365
200.....12083
201.....13733
250.....12083
310.....12083
331.....13733
341.....9684
520.....12085, 13302
522.....10219, 13825
524.....10220
556.....12085
558 .....9929, 12085, 12951
600.....11769
601.....11769
803.....13302
804.....13302
812.....12085
1300.....13938
1301.....13938
1302.....13938
1303.....13938
1304.....13938
1305.....13938
1306.....13938
1307.....13938
1308.....13938
1309.....13938
1310.....13938
1311.....13938
1312.....13938
1313.....13938
1316.....13938

Proposed Rules:

Chapter I.....9721
2.....10242
101 .....9826, 11129, 12579
161.....9826
163.....10781
501.....9826

22 CFR

505.....10630

23 CFR

657.....10178
658.....10178

24 CFR

203.....9930
206.....12952
582.....13538

Proposed Rules:

Ch. I 10247
570.....11284
982.....10786

25 CFR

45.....11324

Proposed Rules:

290.....10494

26 CFR

1 .....11324, 12096, 12541
20.....12542
301.....11769
602.....12687

Proposed Rules:

1 .....11394, 12582, 12981
301.....12582

28 CFR

100.....13307
527.....13825

Proposed Rules:

16.....10495
511.....10164
524.....10164

29 CFR

102.....9685, 9930
500.....11734
4003.....12542
4007.....12542
4011.....12542
4041.....12521, 12542
4041A 12542
4043.....12542
4044.....12098
4050.....12542

Proposed Rules:

1404.....11797
1910.....9402
1915.....12133
1625.....10787
2200.....12134
2203.....12134
2204.....12134
4001.....12508
4006.....12508

4041.....12508
4044.....12982
4050.....12508

30 CFR

901.....9932
902.....9932
904.....9932
906.....9932
913.....9932
914.....9932
915.....9932
916.....9932
917.....9932
918.....9932
920.....9932
925.....9932
926.....9932
931.....9932
934.....9932
935.....9932
936.....9932
938.....9932
943.....9932
944.....9932
946.....9932
948.....9932
950.....9932

Proposed Rules:

56.....9404
57.....9404
62.....9404
70.....9404
71.....9404
202.....10247
206.....10247
906.....11805
914.....11807, 12776
946.....12776

31 CFR

536.....9959

32 CFR

296.....12544
543.....12544
544.....12544
706.....11325, 11326

33 CFR

100.....9367, 12750
110.....9368
117 .....9369, 9370, 10453
334.....9968

Proposed Rules:

100.....9405
117.....9406
165.....10496
207.....9996

34 CFR

75.....10398
206.....10398
231.....10398
235.....10398
369.....10398
371.....10398
373.....10398
375.....10398
376.....10398
378.....10398
380.....10398
381.....10398
385.....10398
386.....10398
387.....10398
388.....10398
389.....10398
390.....10398
396.....10398
610.....10398
612.....10398
630.....10398
682.....13539

Proposed Rules:

668.....13520

35 CFR

61.....12751

Proposed Rules:

103.....9997

36 CFR

200.....13539
223.....13826

Proposed Rules:

1190.....11130
1191.....11130

38 CFR

1.....9969
21.....10454

40 CFR

19.....13514
27.....13514
52 .....9970, 10455, 10457, 10690, 11079, 11327, 11332, 11334, 11337, 11769, 12544, 13329, 13331, 13332
63.....12546
70.....13830
79.....12564, 12572
80 .....9872, 11346, 12572
81 .....10457, 10463, 10690, 11337, 13332
82.....10700
86.....11082
132.....11724
136.....13833
141.....10168
180 ...9974, 9979, 9984, 10703, 11360, 12953, 13337, 13833
185.....13833
186.....13833
271 .....10464, 12100, 13540
300.....9370, 9371

Proposed Rules:

Chapter I.....11130
51.....12583, 13356
52 .....10000, 10001, 10002, 10497, 10498, 10500, 10501, 11131, 11394, 11395, 11405, 12137, 12586, 13357, 13359, 13846, 13849
60.....13776
63.....13776
70.....10002, 12778
71.....13748
80.....11405, 12586
81 .....10500, 10501, 11405, 12137, 13359
86.....11138
92.....11141
123.....11270
131.....13567
141.....10168
260.....13776
261.....13776
264.....13776
265.....13776
266.....13776
268.....10004
270.....13776
271.....13776
300.....13568
372.....10006
501.....11270

41 CFR

Ch. 301.....13342
302–1 .....10708, 13756, 13768, 13770, 13794
302–2.....10708
302–3.....10708
302–4.....13768
302–5.....13756
302–6.....13765
302–7.....10708
302–8.....10708
302–9.....10708
302–10.....13794
302–11.....10708
302–12.....13765
302–14.....13763
302–15.....13760

42 CFR

67.....12906
100.....10626

Proposed Rules:

484 .....11004, 11005, 11035, 11953

44 CFR

64.....9372, 13343
65.....9685, 9687
67.....9690
78.....13346

Proposed Rules:

67.....9722

45 CFR

1611.....12751

Proposed Rules:

16.....10009
74.....10009
75.....10009
95.....10009
1610.....12101

46 CFR

10.....11298
586.....9696

47 CFR

1 .....9636, 12959, 13540
2 .....9636, 10466, 12959
22.....11616
24.....12752
25.....11083
27.....9636, 12959
32.....10220
53.....10220, 10221
59.....9704
68.....9989
73 .....9374, 9375, 9989, 9990, 10222, 12104, 13349, 13544, 13545
76.....11364
87.....11083
90.....11616
97.....9636, 12959
101.....12752

Proposed Rules:

Ch. I.....13852
1.....10793, 13570
22.....11407, 11638
25.....13853
26.....13853
36.....9408
51.....9408
61.....9408
69.....9408
73 .....9408, 9409, 9410, 10010, 10011, 12152, 13359, 13582, 13853
76.....10011, 13853
90.....11638
97.....12982
100.....13853
101.....11407

48 CFR

Ch. I.....12690, 12721
3.....10709, 12691
5.....10709, 12692
6.....10709
9.....10709, 12693
11.....10709
12.....10709
13.....10709, 12720
14.....12692
15.....10709, 12692
16.....12695
19.....10709
23.....12696
25.....12698
26.....12702
31.....12703, 12704
32.....12705
33.....10709, 12718
35.....12693
36.....10709
37.....10709, 12693
42.....10709
44.....12718
52 .....10709, 12691, 12692, 12695, 12696, 12698, 12702, 12705, 12719, 12720
234.....9990, 11953
239.....9375
242.....9990, 11953
252.....9990, 11953
1833.....11107
1852.....11107
3509.....11770

Proposed Rules:

225.....11142
242.....11142
252.....11142

49 CFR

1.....11382
219.....13349
1002.....9714
1180.....9714
571.....10710, 12960

Proposed Rules:

223.....10248
239.....10248
571.....10514, 13583
572.....10516

50 CFR

17.....10730
285.....9376
300.....12759
622.....9718
628.....13298
630.....13350
648 .....9377, 10473, 10478,

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 24, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds, shelled and in shell; grade standards; published 1-21-97

Melons grown in Texas; published 2-20-97

Tomatoes grown in—

Florida; published 2-20-97

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; disposal and sale:

Small business timber sales set-aside program; shares recomputation; appeal procedures; published 3-24-97

AGRICULTURE DEPARTMENT

Farm Service Agency

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Direct and guaranteed loan making provisions; published 3-3-97

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Direct and guaranteed loan making provisions; published 3-3-97

AGRICULTURE DEPARTMENT

Rural Housing Service

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Direct and guaranteed loan making provisions; published 3-3-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Federal Agriculture Improvement and Reform Act of 1996; implementation:

Direct and guaranteed loan making provisions; published 3-3-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Halibut; published 2-21-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; published 1-22-97

Illinois; published 1-21-97

Indiana; published 1-22-97

Kentucky; published 1-21-97

Clean Air Act:

State operating permits programs—

Maine; published 2-21-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Avermectin B1 and delta-8,9-isomer; published 3-24-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telecommunications Act of 1996; implementation—

Telemessaging, electronic publishing, and alarm monitoring services; clarification and interpretation; published 2-20-97

Radio stations; table of assignments:

Missouri; published 2-14-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Organization, functions, and authority delegations:

Agency organizational structure and headquarters and field offices addresses; published 3-24-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

Vaccine injury compensation program:

Vaccine injury table revision; published 2-20-97

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Transfer of inmates to State agents for production on State writs; published 3-24-97

SECURITIES AND EXCHANGE COMMISSION

Public utility holding companies:

Acquisition of securities of nonutility companies engaged in energy-related and gas-related activities; exemption; published 2-20-97

TRANSPORTATION DEPARTMENT

Coast Guard

Regattas and marine parades:

Augusta Invitational Rowing Regatta; published 2-21-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

AlliedSignal Inc.; published 2-21-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Pork promotion, research, and consumer information; comments due by 3-28-97; published 2-26-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Overtime services relating to imports and exports:

Agricultural quarantine and inspection services; user fees; comments due by 3-28-97; published 1-27-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

Pre-loan policies and procedures; conventional utility indenture use as security instrument; comments due by 3-24-97; published 2-20-97

AGRICULTURE DEPARTMENT

Agricultural commodities; commercial sales financing; comments due by 3-28-97; published 1-27-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut and sablefish; comments due by 3-24-97; published 2-21-97

Pollock; comments due by 3-24-97; published 2-27-97

EDUCATION DEPARTMENT

Postsecondary education:

Student assistance general provisions—

Compliance audits and financial responsibility standards; comments due by 3-24-97; published 2-18-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Petroleum refinery sources, new and existing; comments due by 3-24-97; published 2-21-97

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 3-26-97; published 2-24-97

Maryland; comments due by 3-27-97; published 2-25-97

Ohio; comments due by 3-27-97; published 2-25-97

Oregon; comments due by 3-27-97; published 2-25-97

Washington; comments due by 3-28-97; published 2-26-97

Air quality planning purposes; designation of areas:

Pennsylvania; comments due by 3-27-97; published 2-25-97

Clean Air Act:

State operating permits programs—

Maine; comments due by 3-24-97; published 2-21-97

FARM CREDIT ADMINISTRATION

Farm credit system:

Federal Agricultural Mortgage Corporation; receivers and conservators; comments due by 3-26-97; published 2-24-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Competitive bidding procedures; comments

due by 3-27-97; published 3-21-97

Practice and procedure:

Regulatory fees (1997 FY); assessment and collection; comments due by 3-25-97; published 3-10-97

Radio stations; table of assignments:

California; comments due by 3-24-97; published 2-7-97

Colorado; comments due by 3-24-97; published 2-7-97

Idaho; comments due by 3-24-97; published 2-7-97

Michigan; comments due by 3-24-97; published 2-7-97

MIchigan; comments due by 3-24-97; published 2-7-97

Michigan; comments due by 3-24-97; published 2-7-97

Wyoming; comments due by 3-24-97; published 2-7-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Committees; establishment, renewal, termination, etc.:

National Manufactured Home Advisory Council; membership nomination; comments due by 3-28-97; published 2-26-97

INTERIOR DEPARTMENT

Indian Affairs Bureau

Law and order on Indian reservations:

Courts of Indian Offenses and law and order code; correction; comments due by 3-28-97; published 2-26-97

Tribal revenue allocation plans; comments due by 3-24-97; published 2-20-97

Correction; comments due by 3-24-97; published 3-7-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Pallid manzanita; comments due by 3-27-97; published 2-25-97

INTERIOR DEPARTMENT

Minerals Management Service

Administrative appeals process; comments due by 3-27-97; published 12-23-96

Royalty management:

Oil valuation; Federal leases and Federal royalty oil sale; comments due by 3-25-97; published 1-24-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Texas; comments due by 3-24-97; published 2-21-97

LABOR DEPARTMENT

Employment Standards Administration

Federal Coal Mine Health and Safety Act of 1969, as amended:

Black Lung Benefits Act—

Processing and adjudication of individual claims by former coal miners and dependents; comments due by 3-24-97; published 1-22-97

PERSONNEL MANAGEMENT OFFICE

Employment:

Presidential management intern program; comments due by 3-24-97; published 1-22-97

SECURITIES AND EXCHANGE COMMISSION

Securities:

Plain English disclosure; comments due by 3-24-97; published 1-21-97

SMALL BUSINESS ADMINISTRATION

Business loan policy:

Depository and non-depository lenders; financing and securitization of unguaranteed portions of Small Business Act guaranteed loans; comments due by 3-28-97; published 2-26-97

Small business size standards and government contracting assistance regulations:

Very small business concerns; comments due by 3-24-97; published 1-21-97

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Aged, blind, and disabled—

Eligibility and benefit amounts affected by ineligible spouses or parents who are absent from household due solely to active military service; comments due by 3-25-97; published 1-24-97

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Massachusetts; comments due by 3-25-97; published 1-24-97

Regattas and marine parades:

Crawford Bay Crew Classic; comments due by 3-24-97; published 2-21-97

Vessel inspection alternatives:

Classification procedures; comments due by 3-27-97; published 12-27-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2); comments due by 3-24-97; published 2-26-97

Airworthiness directives:

Airbus; comments due by 3-24-97; published 2-12-97

Airbus Industrie; comments due by 3-28-97; published 2-18-97

British Aerospace; comments due by 3-27-97; published 2-14-97

Jetstream; comments due by 3-27-97; published 2-14-97

McDonnell Douglas; comments due by 3-28-97; published 1-27-97

Raytheon; comments due by 3-24-97; published 2-12-97

Airworthiness standards:

Special conditions—

Beechcraft model E90 airplane; comments due by 3-24-97; published 2-21-97

Sino Swearingen model SJ30-2 airplane; comments due by 3-24-97; published 2-21-97

Class D airspace; comments due by 3-27-97; published 1-27-97

Class E airspace; comments due by 3-25-97; published 2-13-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Federal regulatory review; comments due by 3-28-97; published 1-27-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Practice and procedure:

Rail passenger carrier commutation or suburban fare increases; CFR part removed; comments due by 3-26-97; published 2-24-97

TREASURY DEPARTMENT

Customs Service

Drawback regulations; comments due by 3-24-97; published 1-21-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Foreign investment—

Qualified Electing Fund Elections, preferred shares; hearing; comments due by 3-24-97; published 12-24-96

Nuclear decommissioning reserve funds; revised schedules of ruling amounts; comments due by 3-24-97; published 12-23-96

Reorganizations; receipt of rights to acquire corporation securities; comments due by 3-24-97; published 12-23-96

Shareholder interest continuity requirement for corporate reorganizations; comments due by 3-24-97; published 12-23-96

CFR CHECKLIST

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7 Parts:			
●0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
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●53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
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●400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
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1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
●**8**	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
●51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
*●**11**	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–028–00054–1)	31.00	Apr. 1, 1996
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–028–00059–2)	26.00	Apr. 1, 1996
141–199	(869–028–00060–6)	23.00	Apr. 1, 1996
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–028–00062–2)	20.00	Apr. 1, 1996
●400–499	(869–028–00063–1)	35.00	Apr. 1, 1996
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
●1–99	(869–028–00065–7)	16.00	Apr. 1, 1996
●100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
●170–199	(869–028–00067–3)	29.00	Apr. 1, 1996
●200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
●300–499	(869–028–00069–0)	50.00	Apr. 1, 1996
●500–599	(869–028–00070–3)	28.00	Apr. 1, 1996
●600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
●800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
●1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
22 Parts:			
1–299	(869–028–00074–6)	36.00	Apr. 1, 1996
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
0–199	(869–028–00077–1)	30.00	May 1, 1996
200–219	(869–028–00078–9)	14.00	May 1, 1996
220–499	(869–028–00079–7)	13.00	May 1, 1996
500–699	(869–028–00080–1)	14.00	May 1, 1996
700–899	(869–028–00081–9)	13.00	May 1, 1996
900–1699	(869–028–00082–7)	21.00	May 1, 1996
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	May 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1900 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–028–00129–7)	35.00	July 1, 1996
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	46.00	July 1, 1996
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–028–00138–6)	34.00	July 1, 1996
18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869-028-00144-1)	47.00	July 1, 1996
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
86	(869–028–00148–3)	46.00	July 1, 1996
●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–028–00159–9)	12.00	July 1, 1996
101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●**44**	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
●186–199	(869–028–00197–1)	14.00	Oct. 1, 1996
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
*●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
50 Parts:			
*●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.